Case Number: 3316004/2019
3328242/2019

EMPLOYMENT TRIBUNALS

Claimant:	Mr D Durey	
Respondent:	South Central Ambulance Service NHS Foundation Trust	
Heard at:	Reading	**On: 14, 15, 21, 22, 23, 24, 25, 28 November 2022, 5 & 6 December 2022 (discussion days)**
Before:	Employment Judge Gumbiti-Zimuto Members: Mr P Hough and Ms B Osborne	

Appearances
For the Claimant: Mr M Avient, counsel
For the Respondent: Mr C Milsom, counsel

RESERVED JUDGMENT

(1) The claimant's application to strike out the response is dismissed.

(2) The claimant's complaints of unfair dismissal, detriments because of making a protected disclosure and wrongful dismissal are not well founded and are dismissed.

REASONS

The claims

1. The claimant complains that he suffered detriments because of making protected disclosures. Those disclosures related to alleged misconduct by South Central Ambulance Service NHS Foundation Trust (the respondent) in respect of two matters: (a) Major changes to the paramedic course whilst he was an employee of the Trust; and (b) Whilst acting as X's companion in her disciplinary hearing for gross misconduct. The claimant contends that he was subjected to detriments culminating in his constructive dismissal by the respondent. The claimant claims that he was unfairly dismissed and or in the alternative, he was wrongly dismissed.

Witness credibility

2. The claimant gave evidence in support of his own case. The respondent relied on the evidence of Professor David Williams, Mr Matthew Catterall, Ms Caroline Robertson, Mrs Elizabeth Lee, Mr Craig Heigold, Mr Ian Teague, Mrs Kerry Gregory, Mr Josh Wood, Ms Natasha Dymond, Mr Paul Jefferies, Ms Penny Jann, Mr Darren Weston, Ms Kate Ellis, Ms Lisa Pickard, Mr Mark Ainsworth, Mr Ross Cornett and Ms Melanie Saunders. All the witnesses produced statements which were taken as their evidence in chief. The respondent also relied on the witness statement of Ms Kinton who is now deceased and so her evidence was not tested. We were also provided with a trial bundle containing 3467 pages of documents. It was from these sources that we made the findings of fact that we considered necessary to decide this case.

3. The claimant robustly criticises the way that the respondent's witness statements have been prepared by the respondent's solicitors and says it is not possible to discern where the personal voice of the witness ends, and the drafting voice of the solicitor begins. Having considered the criticisms that are made of the respondent's solicitor we have concluded that there is no evidence of any improper conduct by the respondent's solicitor in the preparation of the witness statements.

4. Further we have not been persuaded that such criticism as can properly be made of the way that the witness statements have been drafted, set against the way that the witnesses gave their evidence, establishes that the witness statements have been prepared in a way that has "infected or distorted the true evidence that the witness was capable of giving."

5. The claimant makes specific criticisms of the evidence given by the respondent's witnesses in cross examination he asks us to strike out the response and says that no weight whatsoever should be given to the witness statements produced for the witnesses put forward by the respondent. We do not agree there is either a basis to strike out the claim or disallow the respondent's witness's evidence. They are to be assessed critically along with the claimant's evidence. The application to strike out the response is dismissed.

Facts

6. In 2015 Oxford Brookes University (OBU) ran a paramedic programme approved by the Health and Care Professions Council (HCPC) successful completion of which can result in eligibility for professional registration as a paramedic.

7. At the relevant time there were two distinct groups of students on OBU courses. The Universities and Colleges Admissions Service (UCAS) Students, who entered the Foundation Degree (FdSc) in Paramedic Emergency Care, and students doing an abridged version of the two-year FdSc degree who were employed by the

respondent and had previously worked for an Ambulance Trust in an unregistered role. The claimant was an employee of the respondent in the latter group.

8. The claimant was employed by the respondent initially as a student paramedic from 2 February 2015 and from 1 August 2016 as a paramedic. The claimant had a place in the September 2015 cohort undertaking the FdSc in Paramedic Emergency Care at OBU. On successful completion of the FdSc students are eligible for registration with the HCPC.

9. In July 2015 OBU and the respondent agreed changes to the FdSc course which meant that students would be granted supernumerary status whilst undertaking the academic components of the programme, in hospital placement and a minimum of 225 hours whilst working for the respondent. This was a reduction in supernumerary hours from 750.

10. OBU is accountable to the HCPC for delivery of the FdSc, any changes to the FdSc by OBU are to be reported. Minor changes may be reported in OBU's annual reporting, major changes are to be reported sooner on the Major Change Form. OBU did not consider that it was a major change.

11. On 30 July 2015 students on the claimant's course were invited to attend a meeting with Mr Catterall and managers from the respondent where the students were informed that changes had been made to the FdSc course. The students were told that changes to the course meant there would be a cut in the number of front-line supernumerary training hours from 750 down to a minimum of 225. The claimant asked if the HCPC had signed off on the changes. The reply stated that the position of the OBU was that any changes to this aspect of the course could be notified to the HCPC retrospectively. There was no mention by the claimant or anyone else that the changes would mean the student could not practise safely. Mr Catterall told the claimant that HCPC give guidance and it is not necessary to get their agreement to the change.

