EMPLOYMENT TRIBUNALS

Claimant: Mr G Bennett
Respondents: Knowsley Metropolitan Borough Council

Heard at: Liverpool **On:** 14, 15 and 16 November 2022

Before: Employment Judge Horne

Members: Ms F Crane
Mr W K Partington

Representatives
For the claimant: in person
For the respondent: Mr T Kenward, counsel

JUDGMENT

1. In this judgment, "the 2021 detriments" means the detriments to which the claimant was allegedly subjected by:
   1.1. Failing to provide the claimant with a detailed grievance investigation report on 3 March 2021 (D12)
   1.2. Failing to respond to the claimant's concerns raised on 23 May 2021 or 13 June 2021 (D14 and D15) and
   1.3. Failing to keep to agreed timescales during early conciliation with ACAS (D16 and D17).
2. The respondent did not subject the claimant to the 2021 detriments on the ground that he made a protected disclosure.
3. In any case, the tribunal has no jurisdiction to consider Detriment D12, because the claim in respect of D12 was presented after the expiry of the statutory time limit and it was reasonably practicable for the claim to be presented before the time limit expired.
4. In this judgment, "the 2020 detriments" means Detriments D1 to D9.
5. The tribunal has no jurisdiction to consider any of the 2020 detriments. This is because:

5.1. No detrimental act or failure in breach of section 47B of the Employment Rights Act 1996 was done on or after 3 June 2021

5.2. The 2020 detriments were not similar to any of the 2021 detriments

5.3. The latest date by which any of the acts or failures constituting the 2020 detriments could be said to have been done was 28 October 2020

5.4. It was reasonably practicable for the claimant to present his claim in respect of the 2020 detriments within the statutory time limit and

5.5. In any event, the claim in respect of the 2020 detriments was not presented within such further period as the tribunal considered reasonable.

REASONS

The claim

1. By a claim form presented on 10 November 2021, the claimant complained that the respondents had subjected him to detriments on the ground that he had made protected disclosures. Section 47B(1) of the Employment Rights Act 1996 ("ERA") gives a worker the right not to be subjected to a detriment by any act (or deliberate failure) done by his employer on that ground.

Case management

2. It was not clear from the claim form what disclosures the claimant was saying he had made and what detrimental acts or failures had been done to him. He was requested by an employment judge to provide "further and better particulars". The document he provided in response was lengthy. It appeared to have been prepared by the claimant with considerable care and effort, but it did not really assist in identifying the disclosures and detriments.

3. A preliminary hearing took place on 6 April 2022. The written case management summary following that hearing records the judge's decision to order the claimant to prepare a "Scott Schedule". The judge also expressed the hope that the Scott Schedule would make the issues clear.

4. That hope proved to be somewhat optimistic. The claimant prepared a table, as he was ordered to do. In that table, he set out 18 alleged protected disclosures, each in a separate row. The table had a column headed, "Detriment suffered". For some protected disclosures, the words in the "Detriment suffered" column appeared to be describing what the protected disclosure was about, rather than any detrimental act or failure that was alleged to have been done on the ground that he had made it. Other entries in the "Detriment suffered" column appeared to describe detrimental acts or failures that had been done on the ground that the claimant had made the disclosure referred to in that row.

5. Next to the "Detriment suffered" column was a further column headed, "Reason why claimant says detriment was as a result of protected disclosure". The text in this column often made it easier to understand what the nature of the alleged detriment was, and if there was a detriment being alleged at all.

Issues

How we clarified the issues

6. At the start of the hearing, we discussed each of the allegations in the claimant's table, row by row. We incorporated the claimant's answers into a new list. The numbering system is based on the rows in the original table. That is to say, "PID1" means the protected disclosure alleged in Row 1 of the table, and "D1" means the detriment alleged in under the heading "Detriment Suffered" in Row 1. We have retained some of the column headings from the original table.

7. We revisited the list of allegations during the course of the hearing, as disputes arose about what was, or was not, part of the claim. This led us to make the following disputed decisions:

   7.1. The claimant sought to amend his claim to include an allegation of a further detriment. The proposed allegation arose out of a comment Ms Caldwell made in her draft investigation report. According to the report, Ms Caldwell had not had an opportunity to interview Sonia Bennett. The claimant wanted to argue that Ms Caldwell had not told the truth, and that the falsehood was a detriment on the ground that he had made a protected disclosure. We refused permission to make that amendment.

   7.2. A further dispute arose in relation to what is now PID5. The claimant contended that he had also made a protected disclosure by e-mail on 8 August 2020, and not just on 6 August 2020 as row 5 of the original table suggested. He advanced that case in his closing submissions but, more importantly, he also tried to advance it at the start of the hearing. We gave the claimant permission to amend his claim to make that amendment.

   7.3. The claimant tried to allege (in what is now D9) that he had been subjected to the alleged detriments on 10 September 2020, and not on 13 September 2020 as his original table suggested. We refused permission to amend his claim to make that amendment.

8. We gave reasons for each of these three disputed decisions orally at the hearing. Written reasons will not be provided unless a party makes a further request in writing within 14 days of the date when these reasons are sent to the parties.

Protected disclosures

9. Here is a complete list of the protected disclosures that the claimant says he made. The list takes account of our disputed decisions.

	When and how	To whom	Information disclosed
PID1	23 April 2020 by e-mail	Ruth France Anne-Marie Ness	Potential misuse of public monies via use of purchasing cards for a home that was not currently open
PID2	22 May 2020 by e-mail	Ruth France	Potential misuse of public monies via use of purchasing cards for a home that was not

		Anne-Marie Ness	currently open
PID3	29 June 2020 by e-mail	Ruth France Anne-Marie Ness	Potential misuse of public monies by re-instating a Netflix account
PID5	6 August 2020 in a face-to-face conversation and 8 August 2020 by e-mail	Ruth France Tina Mullock	A boy, PH, had sent a picture of his genitals to the phone of a girl, MB, who lived at one of the respondent's homes. This tended to show that a criminal offence had been committed and that the health and safety of PH and MB was being put in danger.
PID7	26 August 2020	Sonia Bennett Jane Vowles	A breach of COVID-19 regulations and a danger to health and safety, caused by too many people being in the Holt during a joint staff meeting
PID8	7 September 2020 by e-mail	Ruth France Sonia Bennett	Breach of COVID-19 regulations and danger to Health and Safety
PID10	22 September 2020	Sonia Bennett	Breach of GDPR legislation. Sonia Bennett was going to take a filing cabinet to the local council tip. The claimant found personal data in the filing cabinet relating to young people who had lived in the home.
PID11	28 October 2020 by e-mail (grievance)	Graham Ennis	A repeat of PID1 to PID10
PID13	23 May 2021 by e-mail	Graham Ennis	Query to ask why the authority did not send the claimant the completed report into his whistleblowing and grievance complaints
PID14	13 June 2021 by e-mail	Graham Ennis	Further evidence to implicate Tracy Burke and Tina Mullock in the safeguarding concerns about MB and PH
PID15	1 July 2021	Graham Ennis	Informing Mr Ennis that the respondent was failing to respond to his concerns

10. With the exception of the alleged oral disclosure on 6 August 2020 (part of PID5), the respondent accepted that the clamant had made a disclosure to his employer on each occasion. Where the claimant and respondent parted company was over the question of whether the disclosure qualified for protection.

11. In respect of each of these 11 alleged protected disclosures, the issues were as follows:

    11.1. What did the claimant say or write on that occasion?

    11.2. Was it a disclosure of information?

    11.3. Did the claimant believe that the information tended to show the relevant concern listed in section 43B of the Employment Rights Act 1996?

    11.4. Was that belief reasonable?

    11.5. Did the claimant believe that he was making the disclosure in the public interest?

    11.6. Was that belief reasonable?

Detriments

12. Here is a complete list of the detriments to which the claimant says he was subjected. Again, the table reflects the disputed decisions we made.

