EMPLOYMENT TRIBUNALS

Claimant: **Ms A. Rehman**

Respondent: **Healthbridge Direct**

Heard at: **East London Hearing Centre**

On: **15-17 June, 21-22 July and 4 November 2022**

Before: **Employment Judge Massarella**
Members: **Ms J. Henry**
Mrs B.K. Saund

Representation
Claimant: In person
Respondent: Mr B. Uduje (Counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that: -

1. **the Claimant made the public interest disclosure referred to as Disclosure 19;**

2. **the other matters relied on by the Claimant did not amount to public interest disclosures;**

3. **the Claimant was dismissed for redundancy; her claim that her dismissal was automatically unfair because the sole or principal reason for it was that she had made public interest disclosures is not well-founded and is dismissed.**

REASONS

Procedural history

1. The ACAS early conciliation period took place between 7 July and 7 August 2020. By an ET1 presented on 7 September 2020, the Claimant claimed that she was automatically unfairly dismissed for making protected disclosures. The Claimant lacked the two-year qualifying period of employment to bring a claim of 'ordinary' unfair dismissal.

2. The Respondent presented its ET3 on 4 November 2020; it relied on redundancy as the reason for dismissal; it contended that the alleged protected disclosures were not sufficiently particularised and identified the information required.

3. On 30 December 2022, EJ Gardiner ordered the Claimant to provide further particulars of her whistleblowing claim by 6 January 2021. The Claimant provided a generalised narrative document.

4. There was a telephone preliminary hearing on 18 January 2021 before EJ Tobin. He ordered the Claimant to provide further particulars by 15 February 2021.

5. The Claimant provided a second document on 15 February 2021. Again, much of it was generalised, for example: 'the discrimination made between doctors and admin staff'.

6. The Respondent provided an amended response, as ordered.

7. On 5 March 2021, the Respondent applied for an unless order on the basis that the Claimant had failed to comply with EJ Tobin's order.

8. By a notice dated 8 March 2021, this final hearing was listed for four days starting on 14 June 2022.

9. EJ McLaren made an unless order on 26 April 2021. The Claimant then sent a further document, which was lengthy, detailed and muddled, providing only a generalised description of the disclosures, a revised schedule of loss, and an analysis of the documents which had been disclosed to her.

10. On 25 June 2021, the Respondent's solicitor asked the Tribunal to confirm that the claim stood dismissed on the basis that the Claimant had failed to comply with the unless order. In a letter dated 10 March 2022, REJ Taylor stated her conclusion that the Claimant had provided further particulars and declined to dismiss the case. She listed a further telephone preliminary hearing on 8 April 2022 to clarify the issues.

11. At that hearing EJ Reid gave the Claimant a fifth opportunity to set out a list of the disclosures in table form. The Judge included a summary of the law in her case management order and encouraged the Claimant to bear in mind each of the steps in the legal test when completing the table. She also recorded that the Claimant had clarified that her disclosures were about raising health and safety concerns affecting patients and staff and raising data protection breaches in relation to patients. The table required the Claimant to identify, in respect of each protected disclosure, the likely breach of a legal obligation it tended to show and who had that obligation; and/or whose health and safety had been/was likely to be endangered. EJ Reid ended her summary of the discussion by reiterating that 'the Tribunal and the Respondent need to know what the Claimant says was in her mind at the time she made any disclosures'.

12. The Claimant was ordered to provide the information by 22 April 2022. She did not do so. On 5 May 2022, the Respondent made another application for an unless order. The Claimant wrote to the Tribunal on 6 May 2022 saying that she did not receive the summary of the Preliminary Hearing until 23 April 2022. She

attached the table. That table went no further than identifying whether the protected disclosure related either to a breach of a legal obligation (without specifying was it was) or a health and safety concern (without specifying what that was) or both.

13. On 25 May 2022, the Respondent applied to postpone the final hearing and convert it to an open preliminary hearing because the issues were still not clear. It also made an application for a strikeout/deposit order for failure to comply with Tribunal orders. By letter dated 30 May 2022, REJ Taylor refused the postponement application. She considered that a further preliminary hearing would be disproportionate and directed that the Tribunal which heard the case would make such directions/orders as were necessary for the disposal of the case, which may include striking out all or part of the Claimant's case. The length of the hearing was reduced from four days to three because of a lack of judicial resources. As set out below, the case eventually went part-heard.

14. The Respondent submitted an amended Grounds of Resistance, in which it dealt with the disclosures as set out in the Claimant's table as best it could.

The hearing

15. We had a bundle of 382 pages, to which a further two pages were added at the request of the Claimant, without objection from the Respondent. Later in the hearing the Respondent also produced a small number of additional documents, which we considered relevant and admissible.

16. At the beginning of the hearing, we reviewed the list of issues which still did not identify with sufficient clarity what the Claimant believed the breaches of legal obligations/health or safety matters were. There was no indication by the Respondent that it wished to pursue its strikeout/deposit order application.

17. We considered carefully how to proceed. Because the burden is on the Claimant to show that, subjectively, she believed that the disclosure of information tended to show a breach of a legal obligation/health or safety concern, it appeared to us that it would be inappropriate for the Tribunal to give the Claimant further assistance in identifying the matters she was relying on; there would be a real risk that the Tribunal might put words into the Claimant's mouth. If the Claimant had a subjective belief at the time as to a particular breach/concern, she ought to be able to articulate what it was, albeit in layman's terms.

18. The Claimant had had ample opportunity to articulate these matters and had been given careful guidance by previous judges as to what the relevant test was. Nonetheless, we considered that it was appropriate to give her one final opportunity to clarify this aspect of her case. We also pointed out that many of the alleged protected disclosures in her list were communications by other employees, not by her, and we asked her to consider whether she wished to withdraw them.

19. The Claimant conducted that exercise conscientiously, withdrew many of the protected disclosures (because they were made by others) and sought to identify the legal obligations/health and safety concerns in a final version of the table. Her final position in relation to each alleged disclosure is set out in the relevant conclusions section below.

20. We heard evidence from:

    20.1. the Claimant;

    and for the Respondent from:

    20.2. Ms Farzana Awan (Supervisor at the Respondent's Loxford hub);

    20.3. Ms Sanah Mahmood (Operations Manager);

    20.4. Ms Amita Gokani (Business Manager); and

    20.5. Ms Vanita Panesar (Head of HR).

21. Mr Uduje (Counsel for the Respondent) cross-examined the Claimant for the best part of two days; this reflected the number of protected disclosures which the Claimant was relying on, even after the clarification process. The Claimant then cross-examined Ms Mahmood and Ms Awan on the third day of the hearing. We were able to list two further days in July. Our aim was to complete evidence and submissions on the first of those days, deliberate and give judgement on the second day.

22. Unfortunately, the beginning of the fourth day was delayed because of technical difficulties; in the afternoon the Claimant was feeling unwell and so the Tribunal rose early. We encouraged the Claimant to write down her questions in full, as it appeared to us that she was finding the process difficult in part because, although she clearly had notes, she seemed to be trying to formulate her questions as she went along.