12. On 12 August 2015 the claimant wrote to Ms Caroline Robertson, Universities and Practice Education Team Manager about the reduction in supernumerary practice placement ambulance hours. Ms Robertson forwarded a copy of the letter to Mr Catterall and they agreed that Mr Catterall would reply to the claimant's concerns. Mr Catterall responded to the claimant on 14 August 2015. In his letter Mr Catterall tried to reassure the claimant that the "*internal appraisal concluded that because students' total hours in placement would remain at 750 with a paramedic registrant, our lack of specification as to whether these would be supervised or supernumerary would not impact on compliance with the HCPC SET's and graduate eligibility for registration as a paramedic."*

13. On 19 August 2015 Ms Robertson sent an email to Senior Operational Managers and her team, it was forwarded to others including Clinical Mentors and Team Leaders. The email read as follows:

"RE: Update on SCAS internal student paramedics undertaking the 1 year FdSc at Oxford Brookes

As you may be aware, SCAS staff have been attending Oxford Brookes University's FdSc since 2008. Recently, Oxford Brookes, Health Education Thames Valley and SCAS have agreed to slightly alter the way in which SCAS staff achieve their hours. This recognises their existing operational experience and also supports the additional opportunities being afforded to staff.

This September's 1 year cohort will therefore undertake the following:
1) Attendance of all University teaching days.
2) Supernumerary Hospital placements circa 84hours
3) Supernumerary ambulance placements circa 225 hours
4) Supervised ambulance placements (1:1 with a registrant) circa 446 hours
5) Study time

The Curriculum laid out by the College of Paramedics states;

"The College of Paramedics accepts that any employing organisation during the transition (2015-2019) period to level 6/SCQF level 10 may continue to develop "in-house" staff to paramedic status. These individuals may not require 100 percent supernumerary placements due to their existing clinical experience. A guide of 225 hours supernumerary per year of clinical practice development will be deemed as sufficient, this equates to 30% of the 750 of a full-time HEI student paramedic" Paramedic Curriculum Guidance – 3rd Edition Revised (2015)

Staff will be allocated a team and will, as in previous years, undertake their placement hours with registrants within that team. However, any hours undertaken within other teams or even on other stations would also count towards their hours providing that these hours were with a registrant. Scheduling will endeavour to avoid internal students being placed on a vehicle with an external student (whose hours will continue to be supernumerary) however, should this situation arise, it would need to be managed pragmatically.

Both OBU and Health Education Thames Valley are supportive of the above decision however, if you have any queries, please do not hesitate to contact me."

14. The claimant considers that the email trivialised the matters he complained of which he considered to be wrongful conduct. Although the email did come to the attention of the claimant the email was not intended to filter down to the Student Paramedics, it was intended to ensure that the operational management team had the information they needed to know about practice placements.

15. On 29 August 2015 Ms Robertson sent the claimant an email in which she suggested, given the extent of his queries and concerns, that the matter is dealt with as a grievance and offered to meet informally to discuss his concerns in the first instance. Ms Robertson asked the claimant whether he would prefer to defer to the January 2016 cohort. Ms Robertson explains her thought process as being that if

the claimant deferred, he could see how the new system bedded in and hopefully it would allay his concerns. The claimant rejected the offer to explore his concerns by way of a grievance and informed Ms Robertson that he intended to raise his concerns under the Whistleblowing Policy with Professor David Williams and also rejected the idea of deferral to the January 2016 cohort.

16. On 31 August 2015 the claimant wrote to Professor David Williams, Non-Executive Director, and at the relevant time, whistleblowing lead on the Trust Board, in the following terms:

> "Please find attached documents pertinent to concerns raised following a meeting with South Central Ambulance Service managers on 30 July 2015. I am referring this matter to you under Section 7.7.1 of the Trust's Whistleblowing Policy.
>
> I have a more than reasonable belief that proposed changes to practice placements of Internal Student Paramedics this year are inappropriate, pose a threat to patients and the reputation of the Trust. Students have been informed that the Health and Care Professions Council have not been notified and have not approved major changes to their degree programme. In failing to inform the HCPC, I believe that the trust is failing to meet it's legal obligations. Further obligations to respond to the cohorts individual and collective concerns have also not been met.
>
> Attempts have been made to conceal the events of the past month or so. Ignorance of the concerns of staff that failing to notify the HCPC poses a risk to the public, is, in my view, unethical at best. Before completing and forwarding an 'Education Provider Concern Form' to the Director of Education at the HCPC, I must exhaust internal procedures. Practice Placements begin in October. I would be grateful if you could investigate and respond to all these concerns comprehensively as a matter of urgency.
>
> I have enclosed relevant documents to assist you with your investigation. A swift response would be appreciated so that I may be able to determine the Trust's final position on this matter. Please be advised that any undue delay will leave me with no option but to notify the Education Committee so they can assess the changes and ensure protection of the public, my colleagues and I. I look forward to hearing from you soon."

The claimant's email was accompanied by 7 attachments.

17. Professor Williams met with Ms Sharon Walters (Director of Human Resources) who briefed him on the reasons for the changes. She informed him that Health Education Thames Valley and the respondent had proposed that Student Paramedics would undertake 225 hours of supernumerary ambulance practice placements (instead of 750), but that overall, the number of placement hours would not alter and that 525 hours would be supervised (instead of being supernumerary the student would be placed with a qualified Paramedic to work). It was also explained that this would have positive implications for the workforce because there would be more staff available to respond to emergency calls. Professor Williams agreed that an

independent, impartial Investigating Officer should be appointed to look into the claimant's concerns in accordance with the whistleblowing policy, to make factual findings and report back to him.