	Detrimental act or failure	Disclosure that motivated the act/failure
D1	Ruth France ignored the claimant's disclosure and did not progress it	PID1
D2	Ruth France ignored the claimant's disclosure and did not progress it	PID2
D3	Ruth France ignored the claimant's disclosure and did not progress it	PID3
D4	Ruth France and Sonia Bennett attempted to intimidate the claimant at a joint supervision meeting	PID1-3
D5	Sonia Bennett gave the claimant an informal written warning on 7 August 2020	PID5
D6	On 11 August 2020 Sonia Bennett sent the claimant a letter threatening him with disciplinary action connected to the sickness absence procedure	unclear
D7	Sonia Bennett and Jane Vowles reacted negatively to the claimant's concerns about COVID safety and continued to hold meetings	PID7

D8	Ongoing bullying and harassment	PID8
D9	On 13 September 2020, the claimant was given excessive tasks that were not his responsibility. Refusal to allow the claimant to work from home.	unclear
D12	Failure to send the claimant the detailed investigation report with the grievance outcome on 31 March 2021	PID11
D14	Failure to respond to the claimant's concerns	PID14
D15	Failure to respond to the claimant's concerns	PID15
D16	Failure to respond to ACAS timescales around early conciliation	Unclear
D17	Failure to respond to new ACAS timescales around early conciliation	Unclear

13. For each alleged detriment, the issues were:

    13.1. Did the respondent do the thing that was alleged?

    13.2. If it was a failure, was the failure deliberate?

    13.3. Could the claimant reasonably understand the act or failure to be detrimental to him?

    13.4. Was the act or failure significantly motivated by the fact that the claimant had made a protected disclosure?

Time limit

14. The claimant notified ACAS of his prospective claim on 2 September 2021. He was issued with a certificate on 14 October 2021. This meant that the claim had been presented within the statutory time limit for any detrimental act or failure done on or after 3 June 2021. For any act or failure done before that date, the issues were:

    14.1. Was the act part of an act extending over a period which ended on or after 3 June 2021?

    14.2. Was the act (or failure) part of a series of similar acts (or failures) which included an act (or failure) done on or after 3 June 2021?

    14.3. If not, was it reasonably practicable for the claimant to present his claim within the statutory time limit for that act (or failure)? Was the claim presented within such further period as the tribunal considers reasonable?

15. When analysing the time limit issues, we found it helpful to use labels to group together acts and failures occurring during particular periods of time. We should stress that our use of labels was purely for convenience of expression and did not in any way influence our decision-making. When it came to deciding the time limit issues, it was the underlying facts, rather than the labels, that were important.

16. Detriments D1 to D9 were all said to have happened in the year 2020, before the claimant raised his formal grievance on 28 October 2020. We gave these alleged detriments the collective label, "**the 2020 detriments**".

17. Detriments D12 to D17 we collectively labelled, "**the 2021 detriments**".

18. Within the 2021 detriments was a distinct subset, made up of detriments D16 and D17. These were allegations of failures during the ACAS early conciliation process. We called these "**the early conciliation detriments**".

19. Many of the arguments in the case focused on a comparison of the 2020 detriments with the 2021 detriments. When analysing the time limit issues, we found it helpful to bear these questions in mind:

    19.1. Were any of the 2021 detriments part of conduct that extended over a period and, if so, did that period include the time of the 2021 detriments?

    19.2. Were any of the 2020 detriments similar to any of the 2021 detriments?

Evidence

20. We considered documents in a 445-page bundle.

21. The claimant gave oral evidence on his own behalf. The respondent called Mr Ennis as a witness. Both witnesses confirmed the truth of their written statements and answered questions.

22. Once the evidence had concluded, we gave the claimant permission to be recalled to give further evidence about PID5. This was a contested decision for which we gave reasons orally. (The parties are reminded of the deadline for requesting further written reasons.) The claimant gave further oral evidence in chief and answered questions.

23. The claimant wanted to give evidence of things allegedly said by the respondent to an ACAS conciliation officer. According to the claimant, the respondent had told the conciliation officer about timescales by which the respondent would take action. This evidence was important to the claimant's case on the early conciliation detriments. D16 and D17 alleged that the respondent had deliberately failed to keep to timescales, having allegedly communicated its agreement to those timescales to a conciliation officer. There was no other evidence of what those timescales were, or whether the respondent had ever agreed to them. It was common ground that the respondent had not consented to evidence of its communications to ACAS being admissible. Having heard submissions from the claimant, we refused to admit that evidence. We regarded the evidence as being inadmissible under section 18(7) of the Employment Tribunals Act 1996.

Facts

24. The respondent is responsible for looking after children in its care. It operated a number of residential children's homes, including The Holt and a home at Bedford Close.

25. It costs money to run a children's home. One of the ways in which day-to-day expenses are financed is by the use of a purchase card. The Holt had its own purchase card.

26. The claimant was employed by the respondent from 4 November 2019 until 31 August 2021 as a Senior Residential Childcare Officer. He was based at the Holt Children's Home. He reported initially to the Registered Manager.

27. Within a short time of starting employment, the claimant because a trade union steward. He held that office for about 6 months.

28. In December 2019, the claimant spoke to accountants within the respondent's organisation. He raised concerns about perceived financial irregularities at the Holt.

29. In early 2020 the Holt closed temporarily for refurbishment. A group of staff moved to Bedford Close.

30. In January 2020, the Registered Manager of the Holt began a period of absence and did not return. From then until the summer of that year, the claimant's line manager was the Head of Service, Ms Ruth France.

31. One of the early pieces of work that Ms France gave the claimant to do was to audit the use of the Holt's purchase card.

32. By March 2020, most of the world was in the grip of the Covid-19 pandemic. On 23 March 2020, England entered what has come to be known as "lockdown". The claimant had his own reasons to keep himself safe from the coronavirus. With the respondent's permission, he worked from home for several months.

33. On 21 April 2020 the claimant was doing some work on the Holt purchase card audit. On reviewing the bank statements, he discovered that the card had been used for a purchase of £299 at Argos on 10 April 2020. He was concerned about this transaction, because the Holt had been closed since January. (Unknown to the claimant at that time, the £299 had actually been spent on the authority of Miss France. It had been used to buy a mobile phone for a resident at Bedford Close. The resident was a child called "MB".)

34. The claimant believed that spending that amount of money at that time was in breach of what he understood to be a directive to senior managers to prioritise spending on matters related to the pandemic.

35. He set out his concerns in an e-mail on 23 April 2020. We have not seen that e-mail. We do not know precisely what information it contained. We are satisfied however, based on the claimant's evidence to us, that it contained details of the £299 transaction, the date of it and an assertion that the Holt home had been closed at the time. For reasons that will become apparent later, we did not decide what we thought the claimant believed that information tended to show.

36. On 22 May 2020, the claimant discovered that a further transaction had taken place on the same card. This was in the sum of £26.99 on 21 April 2020. He also found that the account had been used to set up a Netflix subscription. He sent an e-mail to Ms France and Ms Anne-Marie Ness, an accountant employed by the respondent. Again, we have not seen that e-mail. All we know of it is what the claimant told us about the gist. We accept that his e-mail described what had happened and that he had "taken action on that occurrence". Again, we did not make a finding about precisely what the claimant believed that that information tended to show.

37. On 29 June 2020, Ms Ness sent the claimant a further statement in relation to the purchase card. The statement showed that the card had been used to set up an

Amazon Prime account. The claimant e-mailed Ms France and Ms Ness, expressing his concerns. He drew their attention in that e-mail to the existence of the Amazon Prime account and his attempts to shut down the Netflix account. Ms France responded, saying, "I will look into this. Please address issues like this with me in the first instance. Whose e-mail was it? How do we know they had the bank details?"

38. That e-mail became the subject of debate during the hearing before us. It was portrayed by the respondent as an invitation to submit further whistleblowing disclosures and a genuine interest in having these matters investigated. We do not agree with that assessment. Indeed, it is arguable that a reasonable reader would have interpreted the e-mail as having the opposite effect. Had the claimant put his case in that way, we might well have found that the e-mail looked like an attempt to filter future concerns through Ms France, rather than share them more widely.