23. On the morning of the fourth day, the Tribunal received an email from the Claimant stating that she had become increasingly unwell overnight and was suffering with fever, diarrhoea and vomiting. She had an appointment with her GP later in the day and applied for a postponement. Mr Uduje agreed that, in the circumstances, the Tribunal had no real alternative but to grant the postponement, but he reserved the Respondent's position, subject to receipt of medical evidence.

24. Medical evidence was produced in due course and the hearing was relisted on the first available date, which was in November. The Claimant was able to complete her cross-examination of the last Respondent witness within an hour. At the Tribunal's request, both parties provided written documents containing their submissions, to which the Tribunal had regard. They are a matter of record and we do not attempt to summarise them here. Mr Uduje made some brief oral submissions; the Claimant did not wish to do so but asked us to have regard to her document, which we did. The Tribunal then deliberated and reached its conclusions.

Findings of fact

25. The Respondent is a provider of primary care support for GP surgeries in the London Borough of Redbridge and is funded by the NHS.

26. The Claimant began working for the Respondent as an administration support casual worker on 6 December 2019. The contract was described as a Bank Worker Agreement. The hourly rate was £10 per hour.

27. In early 2020, the Respondent set up a call centre. It was based in a building in Ilford called the Vintry. This was the Respondent's administrative hub; call centre workers and HR managers were based there; the call centre staff who worked there were bank staff.

28. The Respondent also had four hubs in the Borough of Redbridge: Loxford, Fulwell, Newbury, and Southdene. The last three were evening, out-of-hours sites. If a patient's GP closed at 6 p.m, they would contact the out-of-hours hub and book an appointment; they would be seen by a locum GP; their records would then be sent to their own GP. Before the Covid-19 pandemic began, appointments took place face-to-face; during lockdown they took place remotely.

29. On 4 February 2020, the Claimant was offered a temporary role, on a fixed-term contract of employment ending on 31 March 2020, as an out-of-hours call centre supervisor, covering evenings and weekends, supervising staff at the call centre and the four hubs.

30. Ms Awan was the daytime supervisor; Ms Mahmood was the Claimant's line manager.

31. On 16 March 2020, in light of the Covid-19 pandemic, the government announced that the time had come for non-essential contact and travel to stop. On 20 March 2020, the Respondent offered the Claimant an extension to her contract until 30 September 2020. On 23 March 2020, the government announced the first lockdown in the UK, ordering people to stay at home. On 26 March 2020, lockdown measures came into force.

32. We remind ourselves that this was an extraordinary time, during which individuals and businesses faced unprecedented challenges. There was no plan, to which businesses could default. There was a great deal of improvisation in every organisation, indeed in every aspect of life. The situation evolved rapidly, sometimes from one day to the next. We remind ourselves that no one knew in late March 2020 that the lockdown would continue for as long as it did. The hope was that it would be a short-term measure to halt the spread of the virus.

33. The immediate impact on the Respondent was that patients were no longer allowed to attend the GP surgery to book or attend appointments or to pick up prescriptions.

34. The first lockdown coincided with the Claimant's line manager, Ms Mahmood being on annual leave (from 16 to 31 March 2020). The daytime supervisor, Ms Awan, then contracted Covid and was off sick from 28 March 2020 for three weeks.

35. We now turn to the first of the Claimant's alleged public interest disclosures.

<u>Disclosure 7 - the incident report of 25 March 2020</u>

36. The incident which the Claimant reported was in relation to a child patient with a fever, who attended in person and was waiting in the reception area. The doctor was not willing to see the child. The Claimant took advice from another doctor who suggested that the patient be isolated and that she ask a different

doctor to see the child; if not, a doctor might be able to have a video consultation with them. In the event the original doctor dealt with the patient using the 'eyeball method' (treatment in person but from afar).

37. The Claimant filled out an incident form. She described the incident but did not state what the patient safety concern was. The Claimant did not describe any member of staff or clinician approaching the child; there was no reference to any other patient being near the child. She told the Tribunal that 'by describing the scenario this was me talking about patient safety and staff safety'.

Disclosure 13 – the email of 28 March 2020 at 11:34

38. On the morning of 28 March 2020, Ms Gokani emailed the Claimant, raising a concern that the Claimant had contacted her after hours about non-urgent matters. She said that out-of-hours contact should only be in cases of emergency and that, if the Claimant had planned better, she would not have needed to contact her.

39. The Claimant responded in a lengthy email at 11:34, which she relies on as Disclosure 13. She raised a range of issues, stating that she felt that 'things are quite unorganised at the moment' which was causing her additional work. She felt that she should be provided with a handover email before she started her shift. Her team was working well and going above and beyond the call of duty in terms of their hours, however some of the call handlers needed extra training. The email concluded:[1]

> 'They are many issues which are dragging just because they are not being coded or dealt with properly as the morning staff have their own issues which I guess you should take it with them. The issues addressed above are just a few examples, there are many more issues which I encounter on a daily basis and get them resolved during my shift which is limiting me to keep on top of my daily report and I have to do these during my personal time as in this morning. I hope you are getting my point at this stage as it is not a "COMPLAINT" but I am informing you that this is what I have to address during the 5 hours of my shift due to lack of clear communication. I would like to point out here that I as a Supervisor prioritise assisting the Call-handlers, Receptionists and Doctors and address to their queries, training and needs which I am unable to keep.'

Disclosure 14 - 29 March 2020

40. On 29 March 2020, the Claimant sent an email to Ms Gokani, asking whether the session on the system that day was for Dr Sangeetha or Dr Sangeet. Ms Gokani replied saying that the correct name should be on the system and that it was the supervisor's responsibility to check this at the start of the session.

Disclosure 16 – 29 March 2020

41. On 29 March 2020, the Claimant sent an email to Ms Mahmood. The aspect of this email which the Claimant relies on is her statement: 'prescriptions still not

[1] Quoted text has not been altered for spelling or other errors; minor amendments for sense are shown in square brackets.

been coded and been printed again after liaising with reception staff, pharmacies etc.' In the last sentence she wrote:

> 'please could you relate to the queries I have sent via email - I do not understand where is this getting confusing? For this sole reason, I wanted us to have a meeting to avoid the unorganised ways and have a real chat to resolve these issues.'

Disclosure 17 – 29 March 2020

42. At 12:32 on 29 March 2020, the Claimant wrote an email, in which she said:

> 'Please can we not go backwards and forwards – I have listed my queries as was asked by you when you informed about meeting being cancelled. Can they be addressed in writing.'

43. At 12:39 she sent an email to Ms Gokani and others, including the following:

> 'Please also kindly inform me about the PPE to be dropped off to the hub sites and when should this be taking place – as per my previous email they are in desperate need of it.'

44. Ms Gokani replied at 12:42: 'can you confirm which sites do not have any PPE?' The Claimant did not reply. At 13:04 Ms Gokani chased her, asking for details of the sites that were short of PPE. Only then did the Claimant reply:

> 'All sites require PPE (Loxford require facemasks). However, Southdene is not confirmed since Friday evening. Will liaise with A. Ume tonight.'