18. Ms Walters left the employment of the respondent in September 2015 and was replaced by Ms Melanie Saunders as Executive Director of Human Resources. Initially it was proposed that Mr Stuart Warner (Senior Education Manager) be appointed as investigator, however in his role he was quite close to the affected students, and he queried whether the investigation should be undertaken by someone outside of the directorate. Mr Ian Teague, (Assistant Director of Education) identified Mrs Liz Lee, a former employee of the respondent as a possible investigator. Ms Saunders was happy to appoint Mrs Lee as an independent investigator and on 21 October 2015 Mrs Lee was provided with terms of reference for the investigation and appointed to carry out the investigation. Mrs Lee reported to Professor Williams on 21 December 2015.

19. The claimant started on the FdSc in September 2015. In due course he successfully completed the course and registered as a paramedic commencing employment as a paramedic from 1 August 2016.

20. On 18 September 2015 Mr Catterall received a copy of the claimant's email and attachments sent to Professor Williams on 31 August 2015. Mr Catterall sent an email to the claimant in which he stated that the Paramedic Programme Team took the claimant's concerns seriously and reassured him that OBU had explored the legal and regulatory perspectives before the changes were made by the respondent and that it would be notified to the HCPC through annual reporting rather than on a Major Change Form. The claimant was invited to meet with Mr Catterall to discuss his concerns.

21. The claimant met with Mr Catterall on 30 September 2015. Mr Catterall says that during the meeting, the claimant's concerns were not about patient safety or an alleged breach of a legal obligation: they were much more personal in nature and focussed more on the standard of education and development.

22. On 11 November 2015 Mr Catterall sent an email to the claimant and another person, the email was copied to Ms Robertson in which Mr Catterall stated that he had heard reports about defamatory comments being posted on Facebook towards the claimant and another. He asked to be directed to them as he had been unable to locate them himself. This was so that Mr Catterall could investigate, he took the reports very seriously, if they included defamatory comments it could be a conduct issue or may impact on fitness to practice thus affecting registration.

23. Mr Catterall looked for the comments that had been reported to him but was unable to find anything. The Facebook Group on which they were supposedly posted was deleted soon after and the comments were not found by Mr Catterall. Mr Catterall sent the email of 11 November 2015 because the issue of the alleged defamatory

comments being made on Facebook had been brought to his attention, he wanted to support the claimant and ensure that appropriate steps were taken, either by the respondent and/or by OBU. Mr Catterall's intention was to help the Claimant, not to disadvantage him. The claimant did not reply to Mr Catterall's email, and no further investigation was undertaken.

24. On 14 January 2016 the claimant was informed that the report by Mrs Lee had been received and that the Trust was working through it to determine what actions to take in response to the recommendations. There was no further communication about this issue until the claimant enquired as to the position in May 2016.

25. On 26 May 2016 the claimant sent an email and letter to Professor Williams stating that the Professor had been in receipt of Mrs Lee's report for four months and given the delay in detailing what action had been taken by the respondent and the continuing failure to comply with its legal obligations, the claimant would refer the matter to the relevant external authorities.

26. On 31 May 2016 Professor Williams wrote to the claimant to advise him of the outcome of the investigation by summarising the conclusions. Under the respondent's procedure the claimant was not entitled to a copy of the report and he was not provided with a copy of the investigation report.

27. Due to the extent of the claimant's sickness absences the claimant was invited to attend a first formal sickness review meeting on 18 March 2017. The claimant did not attend the sickness review meeting. The meeting proceeded in the claimant's absence. The claimant was issued with a disciplinary warning regarding the failure to communicate with the respondent and his sickness review was escalated to stage 2.

28. On 29 March 2017, the claimant sent a letter to Ms Judith Macmillan (HR Manager, Northern Operations) appealing the outcome of the first formal review meeting on 18 March 2017. The claimant's letter stated that he had made a protected disclosure under the whistleblowing policy in August 2015. In his letter the claimant asked a number of questions about that issue. This was brought to the attention of Ms Dymond (Assistant Director of HR Operations).

29. In his letter dated 29 March 2017 the claimant had asked four specific questions about his protected disclosures, Ms Dymond states that she did not know the information to answer the questions in detail. Ms Dymond discovered that the claimant had raised concerns, that an independent investigation had been commissioned, that Professor Williams had considered the contents of the investigation report and relayed the outcome to the claimant. Ms Dymond's understanding was that the claimant had received, over two years previously, answers to his concerns relating to the reduction in supernumerary hours for Student Paramedic's practice placements from September 2015. The whistleblowing

investigation had concluded 2 years ago and given the time lapse Ms Dymond considered that it was inappropriate to reopen dialogue on this matter.

30. The claimant successfully appealed against the first formal review in April 2017.

31. In November 2017 the claimant again raised issues referring to the letter of 29 March 2017 making it clear that he was expecting a response from Ms Dymond who he had been told was looking into the matters raised in the letter.

32. On 18 December 2017 Ms Dymond sent an email to the claimant, attaching a letter in response to his recent communications. In the letter Ms Dymond stated that the claimant's whistleblowing concerns had been handled by Professor Williams and the Director of HR in 2015; that she had not been involved in that process and had no knowledge of the concerns the claimant had raised until earlier in 2017. The letter included the following

> "Having reviewed your papers and your most recent letters, I can see that in the letter dated 31 May, you were given responses to the questions that you appear to continue to raise and in addition were offered the opportunity to meet with Melanie Saunders should you have continued to have any remaining concerns. Having consulted with Melanie I understand you did not arrange such a meeting.
> …
> Considering the above and the time that has elapsed since the response to your protected disclosure, we consider this matter to be closed."