39. However, that is not how the claimant put his case on why the e-mail was detrimental to him. During his oral evidence, the claimant was asked three times what he thought was bad for him about the e-mail, and the lack of action that followed it. The three replies that he gave were:

    39.1. that it was the start of detriments that became more protracted as time went on;

    39.2. that the explanation had holes in it; and

    39.3. that there should have been no expenditure in the Home because it was closed.

40. We could not, from that evidence, conclude that he actually understood that the e-mail or lack of action at that time was a detriment to him personally. In any case, if he did think that it was a detriment to him, we find that his understanding was not reasonable.

41. In the summer of 2020, Sonia Bennett began work for the respondent through an agency. Although an agency worker, she was given the role of Acting Senior Manager for the Holt. Broadly speaking, Ms Bennett was responsible for preparing the Holt for reopening later in the year. With her role came line management responsibility for the claimant.

42. On 8 July 2020, the claimant attended a supervision session. He believed that his line manager was still Ms France, and anticipated a one-to-one supervision session with her alone. He was therefore surprised to see that Ms Bennett was also there. He reasonably understood that to put him at a disadvantage. It was harder for him to speak freely about personal development issues with two managers present in the room than with one.

43. During the course of the meeting, the claimant repeatedly asked Miss France questions about the use of the purchase card. At one point in the meeting Miss Bennett asked the claimant "Why are you questioning a senior manager on financial issues?" That was reasonably understood by him to be detrimental to him, because he understood it to be an attempt to prevent him from raising issues of concern.

44. We have considered why it was that Ms Bennett asked that question. There is more than one possible explanation. The claimant says it was an attempt to intimidate him against challenging his head of service about financial issues or, to

put it in more colloquial language, to stop the claimant from speaking truth to power. But it also could have been an attempt by Ms Bennett to restore the meeting to its proper purpose. The focus of a supervision meeting is usually the employee's performance and development, rather than the manager's conduct or wider concerns about financial irregularities within the organisation. It may well have been that Ms Bennett thought that the claimant was abusing the meeting. These were potentially serious findings. Before making a finding either way, we chose to examine our jurisdiction to consider detriment D4. We took the same approach when it came to the question of why Ms Bennett had chosen to attend the meeting at all. There were plausible explanations either way: at some point there would need to be a handover of line management responsibility, and it may have been thought preferable for the claimant to participate in the handover meeting. On the other hand, Ms Bennett and Ms France might have intended to outnumber him with managers as a way of creating an intimidating environment for him.

45. On 3 August 2020, various managers contributed to a chain of e-mails about annual leave. They were discussing a new booking system. Up to that point, there had been a green book kept in each home. The claimant was copied into the e-mails, but was not expressly asked for his opinion. He replied pro-actively. His intervention consisted of criticisms and pointed questions.

46. On 5 August 2020, the claimant arrived on shift at Bedford Close. He attended a shift handover meeting at which more junior members of staff were also present. Ms Bennett was present for at least some of that handover. (The claimant told us in his evidence Ms Bennett did not join the hand-over meeting, although she was present in the building. The reason we find that she was actually at some of the meeting is that, in his grievance, the claimant said that Ms Bennett interrupted it.)

47. One of the topics that came up at the shift handover was MB. It will be remembered that MB was the girl for whom we now know the phone had been purchased. MB had been taken to a house in the Runcorn area that day. The claimant already had concerns about MB going to Runcorn and to that house in particular. A boy, PH, was known to be at that house. Ms France had already exchanged e-mails about MB with a member of staff (whom we call "CD"). During that exchange, Ms France had questioned whether it was safe for MB to go to the house.

48. Knowing the history, the claimant wanted to understand why MB had been taken to Runcorn again. He asked questions of his junior colleagues that were perceived by Ms Bennett as being intimidating.

49. MB returned to Bedford Close at about 10pm. Before bedtime, she handed her mobile phone (the one that had been bought for her) to a member of staff. This was accordance with the arrangements for her care. A member of staff – possibly the claimant himself – examined the phone and found inappropriate "sexting" images on it. One of the images was of PH and showed PH's genitals. The claimant updated MB's notes about what he had found.

50. Ms France arrived at Bedford Close the next day. There is a dispute as to whether or not the claimant showed the images on the phone to Miss France. We did not find the evidence to be reliable enough to resolve that dispute. What we were able to find is that the claimant said something to Ms France about what was on the

phone, but we do not know what words he used, or what the claimant was thinking about what his words tended to show at that time.

51. Ms France then spoke to MB. There was then a further conversation between Ms France and the claimant, during which Ms France asked the claimant to give MB back her phone. The claimant said that he disagreed with that decision.

52. Later that day, 6 August 2020, Ms France and Ms Bennett approached the claimant saying that they needed to speak to him. It was not clear at that stage what they wanted to speak to him about. The claimant understood that it was going to be about the safeguarding concerns that he had voiced earlier that day. He insisted on a trade union representative being present. That led to an impasse. No meeting in fact took place.

53. The next day, 7 August 2020, the claimant received a letter. It was in the name of Sonia Bennett. Relevantly, the letter read:

> **"Re: conduct**
>
> This letter is regarding concerns that were tried to be discussed with you in our informal meeting yesterday; which you unfortunately declined to discuss further.
>
> The main point of discussion were as follows:
>
> - during our initial supervision discussions which took place on the 8th of July 2020, you were informed that you are required to undertake and complete the mandatory training requirements. This was then communicated to you via email sent on 4 August 2020 re: first aid course.
>
> - I then received responses from a workforce development colleague you are questioning my instruction as to why you should cooperate and attend the training course.
>
> - During a visit to Bedford close children's home on fifth of August 2020, I observed that whilst carrying out the shift handover, the team on duty were promoting a positive attitude. However, during the handover process you appeared to be abrupt, rude, aggressive and punitive with your colleagues.
>
> - It has been reported to me that you have continued to be aggressive, disruptive and that under my mother, with no respect for your fellow colleagues, whilst working with them.
>
> As you are aware, I tried to have a conversation with you regarding these issues in order to gain your views and share concerns. Ruth France, head of service was also present at the home, as you had contacted her regarding a young person. It was explained to you that this meeting was informal and was due to the concerns noted above. I had asked Ruth to accompany me in this discussion with you.
>
> The meeting had to be stopped after the initial issue regarding your conduct was raised I felt that your tone and body language aggressive. This is also stopped at your request, as you stated that you wanted to have a union representative with you; you expressed that you didn't want a joint meeting with two managers present.

> I have considered addressing the issues detailed above through the count processes, given the number of concerns. However, on this occasion, I am satisfied in dealing with this matter by way of an informal warning.
>
> …
>
> …whilst formal disciplinary action is not being taken, a copy of this letter will be placed on your personnel file and will be referred to should any similar issues be raised in the future."

54. The claimant reasonably understood this letter to be to his detriment. For one thing, he was being given a warning, which is not generally seen by employees as a pleasant thing to receive. Moreover, as the claimant reasonably understood it, the letter was given to him in breach of disciplinary procedures. There had been no disciplinary meeting before receiving a written warning (albeit an informal one) that would be placed on his file.

55. We have considered what possible motivations Ms France and Ms Bennett might have had for writing that letter. It might have been an attempt to stop the claimant from raising safeguarding concerns about MB. On the other hand, the letter might well have been intended to address a genuinely held belief that the claimant was behaving unacceptably towards colleagues, following an abortive attempt at an informal meeting. We regarded this another dispute best revisited once we had resolved the question of our jurisdiction to consider the 2020 detriments.

56. On 8 August 2020 the claimant sent an e-mail to Miss France and Tina Mullock, MB's social worker. His e-mail was copied to senior managers. His e-mail set out the history between MB and PH and his questions to Ms France about whether visiting Runcorn was part of MB's "safety plan". He then described the images found on MB's phone in detail and added this:

> "Within the Sexual offences act 2003 it states that it is an offence for anyone who has or sends indecent images of someone under the age of 18 is breaking the law. Both having and distributing images of this nature is an offence, encouraging someone to take or send "SEXTS" can also be illegal."

57. The e-mail went on to outline the risks to other children from PH and the risks to PH himself. He concluded:

> "…to learn from such incidents in order to ensure that service delivery is consistent/protective of any child."