45. The next day Ms Gokani confirmed that additional PPE stock had been arranged at two sites (Newbury Park and Southdene).

46. Asked in oral evidence whether the organisation had enough PPE to go around, the Claimant initially did not answer and then said that she did not know because 'that was Ms Gokani's Department'. We accept Ms Awan's evidence that there was never a lack of PPE. Ms Gokani confirmed that a large order had been placed and delivered at beginning of the pandemic, which the Respondent has still not exhausted as at the date of the hearing. A system was in place whereby, if there was a sudden shortage at any given site, PPE would be put into cab and sent there immediately. We were taken to an email from Ms Emma Dennis on 3 April 2020, confirming that there were 'gloves, masks and hand sanitisers in the office for all to use (staff and doctors).' No patients were being seen to face-to-face, so any PPE concerns cannot have related to patient care.

Disclosure 19 – 29 March 2020

47. Still on 29 March 2020, at 17:58 the Claimant sent an email to Ms Awan and Ms Gokani, which included the following:

> 'I sorted 5 patient queries where no one knows where the prescription has gone - I have checked with Fairlop, Ilford lane pharmacy but Britannia was closed - I do not know why no code was entered on EMIS - which has been taught to the SA's via WhatsApp - I have mentioned this at varying place but honestly still this prescription issue persists. That's the reason at the end of my shift I am the one who enter the code to ensure all of my

> Rx dropped are known and could be located with My name and total count of Rx - dropped to Fairlop - so that I am held accountable if any problem occurs and not anyone else.'

48. We note that she wrote the following later in the email:

> 'Rather than blaming its better to inform and I don't know the culture here but my intention is to inform what's happening as COVID-19 is definitely not planned but this should make us better rather than worst when dealing especially when sick patients are trying to locate where there prescription is. This COVID 19 stage will prepare us towards improvement and betterment if GOD FORBID something worse comes alongside.'

Disclosure 22 – email of 30 March 2020 at 12:38

49. At 12:18 on 30 March 2020, Ms Gokani sent the Claimant a long and detailed email, updating her as to what the position was in relation to a wide range of issues, including PPE and prescriptions. We find that this was a direct response to the Claimant's request (para 42 above) that she respond in writing.

50. Among other things, Ms Gokani confirmed that two of the sites would be closing the following day. She concluded: 'if anything is unclear, please don't hesitate to call me or message.' This was a thoughtful and informative email about arrangements which had been made to deal with a very fast-moving situation in relation to which arrangements, of necessity, changed almost daily.

51. Contrary to the Claimant's allegations, we find that systems were in place, which were being adapted as new issues came up. The Claimant accepted in cross-examination that in this email Ms Gokani was trying to refine and explain these systems to her. There were also additional challenges, including the fact that two managers were away (one on leave and one with Covid).

52. At 12:38, the Claimant replied:

> 'Thanks for the updates. All will be done as listed. Mornings scripts from Vintry are they at the Vintry or sent to Richards pharmacy plus have the scripts be coded? In terms of 4 pm, I would like to have a meeting with you as I won't be able to continue working for HBD if things remain as they are. Therefore, please allocate a meeting day/time as per your convenience and mine.'

53. At this point, the Claimant still had not signed her contract extension (para 31 above).

Disclosure 21 - 30 March 2020 email at 21:01

54. Also in the 12:18 email, Ms Gokani wrote:

> 'If you have any scripts after 7pm if you can see if Shujana or Brejna can arrange for GPs at those sites to print and sign if not ask patient if can wait till morning and will be at Richards pharmacy at 9am. If they are to go to Richards please email me and Amaan so we can make sure they are delivered first thing.'

55. Shujana and Brejna were administrators based in Newbury Park and Southdene.

56. In an email at 21:01 later the same day, the Claimant informed Ms Gokani that Shujana had spoken to two doctors who had refused to sign another doctor's prescription. The Claimant also wrote:

> 'HBD Dr's wish for the Rx to be dropped urgently as one of the Pt's has UTI and one of them doesn't wish to collect from Richards as the window of them closing is too tight. I am therefore, willing to take the Rx to Fairlop this evening. I have coded them as well and signed for on the sheet.'

57. At 21:06 Ms Gokani replied that she would sort the matter out the following day. At 21:09 the Claimant replied:

> 'I am getting Dr Abbas who is still here to sign four Rx of Southdene and will be dropping them at Fairlop too – Southdene is sorted as well.'

58. In other words, the Claimant had resolved the issues within ten minutes. The explanation of her concern the Claimant gave in oral evidence was as follows: 'there should be a clear system in place to say you can't refuse to sign a prescription; why would a doctor refuse to sign another doctor's prescription?'

Disclosure 8 – the incident report of 5 April 2020

59. On 3 April 2020 the Respondent closed its Newbury Park hub.

60. On 5 April 2020, the Claimant raised another incident report form, in which she said that a member of the administrative staff had not been told been told about the closure of the Newbury Park hub and had gone into work there, not knowing that her shift had been cancelled. The Claimant advised her to attend a session at the Vintry, where they could go over some training together.

61. This was nothing more than an administrative mix-up. It was completely disproportionate raise an incident report form about such a minor matter.

62. On 5 April 2020 Ms Gokani wrote again to Ms Panesar:

> 'I really don't feel safe working with her as I feel she is deliberately trying to make things difficult. She also is causing problems and in front of staff which is making staff not work and unhappy. Can we discuss what steps we should follow as this is really unhelpful and mistakes will happen.'

63. We find that this referred to the incident report described immediately above and to an earlier incident on 2 April 2020, when a member of staff discovered that 26 of her shifts had been cancelled. The Claimant told her, in an open plan office in front of other members of staff, that it was probably because she had failed to take prescriptions to the pharmacy. The member of staff became very upset and said that she felt like resigning. In fact, what the Claimant had said was incorrect: the shifts had been cancelled in order to change their start time before being reinstated. When Ms Gokani explained this to the member of staff, she agreed to stay.

64. We find it unsurprising that Ms Gokani expressed frustration about these matters in her email to Ms Panesar. There is certainly nothing wrong with

suggesting improvements to management practice. However, the Claimant appeared to have difficulty raising issues sensitively and proportionately.

Disclosure 9 – the incident report of 7 April 2020

65. The Claimant completed another incident report form on 7 April 2020, in which she recorded that shortly after 6 p.m. patients for Fulwell had started attending the surgery for a face-to-face appointment. In the 'action to safeguard patient' box, she wrote:

> 'Please could we ensure to let staff know for the safety & security of our staff and GP's to ensure not to book face to face slots unless/until authorised by a clinical personnel. Call handlers to be informed to use accurate slot types to avoid calling back the patients (as they don't answer at the time and we had to send them text messages) plus it makes the work lengthy and requires extra staff – who can be allocated other tasks.'