33. The claimant became involved in disciplinary proceedings relating to alleged misconduct by Colleague X, his role was in assisting them in the presentation of their defence. Mr Darren Weston, Team Leader (and sometime Acting Emergency Services Manager), in September 2017 was appointed as the investigating officer in an internal process involving Colleague X, as a result of which he investigated allegations, prepared an investigation report and attended the disciplinary hearing.

34. Mr Paul Jefferies, Assistant Director of Operations, was appointed the chair of an internal disciplinary process involving Colleague X. Ms Kathleen Kinton, HR Advisor, was appointed advise to Mr Jefferies in the internal disciplinary process.

35. The claimant accompanied Colleague X to three of their four formal hearings as an employee companion. The allegations, if proven, could have led to summary dismissal of Colleague X.

36. Attached to an email dated 25 January 2018, the claimant sent a handwritten statement to Mr Weston, Mr Jefferies and Ms Kinton. It was a statement in support of Colleague X's case and should therefore form part of the disciplinary hearing pack to be considered when deciding the case. In this statement the claimant stated that he had prepared the statement of his own volition as a recollection of recent events and that he would be happy to answer questions asked by the disciplinary panel at the hearing on 30 January 2018 regarding the issues arising from its contents.

37. The statement set out a number of events relating to the incident in respect of which Colleague X was subject to disciplinary process. Towards the end of the statement, the claimant wrote: "*I am concerned that the allegation itself, the terms of reference and the re-arraignment of [Colleague X] despite evidence exonerating [them] indicates a culture inconsistent with the open and transparent culture the public expects from NHS bodies*". The only individuals who saw the statement would have been those to whom the claimant sent the statement and those who may have read it as part of the disciplinary hearing pack.

38. Mrs Kerry Gregory (née Wilson), Clinical Operations Manager, has overall responsibility for the staff working at Adderbury and Kidlington Ambulance stations (and previously at Oxford and Didcot). Reporting to Mrs Gregory are four or five Team Leaders. The Team Leaders line manage up to thirty members of staff each. The claimant was a paramedic among a group of 85 paramedics, at Didcot and Oxford, who indirectly reported to Mrs Gregory.

39. In a letter dated 21 January 2018 the claimant stated that Mrs Gregory was required to attend a disciplinary hearing relating to Colleague X. Mrs Gregory forwarded a copy of the letter to Mr Paul Jefferies as the disciplinary hearing chair.

40. On 24 January 2018, Mrs Gregory, wrote to Colleague X in the following terms:

> "With regards to the perceived threatening letter I have received from yourself and Declan Durey demanding my attendance at the hearing on 30th January, can you please clarify what value you believe I would add on the day? I am happy to attend but would appreciate understanding in what capacity as a witness you require me.
> Can you please respond to me tomorrow … so I can consider your request fully."

41. On 29 January 2018, Colleague X wrote to Mrs Gregory thanking her for the response and confirmed that having spoken to the claimant, they will bring Mrs Gregory's response to the attention of the chair of the disciplinary hearing. There was no further response from either Colleague X or the claimant and Mrs Gregory did not attend Colleague X's hearing on 30 January 2018.

42. Mr Craig Heigold is a Paramedic Team Leader at Kidlington station. In a letter dated 21 January 2018 the claimant stated that Mr Heigold was required to attend a disciplinary hearing relating to Colleague X. Mr Heigold forwarded a copy of the letter to Mr Paul Jefferies.

43. Mr Heigold responded to colleague X by sending an email on 25 January 2018 which included the following:

> "Further to receiving late on Sunday evening what I perceived to be a blunt and threatening letter I am unaware of any involvement or reason for me to be called

> as a witness and wondered if perhaps you can clarify your reasoning to summons me as your witness.
> Should you wish to call me as a witness I would be more than happy to attend…."

Mr Heigold did not receive a response to his email and did not attend the colleague X's disciplinary hearing.

44. Mr Richard McDonald at the relevant time was employed by the respondent as Head of Operations, responsible for all internal 999 services covering Oxfordshire, Mrs Gregory reported to Mr McDonald. In a letter dated 21 January 2018 the claimant stated that Mr McDonald was required to attend a disciplinary hearing relating to Colleague X. Mr McDonald forwarded a copy of the letter to Mr Jefferies the disciplinary hearing chair.

45. Mr McDonald also sent an email to Colleague X on 22 January 2018. The email read as follows:

> "I have received the email below and letter attached from Declan Durey on your behalf. Please can I clarify who is representing you as I was under the impression that you were using Unison and Przemek Miozga as your representative? Also, if Declan is representing you, please be aware that a work colleague does not have the same role as an union representative and Human Resources can provide you with more guidance as required.
> With regards to your demand (not request) for my attendance at the hearing on 30th January, please can you clarify what value you believe I would add on the day? I am currently planned to be chairing an alternative hearing at a different location within the Trust at the same time. I will need this information to ensure that I can plan accordingly as required.
> Please may I also request that you do the similar thing for any other witness demands that you may have made?
> If you have any queries, please don't hesitate to come back to me."

Mr McDonald did not accept that this was an attempt to denigrate the claimant's involvement or diminish his standing with Colleague X.

46. Colleague X replied to Mr McDonald on 29 January 2018 thanking him for his response and confirmed that having spoken with the claimant, they will bring Mr McDonald's response to the attention of the chair of the disciplinary hearing. Mr McDonald responded to Colleague X that same day pointing out that they had not responded to the queries set out in his email. Neither Colleague X or the claimant responded further, Mr Mc Donald did not attend Colleague X's hearing on 30 January 2018.