58. The claimant did not tell us in his oral evidence or in his witness statement what he believed that information tended to show. Nor did he tell us that he believed that he was sending this e-mail in the public interest. There was no need. His belief in the meaning of his e-mail is obvious from the e-mail itself. He plainly believed that the information in his e-mail tended to show that a criminal offence. The very words of the e-mail also show that the claimant believed that he was making that disclosure in the public interest.

59. Following the claimant's e-mail, a strategy meeting then took place to discuss MB. It may well be that Ms France felt cornered into convening such a meeting by that stage, knowing that the claimant had escalated MB's case to senior management. Ms France would have to be seen to act. We did not need to make a finding as to whether that was actually the case or not.

60. On 9 August 2020 the claimant did not attend work. He texted Ms Bennett to say he had symptoms of COVID-19. His text mentioned that he would contact the dedicated COVID telephone line the following day.

61. The claimant made a telephone call to the COVID line on 10 August 2020. His call was connected for 90 seconds. He later produced screenshots to confirm that he had had that call. For whatever reason, that call was not properly logged in the respondent's computerised telephone records. Those records were checked by the Computer Centre in December 2020. No record could be found of any call from the claimant on 10 August 2020. It is possible that there was a genuine misunderstanding. But we are quite satisfied, without the need to hear from Ms Bennett herself, that she was supplied with information that the claimant had not made a call to the COVID line. Acting on that information, Ms Bennett caused a letter to be sent to the claimant. The letter reminded the claimant of his responsibility to call the COVID line and pointing out some of the consequences that would happen if he did not comply with absence reporting procedures. We are satisfied that the only reason why Ms Bennett sent that letter was her belief that he had not called the COVID line as he said he would do. The letter was dated 11 August 2020, but the claimant did not receive it until he returned to work on about 21 August 2020.

62. On 26 August 2020, the claimant participated in a remote Teams meeting for the Holt. It was described as a joint staff meeting. When the claimant connected to the meeting, he noticed that there were a number of people all present together in the same room at the Holt. The gathering was in breach of what he understood to be the COVID social distancing restrictions present in the Home at the time. He e-mailed his concerns to Ms France, copied to Ms Vowles and Ms Bennett. We do not know what exactly he wrote in that e-mail. We accept his evidence that what he thought the e-mail tended to show was that the health and safety of staff was being put in danger by their failure to observe social distancing. Having accepted that evidence, we also infer that the claimant believed that he was making this disclosure in the public interest. The claimant was not personally at risk of catching COVID from unsafe social distancing practices at the Holt: he was meeting them remotely.

63. Miss Bennett e-mailed staff on 7 September 2020. She reminded them of the COVID protocols and the bubbling arrangements at the Holt. That indicates to us that Miss Bennett welcomed the claimant's concerns, rather than seeking to punish them. There was no evidence that we could find of any negative comments that were made by Miss Bennett or Miss France in response to the claimant's pointing out those concerns.

64. On 8 September 2020, James Robinson of Unison e-mailed again about COVID concerns, this time about the lack of a specific risk assessment. There is no evidence that we can find of any e-mail sent by the claimant on that day or the previous day. It was not referred to in his witness statement.

65. An e-mail was sent to the claimant on 10 September 2020. In that e-mail, the claimant was informed that he would not be permitted to work from home. Beside the e-mail itself, we have no evidence that can put this refusal into context. The claimant did not mention it in his witness statement. The e-mail explained that the

claimant was needed on site to prepare the Holt Children's Home for an Ofsted inspection. We have no reason to think that the motivation for requiring the claimant to be at the Holt Children's Home was anything other than that. We were able to make a positive finding of fact that the refusal was not in any way motivated by any protected disclosures that the claimant had made.

66. On 11 September 2020, the claimant started preparing a written grievance. It took him a long time to prepare. When he finally submitted it, the grievance ran to 28 pages of dense type. It contained a great many allegations in an unstructured form. It is convenient to divide them into four categories.

    66.1. Safeguarding concerns about Ruth France.

    66.2. Concerns about alleged financial irregularity, also appearing to implicate Ruth France.

    66.3. Other whistleblowing concerns.

    66.4. Grievances about how Ms Bennett had treated the claimant.

67. The safeguarding concerns about Ruth France included extensive detail about the circumstances in which MB had been put at risk. It mentioned explicit images that had been sent to MB's phone. The claimant believed that this information tended to show that the safety of MB had been put in danger. He also believed that the same information tended to show that a criminal offence of sending sexual images had been committed. He believed that he was making this disclosure in the public interest.

68. The other whistleblowing concerns included information disclosed by the claimant that sensitive personal data had been about to be sent to the tip, together with an express assertion that these circumstances amounted to a "data breach". At the time of submitting his grievance, the claimant believed that this information tended to show that the respondent had breached its legal obligations under data protection legislation. The grievance repeated the information he had disclosed on 26 August 2020 about COVID safety at the Holt. As before, he believed that this information tended to show that the health and safety of staff had been put in danger. He believed that he was making this disclosure in the public interest.

69. The claimant alleges (PID10) that, as well as raising the data breach in his grievance, he also made a protected disclosure about it on 22 September 2020. We were not persuaded that he did. We were unable to find any contemporaneous evidence of what (if any) information the claimant actually disclosed on that date.

70. The claimant sent his grievance to the respondent on 28 October 2022.

71. The grievance was acknowledged by Mr Ennis, the Principal HR Manager for Employee Relations. He immediately recognised public interest disclosures in the grievance and referred it to the respondent's whistleblowing panel. On receipt, the whistleblowing panel decided that it should be split into component parts, and that there should be a separate investigation of each.

72. The safeguarding concerns were investigated by Lara Wood and Melanie Duncan, Heads of Service. They met with the claimant on 4 November 2020 within a week of the grievance being submitted. Having investigated, they decided that there was a case to answer for Ms France to be referred to Social Work England. A referral was duly made, although we are unsure as to when exactly this happened.

73. The financial irregularities were also investigated. That investigation was handled by the Chief Auditor, Karen Hogan. She received assistance in the investigation from Suzanne Lee to whom the claimant spoke in December 2020. No criticism is made about the way the financial issues were investigated.

74. Arrangements were made to investigate the claimant's grievance against Miss Bennett. Responsibility for the investigation was given to Ms Libby Caldwell, Principal Accountant for Health and Social Care. In the meantime, Ms Bennett was removed from her line management supervision of the claimant. This was done by 16 November 2020.

75. As we have already noted, Ms Bennett was an agency worker and not a direct employee of the respondent. Initially Ms Bennett's employment status caused some uncertainty within the respondent as to what procedure they should follow. This led to a delay in the investigation. But by 16 November 2020, Ms Caldwell had prepared a detailed table breaking the many grievance allegations against Miss Bennett down into a series of detailed points.

76. A meeting took place on 27 November 2020 between Ms Caldwell and the claimant, who was accompanied by his trade union representative Miss Carlyle. During that meeting, the claimant was asked what outcome he wanted from the grievance process. He replied that the outcome should be the "rationale for the decisions", ensuring that processes were followed and clarity going forward. What we understand the claimant to have meant by this was that he was hoping (a) that the investigator would make findings as to why management actions had been taken in particular ways; and then (b) that the investigator would tell him what those findings were. They agreed to meet again on 3 November.

77. In the meantime, Miss France went on sick leave from which she never returned. Her employment ended in March 2021.

78. In December 2020, Ms Caldwell apologised to the claimant about the lack of an update on the grievance investigation. The claimant replied, saying that he fully understood the delay.

79. Ms Bennett handed in her notice in December 2020, with an initial expiry date of 4 January 2021. Her notice period was ultimately was extended to 23 January 2021. From that date her assignment with the respondent ended. By that time, Ms Caldwell still had not interviewed her about the claimant's grievance.

80. At the beginning of January 2021, England went into another national lockdown. At about the same time, the human resources adviser who was supporting Ms Caldwell's contracted COVID-19 and then went on sick leave. This led to further delays in Ms Caldwell's investigation.