66. The Claimant confirmed in cross-examination that, even if patients arrived at the door of the surgery (as they had on this occasion), they were not allowed in. She agreed (and we find) that there was no risk to the health and safety of staff and GPs.

67. On 7 April 2020, Ms Panesar of HR had a telephone meeting with the Claimant at which she raised a number of issues. The first of these was the need for the Claimant to remain in the office until 10 p.m. and not to leave at 9 p.m.; the Claimant said that she believed there was an 'on-call' hour between 9 and 10; Ms Panesar confirmed that was not the case. Ms Panesar also asked why the Claimant had not responded to the contract extension letter, which had been sent to her on 20 March 2020. The Claimant agreed to revert to her by the end of the week.

The downturn in work

68. On 7 April 2020, Ms Panesar wrote to all staff:

> 'Dear valued members of staff
>
> I hope this email finds you well. Unfortunately it is with regret I inform you that there has been a decline in patients requiring our services, due to this we are having to cut back and cancel shifts from next week onwards. I urge you to keep an eye out for further communications I would like to thank you all for your hard work and constant support.'

69. On 12 April 2020, the Respondent closed its Southdene hub. It subsequently closed its Fulwell Cross hub.

70. The Claimant accepted that, by this point there was a dramatic downturn in work: the number of patients trying to access services had reduced greatly and was never the same again; the number of sessions was reduced and, even so, there were many patients slots available. Ms Awan explained that, such was the anxiety among patients, they were reluctant even to have remote consultations; there were no walk-in patients.

71. Although there was initially some additional work through 111, that work reached a peak on 25 March 2020 and fell steadily thereafter, dropping from mid-April to next to nothing by the end of the month.

Disclosure 10 – the incident report of 12 April 2020

72. The Claimant made another incident report on 12 April 2020 in relation to the Vintry:

> 'I found 4 DS not sent at Loxford from the 11/04/2020– I informed Jas about them and Navjot as well. The DS which weren't completed were as follows:
>
> 1) 09:12
>
> 2) 11:36
>
> 3) 16:48
>
> 4) 17:12'

73. 'DS' was a reference to discharge summaries. When the Claimant discovered that four discharge summaries from the previous day had not been sent to the patient' GPs, she arranged for them to be sent and checked on them later to ensure that this had been actioned.

Disclosure 11 – incident report of 12 April 2020

74. The Claimant completed another incident report form on 12 April 2020. She wrote:

> 'When I started this morning at the Vintry – there were 11 prescriptions in the basket from 11/04/2020 which were done as print out rather than prescriptions tokens. Therefore, I liaised with Dr. M. Khan and Dr. Campwala and ensured all 11 Rx are sent via EPS. 3 patients confirmed that they have received it. I informed Amita right away who mentioned I should sent them via EPS and inform patients which was completed.'

75. The context was as follows: because patients were not allowed to come in and pick up their prescriptions, clinicians sent them electronically to different pharmacies. There were occasions when, if patients could not get to the pharmacies within opening hours, one of the Claimant's colleagues would drop them off at other pharmacies with longer hours. The issue here was that scripts had been printed when they should have been prepared electronically. That was an error by the clinicians. As soon as she noticed the problem, the Claimant sorted it out. There was no reference in the incident report to the prescriptions being urgent or to the patients having suffered harm (or even inconvenience) as a result.

The correspondence in 14 April 2020

76. On 14 April 2020, Ms Panesar wrote to the Claimant, asking why she had not reverted to her about the issues discussed at the meeting on 7 April 2020 (including the contract extension) and asking her to do so as soon as possible.

77. The Claimant responded within about half an hour, questioning whether it was correct that she was required to remain in the building until 10 and asking Ms

Panesar to 'gather more information and confirmation in regards to the timings and come back to me'. She wrote:

> 'The only thing I am having the issue here is not perceiving the exact and accurate information – plus the issue of transport issue for me if I finish at 10 p.m.'

78. Later the same day, Ms Panesar wrote to Orchard Employment Law, which advised the Respondent, saying that they were having issues with the Claimant, including not staying in the office until 10 p.m., as she was required to do, and not responding to the contract extension letter, as she had been repeatedly asked to do. There was no reference to the Claimant having made disclosures/submitted incident reports in the email.

79. Later still Ms Panesar wrote:

> 'Many thanks for reviewing the case. Should her manager be having this conversation with her or is it okay for me to? Also I have a couple of queries please:
>
> - As this is a temporary role and we have a full-time perm vacancy to fill – can we advertise for the role whilst [the Claimant] is in the position?
>
> - If we are successful in filling the role, can we terminate [the Claimant] sooner than the end of the extension? How much notice to renew to give her?'

80. In her evidence and submissions, the Claimant questioned why, if the Respondent was intending to advertise the position, they then made her redundant five days later. As we find below, the Respondent's position changed after 16 April 2020, when the extension to lockdown was announced. In the event the role was not advertised.

<u>Disclosure 12 – incident report of 15 April 2020</u>

81. The Claimant submitted another incident report on 15 April 2020. She wrote:

> '4 prescriptions taken home by Hansa by error instead of dropping them at Richards Pharmacy. Patient mentioned they spoke to Richards Pharmacy and that their Rx is not there. We therefore, rang Hansa and then got mentioned that the Rx weren't dropped. Skara took patient details from Hansa which were wrong when checked later. I then rang her and details were provided to Dr. Kadri. Hansa also forgot to sign out on the log sheet that she is carrying 4 Rx. She will enter them tomorrow.'

82. The prescription contained the patient's name, address, date of birth, phone number and age. The Claimant explained that, if a person had a small amount of knowledge, they might be able to infer what medical condition the patient had. There is no doubt that this constituted personal data. However, prescriptions were always placed in sealed envelopes.

83. She accepted that there was no difficulty with the colleague having access to the information because she worked for the Respondent. She said that the breach was taking it to her home where she lived with family. She accepted that she had no reason to think that the colleague would show them to her family.

Of course, this was during lockdown, when visitors would not be calling. The only potential risk the Claimant could identify was that her colleague had grandchildren and, if they went through her belongings, they might have found the prescription; if they had given it to an adult, that adult might have worked out what condition was. She accepted that she mentioned none of this in her contemporaneous report.

Extension of lockdown and notification of redundancy

84. On 16 April 2020 lockdown was extended for 'at least' three weeks. The government set out five tests which would have to be met before restrictions could be eased.

85. On 19 April 2020 Ms Panesar wrote to the Claimant, informing her that she was being made redundant. She wrote:

> 'You will be aware that there has been a downturn in work largely due to the outbreak of Covid-19. We had hoped that the impact of the outbreak would not have been so great which is why we extended your contract on the 20th March. Unfortunately, things have not improved as we had hoped and with the lockdown extended for a minimum of three weeks we cannot see the work increasing for several months. For this reason, I am sorry to have to inform you that your role is being made redundant.'

86. The Respondent paid the Claimant in lieu of one week's notice; her employment was terminated in a video call the same day.