47. In his statement the claimant stated that on the evidence available to him he was concerned that the Trust was seeking to scapegoat Colleague X in order to hide the real issue in this matter, which was an error by the call handler / Emergency Operations Command (EOC). The claimant considers that this was something that presented a clear and ongoing danger to patient safety and the claimant believed

that evidence was being deliberately concealed and therefore the actions being taken by employees of the respondent were incompatible with the respondent's obligations to be transparent.

48. Colleague X's disciplinary hearing took place over four days the first day was 30 January 2018. The claimant accompanied Colleague X on 30 January 2018, 7 March 2018, and 25 April 2018.

49. Ms Kinton's role involved advising the operational management team in respect of all HR matters, including disciplinary issues and grievances. Ms Kinton as HR Advisor to Mr Jefferies in respect of Colleague X's disciplinary hearing, had been copied in on the claimant's handwritten statement of 24 January 2018. On 25 January 2018 the claimant sent to Ms Kinton, by email, a large number of documents to be used at Colleague X's disciplinary hearing. Ms Kinton was unable to open the documents in the format they had been sent. Ms Kinton emailed the claimant and requested that he send her the document in another format as soon as possible, the claimant did not respond and so on 29 January 2018, the day before the disciplinary hearing, Ms Kinton emailed the claimant and asked that he provide two hard copies of the documents Colleague X wished to rely on at the disciplinary hearing. The claimant did not respond to Ms Kinton's email, however on the day of the disciplinary he attended with copies of the documents.

50. On 2 March 2018 the claimant sent a letter to Mr Weston with a request for disclosure of 15 categories of documents. At the disciplinary hearing on 25 April 2018 (day three) the claimant requested that he is provided with the documents requested on 2 March 2018. The documents that he referred to included disclosure as alleged at 5, 6 and 7(1) of the schedule of protected disclosures. Also during the hearing on 25 April 2018, the claimant asked questions exploring whether the nearest ambulance had been despatched to support Colleague X.

51. On 25 April 2018, the claimant asked a number of questions regarding the statement provided by KH as part of the disciplinary investigation process. The claimant asked Mr Weston if he asked KH to change her statement, this was denied. Mr Weston said he may have asked KH for clarification on some points but did not ask for the statement to be redone. Mr Weston stated that he had to chase KH for her statement and that when provided he was happy with the statement and at no point was KH told her statement "*Was not good enough*".

52. Mr Jefferies states, "*I have no recollection of him expressly disclosing any information confirming that he believed this to be the case nor did he expressly set out any reasons which he said led him to believe that. To be honest, I do not recall Declan providing any evidence to substantiate what he may or may not have been insinuating about [KH's] statement.*" In Mr Jefferies view, the claimant's emphasis "*around this topic was to cast doubt on evidence which had been provided for use at Colleague X's formal disciplinary hearing. The issues Declan discussed therefore appear to have been personal to Colleague X."*

53. Ms Penny Jann is a human resources consultant. In September 2018 she was appointed to conduct a formal investigation into two grievances which had been raised by employees of the respondent. As part of the investigation of those grievances, Ms Jann met with the claimant on 25 September 2018. Ms Jann was investigating a grievance made by a trade union representative, PM, against Ms Kinton and a counter grievance made Ms Kinton against PM. Both grievances alleged inappropriate behaviour during disciplinary hearings or internal meetings. As part of her investigation Ms Jann was asked to meet with the claimant.

54. The meeting with the claimant lasted almost two hours. Ms Jann did not recall precisely what might or might not have been said by the claimant during their meeting. Ms Jann says, the claimant saw it as an opportunity to re-visit the issues he had with Colleague X's disciplinary hearing, and he read out a script that had been presented by him at the disciplinary hearing. The claimant was keen to impress upon her "*how well he believed he had presented Colleague X's case at the disciplinary hearing*". The claimant focused on what he considered to be shortcomings in the handling of the disciplinary process. The claimant complained about the way he had been treated in the disciplinary process when accompanying Colleague X, which had caused him to become so stressed that he had become unwell.

55. On reviewing her notes Ms Jann does not have a record of all the matters allegedly raised by the claimant, however her notes are not verbatim, she also states that the notes do not record the claimant's alleged disclosures with the clarity that he now alleges he made them. Some of the alleged disclosures were mentioned at various junctures and were intertwined throughout the course of the meeting. The matters that the claimant raised focused on the shortcomings he believed existed in the disciplinary hearing process.

56. Ms Jann's investigation was kept confidential she reported only to the Investigation Commissioners, Stephen Scales and Philip Smith. She did not show anyone other than them the hearing notes. The matters raised by the claimant focussed on how the information was presented to the panel hearing the disciplinary issue rather than the actions of the HR Adviser in relation to that hearing.

57. Colleague X's disciplinary hearing started on the 30 January 2018. The disciplinary hearing was eventually to take place over four days during which there were many witnesses and a substantial amount of documentation. During the disciplinary hearing the claimant says that he was subjected to several detriments.

58. The claimant alleges that Ms Kinton repeatedly evaded confirming whether the hearing would be conducted in keeping wth the respondent's best Practice Guide to Formal Hearing and Appeals. This is denied by Ms Kinton, her statement states that if the claimant had asked she would have confirmed that and would have had no reason not to confirm that. Ms Kinton denied repeatedly evading any questions.

The respondent's procedures for disciplinary hearing require the disciplinary chair to read out a standard introduction at the beginning of the hearing which confirms the policies in accordance with which it is being held. These policies should have formed part of the disciplinary hearing pack which the claimant would have received. Ms Kinton statement states that there would have been no reason not to confirm this. The invite letter refers to the respondent's Best Practice Guide to Formal Hearings and Appeals.