81. By 29 January 2021, Ms Caldwell had prepared a draft investigation report. It identified 15 distinct grievance allegations against Ms Bennett. As expressed in

her draft report, Ms Caldwell's conclusion was that one allegation was "upheld", three were "partially upheld", one was "unresolvable" and the remainder were "not upheld". One of the partially-upheld complaints was about the informal written warning. A recurring ground for not upholding allegations was, "As I was unable to speak to [Ms Bennett]".

82. Miss Caldwell carried on giving the claimant periodic updates. The claimant chased the progress of his grievance on 12 February 2021. He received a reply on 17 February 2021, copied to Ms Carlyle, informing him that the outcome would be communicated to him in a letter.

83. In the meantime, Mr Ennis was becoming concerned about how to manage the grievance investigation. We accept Mr Ennis' account to us of what he was thinking at the time. As Mr Ennis saw it, he was in a dilemma. He was aware that Ms Bennett had left without being interviewed. He formed the view that it would not be appropriate to interview Ms Bennett after she had left. Nor, in his mind, was it appropriate to make potentially damaging findings about Ms Bennett's conduct without her having the opportunity to give her point of view. He therefore did not believe that it was appropriate to reach a conclusion as to what her alleged behaviour was. On the other hand, Mr Ennis recognised that it would be an unsatisfactory outcome for the claimant to be told that the respondent had not reached any conclusions on his allegations against Ms Bennett. Mr Ennis was anxious, too, about the handling of the claimant's safeguarding allegations about Ms France. There was a live investigation into her conduct that he anticipated might well be referred to Ms France's professional regulator. Mr Ennis was concerned to preserve the confidentiality of the investigation, even to the point of withholding the findings from the claimant.

84. Balancing these competing considerations, Mr Ennis decided on what he thought would be a pragmatic solution. He tried to find out through informal channels what outcome the claimant wanted. He reached out to Ms Carlyle with a view to getting that information. We accept Mr Ennis' account of what Ms Carlyle told him. She informed Mr Ennis that the claimant's concern was about the informal written warning that Ms Bennett had written to him. What the claimant wanted, said Ms Carlyle, was for the informal written warning to be removed from his record.

85. Mr Ennis welcomed this information. He saw it as an opportunity to give the claimant a desired outcome to his grievance, without having to tell the claimant what precise decisions had been made on its constituent elements. Accordingly, Mr Ennis wrote to the claimant on 31 March 2021. His letter stated:

> ""I am writing with regards concerns you raised in management practices with Children's Social Care. I apologise for the delay in formally writing to confirm the actions taken but it was necessary to ensure that actions had been completed before they were communicated to you.
>
> You will be aware that those concerns have been taken very seriously and as a result various formal processes were commenced in respect of the issues you raised.
>
> I'm sure you are also aware that the officers you raised concerns about have now both left the employ of Knowsley Council and as such investigations were not able to reach conclusion. Confidentiality does not allow me to go into any detail in relation to these matters but, on behalf of the Council, can I thank you

> for bringing these matters to our attention particularly as they related to the safeguarding of children. Those concerns have been relayed to the appropriate regulatory authorities.
>
> I can, however, deal with some aspects of the grievance you raised, in particular the fact that you are issued with an informal warning letter which you believe is unfair.
>
> In light of the above, and following consultation with your trade union representative, Paula Carlyle, UNISON, I have decided that this letter should be withdrawn and all record of it will be expunged from your personal file.
>
> I believe this was the outcome you requested should your grievance be upheld so I would hope that you would view this as a satisfactory conclusion to the matter. If you would wish to discuss this matter further with me, I would happy to have a discussion with you. Please let me know by responding to this letter."

86. Ms Caldwell's draft grievance report was not attached to the letter. It was not disclosed to the claimant until many months later.

87. Mr Ennis' hopes were not fulfilled. The claimant was not satisfied with the letter. We find that the claimant's point of view was reasonable. In his first grievance meeting with Ms Caldwell he had told her what he wanted as an outcome. At that time, he did not mention the removal of the informal warning from his record. What the claimant really wanted was an explanation of why his managers had acted in the way they had.

88. The claimant sent Mr Ennis an e-mail on 23 May 2021 asking why there was no completed report. His e-mail made further allegations about Tina Mullock and Tracey Burke. He suggested that they had responsibility for the failure to safeguard MB in August 2020. He repeated information that he had earlier disclosed in his grievance about how MB's safety had been put in danger.

89. From the text of the e-mail itself, we find that the claimant believed that this information tended to show that an individual's safety was put in danger. He also believed that his e-mail tended to show that the respondent had breached the ACAS Code, as he understood it, by failing to provide him with a detailed outcome of his written grievance.

90. Mr Ennis replied substantively on 10 June 2021. Part of his response was to invite the claimant to let Mr Ennis know what his further safeguarding concerns were. In other words, Mr Ennis was encouraging the claimant to disclose further information in the public interest, rather than to suppress it.

91. The claimant provided further information by e-mail on 13 June 2021. He stated that PH had committed a criminal offence under the Sexual Offences Act 2003 by by sending images of a sexual nature to MB, who was a person under 18. Self-evidently, he believed that this information tended to show that a criminal offence had been committed. The claimant's e-mail also stated that Jane Bowles, Tina Mullock and Tracey Burke had failed to safeguard MB, putting her health and safety in danger. He believed that he was making that disclosure in the public interest. That this was his belief can be inferred not just from the nature of the information he disclosed, but also from the fact that he carried on disclosing it even

when he had already secured a personal benefit (the removal of the warning letter from his file).

92. Mr Ennis passed the claimant's 13 June 2021 e-mail to Lara Wood. (Readers will recall that Lara Wood had been investigating the claimant's safeguarding concerns against Ms France.) This was the appropriate thing to do with the safeguarding information. Mr Ennis' actions in making that referral indicate to us that he wanted to deal with the claimant's whistleblowing correctly rather than to ignore it.

93. Mr Ennis sent the claimant an e-mail on 24 June 2021. In his e-mail, Mr Ennis suggested a meeting between himself and the claimant at which he could voice his concerns. He expressly gave the claimant the right to be accompanied by a trade union representative. By e-mail on 1 July 2021, the claimant agreed to the meeting and asked for it to take place in person. His e-mail did not suggest that there had been any failure to address his concerns.

94. It took Mr Ennis until 2 September 2021 to reply to the claimant. This was partly because the respondent was still emerging from the lockdown and making the transition away from remote working. This meant that face-to-face meetings were once again becoming possible after the disruption of the pandemic. He wanted to wait until face-to-face meetings had been reinstated before telling the claimant what kind of meeting it was going to be. That, of course, was not a reason for complete silence. There was nothing to stop Mr Ennis from keeping the claimant updated as to what the cause of the delay was. We are, however, satisfied that the reason for the failure to keep the claimant updated was nothing at all to do with the fact that the claimant was making protected disclosures in his 13 June e-mail or at any stage in the past.

95. The claimant did not chase Mr Ennis for any update about the meeting.

96. In his e-mail of 2 September 2021, Mr Ennis proposed to include Paula Carlyle as the claimant's representative at that meeting. Again, that was a supportive action. It was not indicative of somebody who was stop a worker from making protected disclosures, still less of a manager motivated to retaliate against the whistleblower for making them.

97. Unknown to Mr Ennis, by the time he wrote his e-mail of 2 September 2021, the claimant had already left his employment. His employment had terminated on 31 August 2021.

98. We were not able, and did not feel it necessary, to determine the precise reason why the claimant left his employment.

99. The claimant notified ACAS of his prospective claim on 2 September 2021 and obtained a certificate on 14 October 2021. We did not make any findings about what either party said to the other via the conciliator during the early conciliation process. There was no admissible evidence about what was said.

100. We now rewind the clock to September 2020. This is so that we can record our findings about what the claimant knew about tribunal time limits at that time.

101. Between September 2020 and March 2021, the claimant did some research on the internet. He went onto the ACAS website. From the information he read, he formed the opinion that his claim would be looked on more favourably by the tribunal if prior to presenting a claim he exhausted internal procedures first.