87. By this point, the 111 support shifts had reduced from a peak of 38 shifts down to 8 and then to 4. GP shifts had reduced from peak of 205 to 64. Three hubs had closed and there was no prospect of them reopening in the foreseeable future (as at the date of the trial they still had not re-opened). There was a very significant reduction in the use of bank staff.

88. The Claimant was the only employee made redundant; she was also the only employee not on a permanent contract. We accept the Respondent's evidence that it no longer needed a dedicated evening supervisor at all. Insofar as there was any residual supervision work in the evenings, it could be covered by Ms Awan, who agreed to be on-call at home between 7 and 9 p.m., under a bank contract separate from her daytime role; Ms Mahmood and Ms Gokani could also help out as needed. The Respondent has not subsequently recruited into the evening/weekend supervisor position which the Claimant had held.

89. On 24 April 2020, the Claimant contacted the Respondent to ask it to put her on furlough, rather than making her redundant. We note that in the letter the Claimant did not mention the alleged protected disclosures or question the genuineness of the redundancy situation or the downturn in work, observing:

> 'I understand this is a difficult time amid Covid-19 as we all are suffering and trying our best to deal with this unimaginable disease.'

90. On 7 May 2020, HR refused the Claimant's request to be put on furlough. The reasons given included the fact that the Respondent would continue to accrue costs such as holiday pay, which were not borne by the government, and the fact that it was not possible to foresee when the Claimant's role would return to

full capacity. We accept Ms Mahmood's evidence that the Respondent did not furlough any staff.

91. Not until a month later, on 11 June 2020, did the Claimant write to the Respondent, alleging that her dismissal was because of 'anticipated whistleblowing', race, nationality and sex. This was the first time the Claimant referred to herself as a whistleblower. The Claimant used the same phrase ('anticipated whistleblowing') in her ET1; we find that she meant blowing the whistle outside the organisation, for example to NHS England Datix. The Claimant did not do so at the time. She explained that her solicitor advised her that she should not do so and pursue ET proceedings at the same time. We find that explanation implausible.

92. The Claimant contacted ACAS on 7 July 2020.

The law

Protected disclosures

93. A protected disclosure is a qualifying disclosure made by a worker in accordance with any of sections 43C to 43H. A qualifying disclosure is defined by section 43B, as follows:

> **(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—**
>
> **[…]**
>
> **(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,**
>
> **[…]**
>
> **(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.**

94. In *Williams v Michelle Brown AM*, UKEAT/0044/19/OO at [9], HHJ Auerbach identified five issues, which a Tribunal is required to decide in relation to whether something amounts to a qualifying disclosure:

> **'It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.'**

What was the disclosure of information?

95. It is now well-established that the concept of 'information' used in section 43B(1) ERA is capable of covering statements which might also be characterised as allegations. In order for a statement or disclosure to be a qualifying disclosure, it has to have sufficient factual content such as is capable of tending to show one or more of the matters listed in [s.43B(1) ERA] (*Kilraine v London Borough of Wandsworth* [2018] IRLR 846 per Sales LJ at [30] and [35]).

96. Whether each disclosure meets the sufficiency threshold will be a matter for evaluative judgment by the Tribunal in the light of all the facts of the case.

Did the worker believe that the disclosure tended to show one or more of the matters listed in sub-paragraphs (a) to (f)? If he did hold that belief, it must be reasonably held.

97. The issues arising in relation to the Claimant's beliefs about the information disclosed were comprehensively reviewed by Linden J. in *Twist DX Ltd*, from which the following principles emerge.

    97.1. Whether the Claimant held the belief that the disclosed information tended to show one or more of the matters specified in s.43B(1)(a)-(f) ('the specified matters') and, if so, which of those matters, is a subjective question to be decided on the evidence as to the Claimant's beliefs (at [64]).

    97.2. It is important for the ET to identify which of the specified matters are relevant, as this will affect the reasonableness question (at [65]).

    97.3. The belief must be as to what the information 'tends to show', which is a lower hurdle than having to believe that it 'does show' one of more of the specified matters. The fact that the whistleblower may be wrong is not relevant, provided his belief is reasonable (at [66]).

    97.4. There is no rule that there must be a reference to a specific legal obligation and/or a statement of the relevant obligations or, alternatively, that the implied reference to legal obligations must be obvious, if the disclosure is to be capable of falling within section 43B(1)(b). Indeed, the cases establish that such a belief may be reasonable despite the fact that it falls so far short of being obvious as to be wrong (at [95]).

98. 'Legal obligation' does not cover a breach of guidance or best practice, or something that is considered merely morally wrong (*Eiger Securities LLP v Korshunova* [2017] ICR 561). The EAT in *Eiger* (at [47]) held that, save in obvious cases, identification of the nature of the legal obligation the Claimant believed to apply and how it was believed there had been (or more precisely, tended to show) a failure to comply, is 'a necessary precursor' to the assessment of whether the Claimant held a reasonable belief.

Disclosure in the public interest

99. The Court of Appeal considered the 'public interest' test in *Chesterton Global Ltd v Nurmohamed* [2018] ICR 731. The following principles emerge.

    99.1. The Tribunal must ask: did the worker believe, at the time he was making it, that the making of the disclosure was in the public interest (at [27])? That is the subjective element.

    99.2. There is then an objective element: was that belief reasonable? That exercise requires that the Tribunal recognise that there may be more than one reasonable view as to whether a particular disclosure was in the public interest (at [28]).

99.3. While the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it (at [30]).

99.4. 'Public interest' involves a distinction between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest (at [31]).

99.5. It is still possible that the disclosure of a breach of the Claimant's own contract may satisfy the public interest test, if a sufficiently large number of other employees share the same interest (at [36]).

Automatically unfair dismissal

100. There is an important distinction between whistleblowing detriment cases, where it is sufficient that the disclosure is a material factor in the treatment, and dismissal cases, where it must be the sole or principal reason.

101. S.103A ERA provides:

> **An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.**

102. The approach to the burden of proof in section 103A claims was summarised by Mummery LJ in *Kuzel v Roche Products* [2008] ICR 799 as follows:

> **'[…]**
>
> **[52] Thirdly, the unfair dismissal provisions, including the protected disclosure provisions, pre-suppose that, in order to establish unfair dismissal, it is necessary for the ET to identify only one reason or one principal reason for the dismissal.**
>
> **[53] Fourthly, the reason or principal reason for a dismissal is a question of fact for the ET. As such it is a matter of either direct evidence or of inference from primary facts established by evidence.**
>
> **[…]**
>
> **[57] I agree that when an employee positively asserts that there was a different and inadmissible reason for his dismissal, he must produce some evidence supporting the positive case, such as making protected disclosures. This does not mean, however, that in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason.**
>
> **[58] Having heard the evidence of both sides relating to the reason for dismissal it will then be for the ET to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence.**
>
> **[59] The ET must then decide what was the reason or principal reason for the dismissal of the Claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the ET that the reason was what he asserted it was, it is open to the ET to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the ET must find that, if the reason was not that asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, it is not necessarily so.**