59. The Tribunal have had to decide which of the two versions of events is more likely to be correct on this issue. We can see no reason why it would have been the case that Ms Kinton would wish to evade answering the claimant's question about the procedure to be followed. We prefer the evidence of Ms Kinton on this point and consider that is more likely than not to be correct on this issue.

60. Also during the disciplinary hearing, the claimant says that Mr Weston, Ms Lisa Pickard and Ms Kinton asserted that the questions the claimant was asking were not permitted to be asked. The claimant says that he questioned Mr Weston about whether KH had been asked to alter her statement, and whether she had lied. The claimant says that during this questioning he was harried and prevented from asking questions by Ms Pickard who tried to suggest that what management chose to look at or ignore was up to them. Ms Pickard actively answered questions on Mr Weston's behalf.

61. The respondent's witnesses deny this allegation and give evidence that on the three days of hearings at which the claimant was present there were interjections when the claimant was speaking. However, they say that this would have happened on a small number of occasions in a respectful way and only when it was necessary. The respondent's witnesses say that the claimant was presenting a substantial amount of information and some of it was irrelevant. Further they say that at times the claimant's behaviour was inappropriate and it would have been only in those situations that there was an interjection. During some of these interjections Ms Pickard stated that the questions the claimant was asking Mr Weston were asked repeatedly and seeking to solicit his opinion and that on some of these occasions she interjected by saying that Mr Weston did not need to answer.

62. The claimant also states that managers employed by the respondent asked a witness to leave the room, preventing the claimant from asking further questions of the witness, asserting that questions were irrelevant, and the witness could not be in the room when a voice recording was being played. The evidence from the respondent's witnesses accepts that some of the witnesses were asked to leave the room when audio recordings were played. They state that this is standard practice, the audio recordings used during this process contained confidential information.

63. The claimant states that he was not provided with all audio recordings of the evidence relied upon by the investigating officer prior to the commencement of the hearing to enable the claimant to put Colleague X's case. Ms Kinton statement states that it is possible that audio recordings were not provided to the claimant and Colleague X ahead of the first day of the disciplinary hearing and that if that was indeed the case, then there would have been a valid reason for that, they would not have been deliberately withheld from the Claimant or Colleague X to prejudice their preparation. The claimant and Colleague X would have been given time to consider any evidence given at the disciplinary hearing itself. Mr Weston could not recall whether all audio recordings used during the disciplinary process were provided to Colleague X and the claimant ahead of the first day of the hearing. Mr Weston states that the claimant and Colleague X would have been given time to review the audio recording before continuing with the process, he states that the notes of the hearing seem to support that. The respondent's witnesses point out that there was no complaint about lack of opportunity to review evidence made at the time.

64. The conclusion of the Tribunal is that it is more likely than not that the claimant and Colleague X were not provided with all the audio recordings prior to the commencement of the hearing. We come to this conclusion because the claimant states that was the case, and to have provided the claimant with all the audio recordings before the disciplinary hearing would appear to be an exceptional occurrence outside the norm.

65. The claimant also makes allegations about the continuation of conduct that was deliberately demeaning and undermining of his position in the workplace and set him up to fail at Colleague X's disciplinary hearing on 7 March 2018, the second day of the disciplinary hearing. The claimant says that he asked questions of Mr Adrian Leahy and suffered interjections by Ms Kinton, Mr Weston and Ms Pickard who asserted that the questions the claimant was asking were not relevant or permitted. Further the claimant says he was subjected to excessive requests by managers to signpost them to pages and paragraph numbers within documentation.

66. The respondent's witnesses say that they have no specific recollections of the incidents complained of by the claimant during the 7 March 2018 disciplinary hearing. Mr Jefferies says that the hearings were difficult hearings but everyone remained professional at all times. The claimant's style of questioning was very formal and structured, but Mr Jefferies gave the claimant plenty of leeway when asking questions (even if they did not appear to be relevant) and he did not recall the claimant being told he could not ask certain questions, however, he accepted that it is possible that may have happened if the questions he was asking were irrelevant. Ms Kinton and Ms Pickard say that they would not have interjected when the claimant was asking questions unless the questions that the claimant was asking Mr Weston were inappropriate. The respondent's witnesses say that it is standard practise to ask to be signposted to paragraphs and documents during the

hearing, especially as was the case in Colleague X's case which had a substantial number of documents in the hearing pack. They deny that this was done excessively.

67. The Tribunal found the respondent's witnesses explanations on this point credible and consider that in the course of doing his best to represent Colleague X the claimant may well have felt that such interjections were disruptive, but we are not satisfied that there was any inappropriate behaviour in the conduct of the hearing by the respondent.

68. The third day of Colleague X's disciplinary hearing was on the 25 April 2018. On this occasion the claimant complains that Ms Pickard demonstrated hostility towards him by repeatedly interrupting him and stated "*Declan, we are not in a court of law.*" In the same hearing the claimant says that Ms Kinton asked the note taker to document statements which did not reflect what the claimant had asked of Mr Weston leading the claimant to divert his attention to repeating his prepared questions and ensuring the question was not falsely documented.

69. Mr Jefferies recalls that Ms Pickard said to the claimant that the hearing was "not a court of law", Ms Pickard agrees that she made the comment during the hearing. Mr Jefferies then asked Ms Pickard not to say that again. The respondent's witnesses rely on this intervention as an example of Mr Jefferies acting to control the proceedings and conducting them fairly.Ms Pickard explains her comment by saying that the claimant's behaviour during the hearing led her to say it following an instance of the claimant repeatedly asking Mr Weston a question which would have required Mr Weston to answer by providing an opinion. The claimant's style of questioning was, Ms Kinton statement says, confrontational.