102. We happen to know that the ACAS website states that there is a three-month time limit for bring claims to an employment tribunal. (We did not carry out any internet searches specifically for the purpose of this case, but we did rely on our own knowledge from other cases about what the ACAS website says.) By September 2020, the claimant had stopped acting as a trade union steward. The claimant must have received some training to become a union steward in the first place. We think it likely that that training would have included telling him about the existence of employment tribunals and that there are time limits for bringing claims there.

Relevant law

Disclosures qualifying for protection

103. Section 43B of ERA provides, so far as is relevant:

> "
>
> (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:
>
> (a)that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> …
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
>
> …"

104. A worker may have a reasonable belief that information tends to show that a criminal offence has been committed, even if the worker cannot point to an actual criminal offence that could have been committed on the basis of that information. A worker may form a mistakenly-held, but reasonable, belief about what the criminal law says. Likewise, a worker may have a reasonable belief that information tends to show breach of a legal obligation, without the need for the worker to point to an actual legal obligation that could have been breached: *Babula v. Waltham Forest College* [2007] EWCA Civ 174.

105. When evaluating the reasonableness of a worker's belief in what disclosed information tends to show, the tribunal should have regard to the worker's expertise in the subject, or lack of such expertise: *Korashi v. Abertawe Bro Morgannwg University Local Health Board* UKEAT 0424/09.

Protection against detriment

106. Section 47B(1) of ERA provides:

> "(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

107. An employer can subject a worker to a detriment within the meaning of section 47B of ERA even after the employment relationship has ended: *Woodward v. Abbey National plc* [2006] EWCA Civ 822.

108. The concept of "detriment" should be construed widely. A detriment is something that could reasonably understood by the worker to put them at a disadvantage: *Jesudason v. Alder Hey Children's NHS Foundation Trust* [2020] EWCA Civ 73.

109. An unjustified sense of grievance is not a detriment: *Shamoon v. Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11.

110. An employer's act, or failure, is done "on the ground that" the worker made a protected disclosure if that disclosure influenced the employer's motivation to an extent that was more than trivial: *NHS Manchester v. Fecitt* [2011] EWCA Civ 1190.

Time limits and burden of proof

111. Section 48 of ERA provides, relevantly:

> (1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.
>
> …
>
> (2) On a complaint under subsection … (1A) … it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
>
> …
>
> (3)An employment tribunal shall not consider a complaint under this section unless it is presented—
>
> (a)before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
>
> (b)within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
>
> (4) For the purposes of subsection (3)—
>
> (a)where an act extends over a period, the "date of the act" means the last day of that period, and
>
> (b)a deliberate failure to act shall be treated as done when it was decided on;
>
> and, in the absence of evidence establishing the contrary, an employer… shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such

> inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

112. Where a claimant has proved that he made a protected disclosure and that he was subjected to a detriment by the employer's act or deliberate failure, subsection (2) requires the employer to prove that the act or failure was not motivated to any significant extent by the fact that the claimant had made a protected disclosure.

113. The period of 3 months mentioned in subsection (3) is subject to the provisions affecting time limits where there has been early conciliation.

114. Where a claimant makes multiple allegations of acts or failures over a period of time, subsection (3) raises question of whether those acts or failures were isolated or part of a series of similar acts. That question is highly fact-sensitive: *Arthur v. London Eastern Railway Ltd* [2006] EWCA Civ 1358. Potentially relevant considerations were described by the Court of Appeal in that case as follows:

> – it is necessary to look at all the circumstances surrounding the acts
>
> – were they all committed by fellow employees?
>
> – if not, what connection, if any, was there between the alleged perpetrators?
>
> – were their actions organised or concerted in some way?
>
> – why did they do what is alleged?
>
> – it is not necessary that the acts alleged to be part of the series are physically similar to each other
>
> – it may be that a series of apparently disparate acts could be shown to be part of a series or to be similar to one another in a relevant way by reason simply of them all being on the ground of a protected disclosure (Lloyd LJ disagreed on this point)

115. It appears to us that a detrimental act (or failure) can only be part of a series of similar acts (or failures) if it was done on the ground that the worker had made a protected disclosure. A claimant cannot get around the statutory time limit by pointing to some later innocent act of the employer, even if that act was detrimental to the claimant.

116. "Reasonably practicable" means "reasonably feasible". It is not sufficient for a claimant to show that they acted reasonably. The claimant does not, however, have to show that presenting the claim on time was a physical impossibility: *Palmer and Saunders v. Southend-on-Sea BC* [1984] ICR 372.

117. Where the claim was presented late because the claimant did not know about the three-month time limit, the tribunal cannot extend the time limit unless the claimant proves that it was not reasonably practicable for the claimant to have discovered the existence of the time limit. The tribunal should take account of the enquiries that it would have been reasonably practicable to have made. If the claimant could reasonably have been expected to know about the time limit, the claimant must take the consequences: *Walls Meat & Co v. Khan* [1979] ICR 52, CA.

118. Where it was not reasonably practicable to present the claim in time, the tribunal must decide what further period it considers to be reasonable for presenting the claim. When doing so, the tribunal must take into account all the circumstances, including the strong public interest in claims being brought promptly, against the background of the primary time limit being three months: *Cullinane v. Balfour Beatty Engineering Services Ltd* UKEAT/0537/10 per Underhill J at paragraph 16.

Conclusions – protected disclosures

PID1-3

119. PID1 to PID3 are alleged protected disclosures about the use of the Holt purchase card. We did not determine whether these disclosures were protected or not. It was a difficult task, because of the lack of contemporaneous evidence about what information the claimant disclosed and the diminished quality of the evidence about what the claimant believed that information tended to show. We were reliant on the claimant's recollection, which had faded over time. We were also concerned about how proportionate it would be to strive to make findings on this part of the evidence, when we were uncertain of our jurisdiction to consider this part of the claim at all. The only detriments which were said to have been on the ground of PID1 to PID3 were the 2020 detriments.

120. The approach we took was to determine issues relating to the statutory time limit for the 2020 detriments and then to revisit PID1 to 3 if it became necessary to do so. Ultimately, we did not consider it to be proportionate.

PID5

121. The claimant disclosed information to the respondent in an e-mail on 8 August 2020. As we have found in paragraphs 56 to 58, he believed that this information tended to show that a criminal offence had been committed. It was plainly reasonable for him to believe that that was the meaning of the information. The respondent does not try to deny that the conduct of PH (if it happened) would amount to a criminal offence. The claimant also believed that he was making the disclosure in the public interest. In case it needs to be said, that belief was also reasonable. He was highlighting the risks to other children beside MB.

122. The e-mail labelled PID5 was therefore a protected disclosure.

123. The claimant also says that PID5 included a separate oral protected disclosure on 6 August 2020. We did not reach a conclusion about that. We were unable to make findings about whether the claimant actually showed Ms France the images on MB's phone. More importantly, we were unable to make findings as to exactly what the claimant believed the information tended to show. Nor could we compare his beliefs with the information he actually disclosed, in order to assess whether his belief was reasonable.

PID7 – social distancing

124. Paragraph 62 shows our findings at to what information the claimant disclosed. It also records what the claimant believed the information tended to show and the claimant's belief that his disclosure was made in the public interest. We have concluded that both beliefs were reasonable.

125. PID7 was therefore a protected disclosure.

PID8 – COVID safety

126. As paragraph 64 makes clear, there was no evidence of the claimant having made any kind of disclosure of information about COVID health and safety on 7 September 2020. The union representative's e-mail on 8 September 2020 was not a disclosure of information by the claimant.

PID10 – data breach

127. We did not reach a conclusion as to whether PID10 was a protected disclosure or not. The claimant did not prove to us that he had disclosed information on 22 September 2020, or what that information was. We did not have any evidence about what the claimant believed that information tended to show. We did, however, consider the content of PID10 as part of the claimant's grievance which is alleged to be PID11. We indicated that we would take this course during the parties' closing arguments.

PID11 - grievance

Data breach

128. We found at paragraph 68 that the claimant believed that the information he disclosed in his grievance tended to show that the respondent was in breach of its legal obligation (a "data breach"). In our view, that belief was reasonable. The information in the claimant's grievance tended to show that the insecure disposal of data had been narrowly averted. We infer from this that the claimant believed that the information tended to show that the respondent was already in breach of GDPR by storing the information insecurely and that unlawful data loss was likely to happen in the future. He also believed that he was making his disclosure in the public interest.