> **[60] As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the Tribunal to find that, on a consideration of all the evidence, in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case advanced by the employee on the basis of an automatically unfair dismissal on the basis of a different reason.'**

Redundancy

103. A redundancy situation is defined by s.139 ERA.

> **(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—**
>
> **(a) the fact that his employer has ceased or intends to cease—**
>
> **(i) to carry on the business for the purposes of which the employee was employed by him, or**
>
> **(ii) to carry on that business in the place where the employee was so employed, or**
>
> **(b) the fact that the requirements of that business—**
>
> **(i) for employees to carry out work of a particular kind, or**
>
> **(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,**
>
> **have ceased or diminished or are expected to cease or diminish.**

Conclusions

Disclosure 7 - Incident report of 25 March 2022 (above at para 36)

104. We accept that the Claimant disclosed specific information. In the final version of the list of issues, she identified the legal obligation/health and safety concern as follows:

> 'Breach of legal obligation of HBO: there should be a system/policies/procedures/guidelines in place for clinicians to undergo when seeing patients with fever.
>
> Health and safety of Admin and Clinician on site plus other patients in that room as if Covid it could affect other patients and further leads to isolation.'

105. The Claimant made no mention in the incident report of 25 March 2022 of any policy not being followed, or doctors not been trained in policy. In her oral evidence, she referred to a different purported legal obligation altogether: that 'a doctor cannot deny to see a child'.

106. We are not satisfied that the Claimant subjectively believed that the information she was disclosing tended to show a breach of a legal obligation at all, rather she believed that it showed a failure of good practice. In any event, we have concluded, having regard to her oral evidence, that she did not have in mind the matters set out in the table, but rather her belief that the doctor acted wrongly in refusing to see the child.

107. Nor are we satisfied that she subjectively believed that the information she was disclosing tended to show the pleaded health/safety concern. There was no mention of a risk of infection from people being together on site in her report. We do not think she had that concern in mind at all, given the cautious manner in which those involved handled the incident.

108. Consequently, the Claimant did not make a public interest disclosure in this incident report. She was simply recording a situation, which she found difficult. Her case has been constructed after the event and has been advanced inconsistently.

109. If we are wrong about that, and the Claimant had the pleaded matters in mind, it was not objectively reasonable for her to believe that the information she disclosed tended to show a breach of a legal obligation. It was so early in the lockdown (two days after it had been announced and a day before it became mandatory) that it was inevitable that challenging situations would arise and a degree of improvisation would be required.

110. Further, it was not reasonable for her to believe that admin, clinicians and other patients had been or were likely to be endangered, in circumstances where the incident was dealt with so carefully by all concerned.

Disclosure 8 – the incident report of 5 April 2020 (para 59)

111. In the final table the concern identified was: 'Health and Safety of Staff plus it is a safeguarding issue'. There is no reference to any health and safety concern in the incident report, nor in the earlier version of further and better particulars, which referred to 'repetitive errors/mistakes made by management yet no one held accountable.'

112. The Claimant accepted in cross-examination that she was disclosing information relating to what she regarded as bad management. We have concluded that she did not have health and safety considerations in mind when she completed the incident report. It was nothing more than an administrative mix-up. It was completely disproportionate raise an incident report form about such a minor matter. We find it unsurprising that Ms Gokani expressed frustration about this in her email to Ms Panesar (para 61 above).

113. There was no public interest disclosure.

Disclosure 9 – the incident report of 7 April 2020 (para 65)

114. In the final table the concern identified was: 'Health and Safety of staff at those hubs as appointment still being booked face-to-face, plus delaying patient treatment as some patients not answering calls.'

115. In her earlier further information she wrote:

> '5) IR form dated 07.4.2020 - As I started my shift, I was asked by management to address issues/mistakes from previous shifts and was told to involve the evening staff – which added extra pressure on the evening staff as some of them were there for less hours than the morning staff and had to complete their tasks along with the amendments. Again, I don't till today understand the reason behind this and why wasn't staff being

> trained the same thing. But I kept bringing/pushing this forward to ensure it falls on the right years and an action will be taken but rather I was made redundant.'

116. We have concluded that the Claimant did not subjectively believe she was disclosing information which tended to show a health and safety risk in relation to the patients arriving at surgery; rather she was complaining about another administrative mix-up, which caused her and her staff extra work.

117. If we are wrong about that, and the Claimant did believe she was disclosing information which tended to show a relevant health and safety concern, we conclude that that was not a reasonable belief, in circumstances where she knew that patients were not being permitted to enter the surgery.

118. As for the reference to 'delaying patient treatment', we are not satisfied she had that in mind when she raised this matter. She did not mention it in her earlier further information. We infer from the totality of the documents that her real concern was 'the extra pressure on the evening staff' and the inconvenience to them and her.

119. There was no public interest disclosure in this document.

Disclosure 10 – the incident report of 12 April 2020 (para 72)

120. In the final table the Claimant relied on the following matters:

> 'Breach of legal obligation of HPL – discharge summaries are sent to GP to ensure GP is aware of what their patient was diagnosed/treated for.
>
> Patient's [health and safety] as it could lead to overdose, repetition of treatment and/or to ensure no interaction between medications.'

121. There is no mention of these concerns in the original incident form. The Claimant accepted in cross-examination that she did not mention in the incident report that these were urgent discharge summaries, nor that there were particular concerns in relation to these patients of the sort she now identifies. The table does not articulate any identifiable legal obligation.

122. Nor did the Claimant mention the second of these concerns in the earlier further information document, in which she wrote:

> '7) IR form dated 12.4.2020 - Discharge Summaries (DS) not being sent to patient's GP to inform them about the treatment/problem/consultation their patient has had at our clinics. Once again, we had to pick this from previous shift and added to our workload for the day.'

123. We have concluded that the Claimant did not have legal obligations in mind when she made the report. At the hearing she was unable to identify with any degree of cogency what legal obligation she believed had been/was likely to be breached.

124. As for health and safety concerns, we have concluded that she did not believe that the health or safety of patients had been/was likely to be endangered. If she did, the belief was not reasonable: the serious risks she described were

theoretically possible, but not likely, especially as the issue had been so quickly picked up (by her) and remedied.

125. We conclude that these are retrospective labels which the Claimant has applied to the document in order to assist her in her case. In our judgment, what the Claimant was really concerned about was that the previous shift had not done something it should have done, leaving her to deal with it when she arrived and adding to her workload.

126. This was not a protected disclosure.

Disclosure 11 – incident report of 12 April 2020 (para 74)

127. In her earlier further information, the Claimant wrote:

> 'IR form dated 12.4.2020 - Prescriptions (Rx) being printed still than being sent EPS – once again it explains that prior to me addressing the issues of the day I am working – I and my staff had to address issues from the previous shift and to ensure they were addressed immediately as it was at the cost of patients health. There was no organised method and staff were not being trained accordingly as the rules kept on changing without everyone being informed.'

128. We note that. although there is a fleeting reference to the error being 'at the cost of patients health', there is no specific explanation as to how, and no reference at all to any legal obligation.