70. As to the suggestion that there was an attempt to get the note take to record inaccurate notes, the respondent's witnesses do not recall Ms Kinton or anyone at the hearing asking the note-taker to record notes which did not accurately reflect what was being said or the claimant raising any issues with the accuracy of the hearing notes at the time. Ms Kinton statement states that it is possible that she might have asked the note-taker to read back the notes that had recently been taken or to ensure that a particular comment had been recorded but she did not ask the note-taker to record anything which did not accurately reflect what had been said at the hearing.

71. The Tribunal consider that it is not likely that such a brazen attempt to concoct a false note would have been attempted in front of a senior person by Ms Kinton. It is more likely that what the claimant witnessed and now misremembers was as Ms Kinton suggests probably an instance of her asking the note take to read back the notes.

72. In around November 2018 Mrs Gregory became aware that the claimant was allegedly living in his mobile home a converted ambulance at Didcot Ambulance

Station. The claimant says that this is factually incorrect. Mrs Gregory ask a Team Leader, H, to have an informal conversation with the claimant. The purpose of the conversation was to check on the claimant's welfare and to ask him to stop parking as he was doing. On the 19 November the claimant received a voicemail from H explaining the concern and inviting a discussion with the claimant. On 20 November 2018 the claimant declined the invitation to discuss the situation and wrote an email in reply to H setting out his position and also pointing out that he had received racist comments about his Irish nationality and travellers. Following this email Mrs Gregory invited the claimant to attend a meeting on the 6 December 2018. The claimant declined the invitation in an email sent on 29 November 2018 explaining his reasons as well as setting out what he said was the "the most appropriate steps to ensure swift conclusion of this matter." Mrs Gregory sent an email to the claimant the following day stating that she wanted to meet with the claimant "to discuss the numerous issues which are of a complex nature and communication via email is not appropriate for these matters." She informed the claimant that he had been stood down on the 6 December 2018 so that she could meet with the claimant at Didcot at 16:00hrs.

73. On the 4 December 2018 the claimant raised a grievance in respect of Mrs Gregory's action in having him stood down and instructing him to meet with her at Didcot.

74. The claimant's meeting with Mrs Gregory could not take place on 6 December 2018 because a Team Leader was not available to attend the meeting and the claimant was told that the meeting could take place on 13 December 2018. The claimant wrote an email to the Ms Saunders stating that he would not be attending the meeting with Mrs Gregory because she was the subject of a grievance.

75. On 13 December 2018 the claimant attended a grievance meeting with Mr Ludlow Johnson, the Equality and Diversity manager at the Trust. During the meeting the claimant received a call from EOC to attend a job. The claimant stated that he was in a meeting with Mr Ludlow and would be available in the next 20-30 minutes. 15 minutes later a call was made to the station asking the claimant to contact EOC to explain the reason for his meeting with Mr Ludlow. Mr Ludlow called EOC after the meeting and was told that Mrs Gregory had insisted that they are told the details of the meeting.

76. On 21 December 2018 the claimant's roster had him undertaking clinical duties at Oxford City Ambulance Station. The remainder of the claimants Red Team colleagues continued with their Didcot Ambulance Station roster. On 21 December 2018 Colleague X was ordered to attend a meeting with Ms Ellis and Mr Weston. The claimant says that his absence from Didcot Ambulance Station had been purposely orchestrated to exclude him from attendance.

77. The respondent states that the claimant is wrong about this, while Mr Weston was present in the office during the meeting taking place between Colleague X with Ms

Ellis he was not participating in the meeting. There is a statement provided by Colleague X which states that Colleague X was being represented by their union representative at this meeting, the notes also refer to Ms Ellis but there is no mention of Mr Weston. The respondent states that as the claimant was rostered on a "relief" shift pattern at this time, he could be asked to work anywhere, including Oxford. The respondent denies that this roster-related location change had anything to do with any meetings involving anyone, and even if that had been the intention it is said that this could not have been engineered as the scheduling department determines which shifts a paramedic works on.

78. The claimant's version of events is not established by the evidence, he makes a connection between his being on the roster to work in Oxford and Colleague X's meeting at Didcot however the situation is explained by the respondent and could not have been engineered as the claimant alleges.

79. On 13 February 2019 the claimant states that he was approached by Colleague X's UNISON representative who told him that he had received a telephone call from Mr Mark Ainsworth, the Trust's Director of Operations. The claimant states that the UNISON representative told him that he had been in discussions with Mrs Gregory about an incident and that Mr Ainsworth said that he was told that the claimant was not to attend a meeting due to take place the following day and that if Colleague X did attend with the claimant formal action would be taken against her. The claimant states that he was further informed me that Mr. Ainsworth had disparaged him on the call and stated that any hesitation felt about Mrs Gregory was due to the claimant's own issues with her.

80. Mr Mark Ainsworth says that he does not know the claimant and has never met him as far as he knows. Mr Ainsworth has no recollection of the telephone call with Colleague X's UNISON representative and cannot say whether the conversation happened and if it did what was said. Mr Ainsworth states that such a description of events are not how he would have acted.

81. The conversation reported by the claimant is not supported by evidence from anyone else and Mr Ainsworth denies that he would have behaved in the way allegedly reported by the UNISON representative. On balance of probability, we do not consider that the events alleged occurred as reported by the claimant.

82. Also, on 13 February 2018 the claimant says that he was approached by Clinical Mentor Josh Wood who showed him correspondence relating to a Freedom of Information request regarding his vehicle being in the car park and that Clinical Mentor Mr Leahy confirmed that he had been party to the email.