129. We came to the conclusion that both the claimant's beliefs were reasonable. This was plainly a public interest concern. Children in local authority care are a particularly vulnerable section of society. Their data security is of public importance. It was also reasonable for the claimant to believe that GDPR had been breached and was likely to be breached, even if that belief was not technically accurate. The claimant was not a data protection expert. A person with a broad, non-technical understanding of the subject could quite reasonably think that GDPR obligations had already been broken when the filing cabinet was marked for disposal in the public waste system.

MB safety and criminal offence

130. The claimant's grievance disclosed information about MB. Paragraph 67 sets out the claimant's belief that he was making the disclosure in the public interest and also records what the claimant believed that information tended to show. Both beliefs were reasonable in our view. The meaning of the information was clear, both as to the sexual offence that had been committed and as to the danger to MB's safety. The public interest in safeguarding MB and preventing further sexual offending was obvious.

Financial irregularity and other concerns

131. It is the claimant's case that PID11 also contained protected disclosures about financial irregularities under Ms France's watch, and about the way in which the claimant had allegedly been treated by Ms Bennett. We did not decide whether those disclosures were protected or not. We considered the exercise to be

disproportionate. We have already concluded that PID11 contained at least two protected disclosures.

PID13

132. The claimant made a protected disclosure in his e-mail of 23 May 2021.

133. As we found at paragraph 88, the claimant believed that his e-mail tended to show that MB's safety had been put in danger by the failures of two named individuals. It was reasonable for the claimant to believe that that is what the e-mail showed. The information was clear as to how MB's safety had been put at risk and how Ms Burke and Ms Mullock were responsible.

134. We also found in paragraph 88 that the claimant believed that the respondent had failed to comply with the ACAS Code by failing to provide him with the grievance investigation report. That was a reasonable belief. The claimant also believed that the respondent was subject to a legal obligation to comply with the ACAS Code. That belief, too, was reasaonable. We came to this view, even though, strictly speaking, the claimant's belief was not accurate. Employment tribunals are under a legal obligation to consider relevant parts of the Code. An employer who unreasonably fails to comply with the Code may have to pay increased compensation. That is not the same as saying that the employer is under a legal obligation to follow the Code. But we would not expect a person in the claimant's position to understand the difference.

135. The claimant believed that he made both disclosures of information in the public interest. That belief was in our view reasonable. The claimant was not just seeking an explanation of how he personally had been treated, but about how a child in care had been put at risk.

PID14

136. See paragraph 91 for our findings about the information disclosed in the 13 June 2021 e-mail and about what the claimant believed that information tended to show. His belief was reasonable. So was his belief that he was making the disclosure in the public interest. Again, this was a safeguarding concern in relation to MB. The fact that he had already secured an outcome beneficial to him made it more reasonable for him to believe that his persistence in raising these concerns would serve the wider public as well as his own private interest.

137. PID14 was therefore a protected disclosure.

PID15

138. The claimant did not make a protected disclosure on 1 July 2021. There was no disclosure of information to Mr Ennis. See paragraph 93 for our finding in more detail.

Conclusions – the 2021 detriments

D12 – no grievance investigation report

139. The claimant was subjected to a detriment by the deliberate failure of Mr Ennis to send a detailed investigation report with his letter of 31 March 2021. As we have explained in paragraph 87, the claimant understood the absence of specific investigation findings to put him at a disadvantage. That same paragraph also explains our conclusion that the claimant's understanding was reasonable.

140. The respondent has the burden of satisfying us that Mr Ennis' deliberate failure was not motivated to any significant extent by the fact that the claimant had made a protected disclosure. We are persuaded that he had no such motivation. As explained more fully in paragraphs 83 to 85, Mr Ennis chose not to provide a full investigation report because:

140.1. He wanted to preserve the confidentiality of the ongoing safeguarding investigation;

140.2. Ms Bennett had left before Ms Caldwell had interviewed her; and

140.3. The claimant's union representative had told him what outcome the claimant wanted, and that outcome could be achieved without providing a full investigation report.

141. Our conclusion on Detriment D12 is therefore that, whilst the respondent did subject the claimant to a detriment by a deliberate failure to act, that failure was not done on the ground that the claimant had made a protected disclosure.

D14 – failure to respond to the claimant's concerns

142. Detriment D14 (failure to respond to the claimant's concerns) is said to have been motivated by PID14. Strictly speaking, it appears to be a complaint about Mr Ennis' failure to respond to the concerns raised in the claimant's e-mail of 13 June 2021. In case we have taken an unduly narrow view of the claimant's case, we have also considered whether Mr Ennis was motivated by PID13 (the 23 May e-mail) and failed to respond to those concerns as well.

143. Mr Ennis did not fail to respond to the claimant's concerns. He replied to PID13 giving the claimant an opportunity to provide further detail of the disclosures he was making. The time it took him to reply (18 days) was not excessive. The claimant had taken considerably longer than that to reply to Mr Ennis' previous letter of 31 March 2021. Mr Ennis positively acted on PID14. He passed it to the person responsible for the safeguarding investigation into Ms France and MB. He wrote to the claimant after 11 days and invited the claimant to a meeting to discuss his concerns. His trade union representative was also invited.

144. It is not clear what else the claimant believes Mr Ennis should have done. If there were shortcomings here, there is nothing to suggest that the failure was deliberate. Nor was it detrimental. The claimant could not reasonably have understood himself to be disadvantaged by Mr Ennis' 10 June 2021 letter or 24 June 2021 letter, or the time he had to wait for them. To put it another way, the claimant's sense of grievance was not justified.

145. There was therefore no detriment as alleged at D14.

D15 – failure to respond to the claimant's concerns

146. Detriment D15 is alleged to have been motivated by PID15. We have found that PID15 was not a protected disclosure.

147. In case we have interpreted the claimant's case on D15 too narrowly, we have also considered whether Mr Ennis was motivated by PID13 or PID14.

148. Mr Ennis deliberately failed to hold a meeting before September 2021. We did not think that the claimant could reasonably understand this failure to be detrimental to him. He could quite easily have chased Mr Ennis for a meeting date, but did not do so.

149. In case we are wrong about that, we have considered Mr Ennis' motivation. Can the respondent prove that Mr Ennis' deliberate failure to hold the meeting before September was not influenced significantly by the fact that the claimant had made PID13, PID14 or PID15? The respondent has persuaded us that this was no part of Mr Ennis' thinking. It was Mr Ennis' idea to hold the meeting in the first place. The reason for the delay was because the claimant wanted the meeting to be face-to-face. The respondent was only just starting to resume face-to-face meetings after the pandemic.

150. The claimant was not therefore subjected to Detriment D15 on the ground that he made a protected disclosure.

D16 and D17 – ACAS conciliation

151. We can deal with D16 and D17 quickly. The alleged deliberate failure here was to "respond to ACAS timescales". The "timescales" were alleged to have been promised by the respondent to the ACAS conciliator. There is no admissible evidence about what the respondent said to the conciliator about timescales or anything else. Without knowing whether there were any promised timescales, or what they were, we have no way of telling whether the respondent kept to them or not.

152. The claimant has not therefore proved to us that the respondent deliberately failed to act in the way that is alleged at D16 and D17.

D12 revisited – no jurisdiction

153. The effect of our conclusions in respect of D14 to D17 is that there was no detrimental act or failure done on or after 3 June 2021 on the ground that the claimant had made a protected disclosure.

154. We have already concluded that Detriment D12 was not done on the ground that the claimant made a protected disclosure. For completeness, we now revisit that allegation to check whether we have jurisdiction to consider it at all.

155. Mr Ennis' deliberate failure to send a detailed investigation report was decided on by 31 March 2021. The last day for presenting the claim was 30 June 2021.

156. In our view it was reasonably practicable for the claimant to have presented his claim by then. Our finding was that he already knew that employment tribunals had time limits. His research (which he had done by March 2021) must have taken him to web pages that displayed the three-month time limit. His reason for delaying was that he wanted to pursue internal procedures first, so that the tribunal would look on his case more favourably. But, by 31 March 2021, the claimant had received a letter informing him of the outcome to his grievance.