129. The concerns relied on in the final table were

> 'Breach of legal obligation of HPL – treatment delay as HPL to provide medical care (prescription) to patients for their treatment.
>
> Patient safety – what if one of those prescriptions was morning after pill, iron tablets for low haemoglobin or any other urgent prescription for infection.'

130. The Claimant made no reference to these matters in the incident report. Her explanation was that she did not know the legal terms. However, these are not legal terms, they are factual assertions. The Claimant did not identify with any degree of cogency what legal obligation she believed had been/was likely to be breached, either in her table or at the hearing.

131. We have concluded that the Claimant did not subjectively believe that she was disclosing information which tended to show a breach/likely breach of a legal obligation; she was complaining about a lack of organisation which caused her additional work.

132. As for the alleged health and safety concern, in the first version of her further particulars she stated 'it was at the cost of patient's health', suggesting that there was actual harm, without specifying what that harm was. In the final iteration her position changed and she referred only to a theoretical possibility of patient harm, giving notional examples.

133. This inconsistency, together with the fact that the Claimant did not make any reference to patient harm in the original incident report, only articulating this in

documents long after the event, leads us to conclude that she did not subjectively believe at the time that a patient's health or safety had been, or was likely to be, endangered.

134. If we are wrong about that, and she did have such a belief, we have concluded that the belief was not reasonable, given that the error was quickly rectified and no harm to patients was identified at the time.

135. This was not a protected disclosure.

Disclosure 12 – incident report of 15 April 2020 (para 81)

136. We note that in the original report there is no reference to a breach of data protection.

137. In her earlier further information, the Claimant did mention 'a direct GDP risk to patient privacy and'. She went on:

> 'Yet, some of the morning staff were never properly trained on it and the mistakes continued. This time it was serious as it involved patient confidentiality and privacy as four [prescriptions] were taken home by the staff and we were not informed until we received a call from patient who had contacted the pharmacy to collect the [prescription]. Thus, the [prescription] had to be reissued.'

138. In her final table, the Claimant relied on

> 'Breach of legal obligation of HPL (GDPR) – a personal data breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of all access to personal data. This includes breaches that are the result of both accidental and deliberate causes. It also means that a breach is more than just about losing personal data.
>
> Patient's [health and safety] – the NHS Confidentiality Code of Practice (2003) outlines four main requirements that must be met in order to provide patients with the confidential service: Protect patient information.'

139. We found the Claimant's explanation as to the potential risk of a data breach so strained and convoluted (para 83) that we concluded that she did not subjectively believe at the time that she was disclosing a breach of legal obligation or a risk to patient health or safety as identified in the final particulars. We note that the focus in the original incident report was on the prescriptions not having been dropped off at the pharmacy. The fact that the staff member had taken them home was mentioned only in passing, and not by reference to a data/confidentiality breach.

140. If we are wrong about that, and the Claimant did believe it, we find that belief was not reasonable. This was a breach of good practice, but it ought reasonably to have been obvious to the Claimant that it was not one which had led, or was likely to lead, to an actual data/confidentiality breach.

Disclosure 13 – the email of 28 March 2020 at 11:34 (para 38)

141. The concerns relied on in the final table were:

> 'Breach of legal obligation of HPL – no system in place to deal with discharge summaries, prescriptions, NHS 111 reports, incorrect information etc.
>
> Patient's and Staff's [health and safety] – work-related stress, employers have duty of care to protect employees from work-related stress.'

142. In the course of cross-examination, the Claimant accepted that it was not true that there was 'no system in place to deal with discharge summaries, prescriptions, NHS 111 reports'. There was a system; it was just not the system she thought should be in place.

143. In an earlier version of her further information, she had relied on entirely different legal obligations/health and safety concerns:

> 'Breach of legal obligation of Health Bridge Direct was to provide medical care (prescription) to patients for their treatment
>
> [health and safety] delaying the treatment of patients as prescriptions were never ready for them.

144. The Claimant accepted in cross-examination that her email did not refer to these matters. Again, she accepted that these assertions were not factually correct: it was not true that prescriptions were 'never ready for patients'; nor was it true that the Respondent was 'not providing medical treatment' by way of prescriptions for patients. When it was pointed out that these were serious allegations to make against a healthcare provider, if they were not true, the Claimant withdrew them and observed that she should have 'worded them more carefully'.

145. Earlier in cross-examination the Claimant had suggested that she was raising a concern about 'prescriptions being lost or missed'. This was a further example of the Claimant shifting ground: although there was a reference to prescriptions in the email, she eventually accepted that there was no reference to them being 'lost or missed'.

146. The email was long and detailed. At no point in it did the Claimant expressly referred to breaches of legal obligations or the risk of work-related stress to employees.

147. Although the Claimant stated that it was not a complaint, in our view that is precisely what it was. Counsel for the Respondent asked the Claimant whether she believed that every time she wrote to her line manager, she believed she was raising a breach of a legal obligation, the Claimant said: 'when highlighting concerns, yes'. Asked by the Tribunal whether she thought that concerns and public interest disclosures were the same thing, she said that she did. In relation to one of the matters she raised, asked whether she was saying that there was an obligation, which was not being complied with, or rather that there should be an obligation, she replied that the latter was the case. She confirmed that she was setting out what she thought would be good practice.

148. In any event, having accepted that the alleged breaches of legal obligations were not true, and in view of the fact that there was no mention of work-related

stress in the email, we concluded that the Claimant there were no public interest disclosures in this email.

Disclosure 14 – the email of 29 March 2020 (para 40)

149. In relation to this alleged disclosure, concerning the identity of a doctor referred to on the system, the Claimant relied on health and safety 'in case of fire hazard'. She said nothing about this in her email or in her reply to Ms Gokani's email. In oral evidence she explained that 'if their gender was different, I would struggle to locate them'. We found that explanation utterly implausible. We are not satisfied that she had fire safety concerns in mind when she sent this email; that was something she articulated long after the event.

150. This was not a public interest disclosure.

Disclosure 16 – 29 March 2020 (para 41)

151. The Claimant relied on:

> 'Breach of legal obligation of HPL: prescription being reprinted as no one knew where the first print was. Management not addressing these compelling issues.
>
> Patient's [health and safety] as their first prescription is missing (GDPR) and staff's [health and safety] – stress at work – health and safety at work act to ensure health, safety and welfare of staff. Missing or lost prescriptions could be misused.'

152. The Claimant did not make any reference in her email to prescriptions being missing, nor any reference to data protection or stress at work. We do not accept the Claimant's assertion that they were implicit in the email. We have concluded that she did not have these matters in mind at the time and did not believe that she was disclosing information which tended to show the pleaded concerns; rather, she has applied these labels after the event.

153. This was not a public interest disclosure; it was merely a complaint about what she perceived as 'unorganised ways'.

Disclosure 17 – 29 March 2020 (para 42)

154. In the final table the Claimant relied on:

> 'Breach of legal obligation – desperate need of PPE, during Covid crisis, it was desperate and scary situation, affecting mental health.
>
> Health and safety of clinicians, staff and patients as if no PPE no protection thus exposed to Covid.'