157. We therefore have no power to extend the statutory time limit.

Conclusions – the 2020 detriments

158. We now turn our attention to the 2020 detriments, that is, D1 to D9.

Jurisdiction – was the claim presented within the time limit?

159. We start by examining our jurisdiction to consider the 2020 detriments. Was the claim presented within the time limit? In order to answer that question, we must determine when the time limit started to run.

160. Detriments D4 to D9 are allegations of detrimental acts, as opposed to deliberate failures. The latest of these acts was in September 2020. Taken together, they might be viewed as acts extending over a period, but that period ended no later than 28 October 2020. Once the claimant had raised his formal grievance, all management intervention by Ms France and Ms Bennett ceased. No detrimental acts are alleged to have been perpetrated by them after that time.

161. Detriments D1 to D3 are allegations of deliberate failures to address the claimant's concerns raised in PID1 to PID3. We were unable to make a finding that Ruth France made a decision to ignore the claimant's concerns, or even that she did an act that was inconsistent with addressing them. The time limit would therefore start to run from the expiry of a reasonable period for addressing PID1 to PID3.

162. In our view, a reasonable time for addressing PID1 to PID3 had expired by the time of the meeting on 8 July 2020. The claimant evidently thought so, too: that is why he used what was meant to be a supervision session to press Ms France for answers.

163. This means that, unless the 2020 detriments were part of a series of similar acts which included at least one of the 2021 detriments (that is, D12 to D17), the claim in respect of the 2021 detriments was presented after the expiry of the statutory time limit and the claimant would need an extension of time.

164. Our conclusion about the 2021 detriments was that there was no detrimental act or failure that were done on the ground that the claimant had made a protected disclosure. This means that, even if the acts or failures described in D12 to D17 were similar in nature to the 2020 detriments, they would not help the claimant to overcome the statutory time limit for the 2020 detriments. As we have observed, our view of the law is that an innocent act cannot count as part of a series of similar acts.

165. We have a further reason for considering that the 2020 detriments and 2021 detriments were not part of a series of similar acts or failures. Detriments D1 to D9 were not similar to Detriments D12 to D17. This is because:

165.1. The alleged perpetrators were different: Ms France and Ms Bennett for the 2020 detriments and Mr Ennis for the 2021 detriments.

165.2. Mr Ennis was unconnected to the perpetrators of the 2020 detriments. He was the Principal HR Manager for Employee Relations in a large organisation. Ms France was an operational Head of Service. Ms Bennett was a home manager, employed through an agency. There is no evidence of Mr Ennis having worked with Ms France or Ms Bennett.

165.3. The nature of Mr Ennis' alleged conduct was different from the detriments alleged at D4 to D9. Ms France and Ms Bennett were alleged to have conducted an intimidating meeting, sent two inappropriate warning letters, reacted negatively to the claimant's concerns about COVID safety, and refused a request to work from home. The detriment to which Mr Ennis subjected the claimant was entirely different. He deliberately failed to send the claimant a detailed outcome into the investigation of the claimant's grievance. He is then alleged to have failed to deal with the claimant's further concerns.

165.4. Mr Ennis did not act in concert with Ms France or Ms Bennett.

165.5. The 2020 detriments and the 2021 detriments are not made similar by any underlying pattern of suppressing whistleblowing concerns. Mr Ennis arranged for the claimant's disclosures to be appropriately investigated and tried to encourage the claimant to come forward with further detail.

165.6. The claimant argues that there is some similarity in the underlying subject-matter. That is to say, the 2021 detriments concerned the handling of his grievance, which included complaints about the 2020 detriments. That is not enough in our view. This is for two reasons. First, the claimant's grievance of 28 October 2020 raised a large number of different points, only some of which were detriments D1-D9. Second, and more fundamentally, the claimant is making the wrong comparison. Whilst the surrounding circumstances are relevant, the things that have to be similar are the acts or failures, rather than some underlying fact that is connected to them.

166. The time limit for the latest of the 2020 detriments therefore started to run from 28 October 2020. This means that the last day for presenting the claim was 27 January 2021. The claim was presented about 10 months too late. Unless the tribunal can extend the time limit, the claim in respect of the 2020 detriments cannot be considered.

Jurisdiction – extension of time

Was it reasonably practicable to present the claim in time?

167. In our view, it was reasonably practicable for the claimant to present his claim within the time limit.

168. We have found as a fact that the claimant was likely to have known of the existence of tribunal time limits by October 2020. We do not know precisely when the claimant did his online research. (It could have been before January 2021; it could have been afterwards, in which case it would have not helped him discover the time limit in time.) What we are sure of is that the claimant was capable of researching tribunal time limits throughout the limitation period. He knew the facts of which he wanted to complain: they were set out in his grievance. He could reasonably have been expected to check the time limit by doing some simple internet searches at any time prior to 27 January 2021.

169. The claimant made a tactical decision. He believed that the tribunal would look on his claim "more favourably" if he had exhausted internal procedures first. He has to take the consequences of that decision. He is not saying that he believed that the tribunal was *unable* to consider a claim before the internal procedures had been exhausted. Even if that is what the claimant believed, some fairly basic online research would have corrected any misunderstanding on his part.

170. The tribunal therefore has no power to extend the statutory time limit.

Claim not presented within further reasonable period

171. In case we are wrong in our conclusions about reasonable practicability, we have also considered what further period would be reasonable for the claimant to bring a claim.

172. In our view, a further period of ten months would not be reasonable. The starting point is that there is a strong public interest in claims being brought promptly. An extension of 10 months would mean that the claimant had more than four times the usual limitation period to bring the claim.

173. The delay in this case has had a significant effect on our ability to find the facts. This was not a case where the bundle told the whole story. Our conclusions in relation to the protected disclosures (for example, PID1-3) explain how important factual issues (such as what information the claimant disclosed) depended on the oral evidence of the claimant, whose memory had faded over time. Paragraphs 44 and 55 above also describe the findings we would have to make in relation to the motivation of Ms Bennett and Ms France. Were those managers motivated by the fact that the claimant had made a protected disclosure? The circumstances (so far as we were able to find what they were) did not point clearly to one conclusion or the other. Again, our view was that the passage of time had made our task considerably more difficult. For some allegations of detriment, the allegation itself was vague (see Detriment D8 – "ongoing bullying and harassment") which compounded the problem caused by the delay – it was harder for the respondent to guess at what the bullying and harassment was supposed to have been when the allegation was made over a year after the events in question.

174. For these reasons, even if we had had the power to extend the time limit, we would not have done so.

<u>2020 detriments - merits</u>

175. We did not finally determine whether or not the claim in respect of all of D1 to D9 would have succeeded if we had had the power to consider it.

176. In some cases, however, we were able to state what our conclusion would have been on the merits of the complaint. In particular:

176.1. We would have dismissed the claim in respect of Detriment D3. This is because the claimant could not reasonably have understood Ms France's e-mail, or lack of action at that time, to put him at any disadvantage. This conclusion reflects our finding at paragraph 40.

176.2. Detriment D6 would not have succeeded. We found (at paragraph 61) that Ms Bennett's decision to send the warning letter was not motivated to any significant extent by any protected disclosures that the claimant had made.

176.3. Detriment D7 would have failed, because the detrimental act complained of did not happen. Ms Bennett did not react negatively to the claimant's concerns. See paragraph 63.

176.4. Detriment D9 – We made a positive finding at paragraph 65 that the detrimental refusal of working from home was not motivated to any significant extent by the claimant's protected disclosures. For this reason, the claim in respect of this alleged detriment would not have been well-founded.

Outcome

177. It follows from the above conclusions that we must dismiss this claim.

178. We apologise to the parties for the delay in providing these written reasons. This is purely down to the pressure of hearing other cases and in providing written reasons for those cases, too.

179. Finally, we would like to thank Mr Kenward for his focused submissions and Mr Bennett for the dignified way in which he presented his own case.

Employment Judge Horne
20 February 2023

SENT TO THE PARTIES ON
28 February 2023

FOR THE TRIBUNAL OFFICE