155. We have concluded that the Claimant did not subjectively believe that she was disclosing information tending to show these breaches; for whatever reason, she was asserting a 'desperate need' when, as a matter of fact, there was none.

156. Alternatively, if she did believe it, the belief was not reasonable because, on her own evidence, she did not know what the position was as to levels of PPE in particular sites (hence her failure to respond immediately to Ms Gokani's request for more details and her subsequent, vague response when chased).

She ought reasonably to have known that there was no shortage generally of PPE in the organisation, that there was a good system in place for distributing it and no likelihood of danger to health or safety.

157. This was not a public interest disclosure.

Disclosure 19 – 29 March 2020 (para 47)

158. In the final table the Claimant relied on:

> 'Breach of legal obligations – prescription missing.
>
> Patients [health and safety] as their personal information is missing plus their treatment is being delayed. Personal information could be misused, risk to patients health due to delayed treatment, breach of basic duty of care from Respondent.'

159. In this disclosure we note that the Claimant did specifically mention, in the second extract quoted above (para 48), 'sick patients are trying to locate where their prescription is'.

160. The Claimant said in the email that she entered the codes for prescriptions herself; consequently, it was unlikely that health and safety would be endangered on her shift. However, the Claimant pointed out in her evidence that the same system was not being implemented on other shifts.

161. She stated that she was disclosing this information in the public interest. She described herself as 'making myself accountable, they know it was me'.

162. We have concluded that, in relation to this communication, the Claimant did have in mind a concern that patients were unable to locate their prescriptions. We accept that she believed (whether or not she was right) that this information tended to show that a patient's health was likely to be endangered, and that her belief was reasonable, given the information she received that five patients had been in contact to chase their prescriptions.

Disclosure 21 - 30 March 2020 at 21:01 (para 54)

163. The breaches relied on in the final table were:

> Breach of legal obligation – Drs refusing to sign prescription as not prescribed by them – no system in place to reassure clinicians. It would have been unlawful for other doctors to sign someone else prescription as they have not seen patient. It's like one judge hearing the case and taking different making a decision
>
> Patient's [health and safety] as delaying their treatment.

164. The Claimant's evidence in relation to this disclosure was inherently contradictory: in the formulation set out above she asserted that it was unlawful for one doctor to sign another doctor's prescription; in her oral evidence she said that the GPs who refused to sign another doctor's prescription were in breach of their obligations; in her written closing submissions she asserted (at para 21) that signing another doctor's prescription was 'unsafe and not in line/lawful when we consider GMC Good Practice in Prescribing' (a document

to which we were not taken in evidence); at para 23 she submitted that refusing to sign another doctor's prescription 'can put the patient at significant risk' and was contrary to GMC good practice.

165. We do not believe that the Claimant had any legal obligations in mind; she was simply complaining about the fact that a situation had arisen which caused some difficulties (albeit that she had resolved it within ten minutes). Her attempt to attach the label of legal obligations to this incident was retrospective and incoherent. She made no reference in her email to any patient's health or safety being likely to be endangered and we do not think that she had this in mind.

166. This was not a public interest disclosure.

Disclosure 22 – email of 30 March 2020 at 12:38 (para 49)

167. The breaches relied on were:

> 'My health and safety as work-related stress, employers have duty of care to protect employees from work-related stress.'

168. The Claimant explained in oral evidence that she relied on the sentence: 'In terms of 4 pm, I would like to have a meeting with you as I won't be able to continue working for HBD if things remain as they are.' She maintained that this 'referenced I was stressed at work'.

169. We disagree. She referred to the fact that she may decide to leave; she gave no indication that she might do so for health reasons. The disclosure did not contain information which was sufficiently specific or clear such that it tended to show that a person's health or safety was likely to be endangered.

170. It is not a protected disclosure.

Disclosures 23, 24 and 25 – telephone calls

171. In her final schedule the Claimant provided a list of telephone calls with Ms Awan and Ms Mahmood and described what 'would have been discussed' in those calls. The Claimant accepts that she does not remember exactly what was said and that the information in the table was speculation only. In the circumstances, we have concluded that there is insufficient evidence on the basis of which we could properly find that the Claimant made protected disclosures in any of these calls.

The sole or principal reason for the dismissal

172. We have concluded that, among the various communications the Claimant relied on, only one, on 29 March 2020 (Disclosure 19), amounted to a public interest disclosure.

173. We then asked ourselves whether the fact that she made that disclosure was the sole or principal reason for her dismissal. We concluded that it was not. Although Ms Panesar was not copied into the email, the Claimant said in oral evidence that she believed that Ms Gokani 'would have discussed this with her'.

174. We note that Ms Panesar spoke to the Claimant after this email, on 7 April 2020 (paras 67), chasing her to sign the contract extension which she had been

offered. Assuming she did know about the email, it appears not to have had any adverse effect on her wish to retain the Claimant. We have concluded that, if anything, her emails indicate a frustration with the Claimant not committing one way or the other to a further period of employment, which created uncertainty for the Respondent. Her subsequent dissatisfaction with the Claimant, expressed in her email to Orchard employment law on 14 April 2020, specifically included the fact that the Claimant had still not signed the extension.

175. We have concluded that the turning-point for the Respondent came on 16 April 2020, when lockdown was extended for a minimum of three weeks. Already by that point there had been a dramatic downturn in work. There was no guaranteed end-date for that downturn and the Respondent's hope (shared by many at the time) of a swift end to the pandemic had been dashed. That is confirmed by the email of 19 April 2020, by which Ms Panesar informed the Claimant that she was being made redundant.

176. Two of the three out-of-hours sites (Southdene and Newbury Park) had already been forced to close and the third (Fulwell Cross) would follow suit. There was no prospect of them reopening in the foreseeable future. There had been a dramatic reduction in 111 work and GP shifts (para 87). There was no longer a need for a dedicated evening supervisor (para 88); the requirements of the Respondent for employees to carry out work of that kind had ceased/diminished; there was a clear redundancy situation.

177. We are satisfied that redundancy was the sole reason for the Respondent's decision to dismiss the Claimant. If we are wrong about that, and the concerns Ms Panesar raised about the Claimant (paras 78-79) played any part in the decision to dismiss her, we conclude in the alternative that they were no more than a subsidiary factor. They were concerns which might well have been resolved satisfactorily in due course, had the extension to the lockdown not intervened. They were unconnected to the single protected disclosure which we have found the Claimant made.

178. For the avoidance of doubt, we reject the Claimant's submission (in her written closing submissions) that the Respondent's decision not to furlough her was evidence that the Respondent wanted to dismiss her for reasons other than those connected to the pandemic. The Respondent chose, as it was entitled to do, not to furlough any of its employees. We accept its explanation for that decision.

179. For all these reasons, we have concluded that the Claimant's claim of automatically unfair dismissal is not well-founded and is dismissed.

Employment Judge Massarella
Date: 15 December 2022