83. The respondent states that at the beginning of February 2019 there was a group email sent to managers at Didcot Ambulance Station relating to a Freedom of Information Act request, the email was asking whether anyone knew who owned the vehicle with registration number VX58 CCE and asked why it was parked at

Didcot Ambulance Station. Mr Leahy replied to the email to advise that the vehicle was owned by the claimant.

84. The claimant overslept on 14 February 2019 and awoke to find that he had a missed calls and a voicemail from Thames Valley (TV) Police asking the claimant to contact them. The claimant contacted the TV Police and they explained to him that that a welfare call had been made by the Trust and they would send a police officer to see him. The claimant sent a text message to the scheduling department notifying them of his absence.

85. Mrs Gregory had contacted the police after the claimant failed to turn up for duty as scheduled and attempts to contact him had been unsuccessful. Mrs Gregory explained that normally, if attempts to contact the individual by phone are unsuccessful, a manager of the respondent would attend the individual's home address to conduct a welfare check in-person, in the claimant's case that was not possible because the claimant lived in his mobile home a converted ambulance and had not informed the respondent where he parked. Alternatively, a manager or HR Advisor would contact the individual's next of kin but in the claimant's case his next of kin were based in Northern Ireland. So when it reached approximately 11am and there had still been no contact from the claimant, Mrs Gregory states that she became particularly concerned.

86. After taking advice from the respondent's safeguarding team Mrs Gregory contacted the police. Mrs Gregory states that she thought it justified to do so in the circumstances and only did so intending to be supportive of the claimant. When she made the call to the police Mrs Gregory was acting in the capacity of Tactical Commander and in that role, such issues fall into her remit if they occur in one of the four Northern Oxfordshire stations.

87. From the 14 February 2019 the claimant was off sick and did not return to work before his employment came to an end.

88. The claimant lodged a grievance complaining of bullying and harassment on 14 February 2019. There was a discussion with the claimant about his grievance and a change to the claimant's line management arrangements pending the outcome of the grievance process. The claimant initially indicated that he was prepared to engage with a mediation process.

89. During his sickness absence the claimant relocated to Ireland. By May 2019, the claimant failed to engage with the respondent's attempts to progress mediation and resolve his grievance, and at times he chose to ignore the respondent's correspondence. The respondent invited the claimant to attend a meeting to discuss his continuing absence and how it could support the claimant in returning to full contractual duties: the Claimant had been assessed as fit to attend meetings by Occupational Health. The claimant ignored the respondent's correspondence.

90. The claimant eventually declined to attend a meeting at all; expressed significant concern about the respondent's attempts to contact him; requested that the respondent refrain from contacting him and stated that instead he would await independent and impartial adjudication from an Employment Tribunal.

91. On 31 July 2019, the claimant resigned without notice with immediate effect due to "the conduct of the Trust".

Law

92. Section 43A Employment Rights Act 1996 (ERA), provides that a " protected disclosure " means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. In section 43B provides that 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,
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
> (e) that the environment has been, is being or is likely to be damaged, or
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

93. To be a protected disclosure, the disclosure must satisfy three conditions. It must be a qualifying disclosure, one that, in the reasonable belief of the worker making it, is made in the public interest and tends to show that one or more of the six relevant failures has occurred or is likely to occur. It must be made, as relevant to this case, to the employer. The claimant must have suffered some identifiable detriment.

94. The term detriment has a broad ambit. In Ministry of Defence v Jeremiah [1980] ICR 13, CA, it was said that 'detriment' meant 'putting under a disadvantage', and that a detriment 'exists if a reasonable worker would or might take the view that the action of the employer was in all the circumstances to his detriment'. Detriment should be assessed from the viewpoint of the worker. General unfavourable treatment is capable of being a detriment.

95. The protection is from any detriment, there is no test of seriousness or severity, and the provision could well be breached by detrimental action that is minor. It is

not necessary for there to be physical or economic consequences to the employer's act or inaction for it to amount to a detriment. What matters is that, compared with other workers (hypothetical or real), the complainant is shown to have suffered a disadvantage of some kind.

96. Section 47B ERA provides that 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. For a detriment to come within the scope of section 47B, it must be a detriment to which the worker has been subjected in the 'employment field'. A detrimental observation about a whistleblower, claiming that the claimant is a troublemaker would be a detriment. Where an employer fails to investigate, or excessively delays investigating, a protected disclosure, this is capable of amounting to a detriment.

97. A disclosure will only be protected if, in the reasonable belief of the worker making it, it is made in the public interest. The public interest test is focussed on the reasonable belief of the worker. In order for any disclosure to qualify for protection, the person making it must have a reasonable belief that the disclosure is made in the public interest. Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed [2018] ICR 731, CA set out that factors relevant for considering whether a disclosure is in the public interest can include the numbers in the group whose interests the disclosure served, the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed, the nature of the wrongdoing disclosed, and the identity of the alleged wrongdoer.

98. The employer must have subjected the claimant to that detriment by some act, or deliberate failure to act. The act or deliberate failure to act must have been done on the ground that the claimant made a protected disclosure.

99. Section 103A ERA provides that the dismissal of an employee is automatically unfair where the reason (or, if more than one reason, the principal reason) for his or her dismissal is that he made a protected disclosure. The definition of dismissal includes constructive dismissal, that is, dismissal where the employee terminates the contract, with or without notice, in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct (section 95 (1)(c) ERA).

100. The employee, to claim constructive dismissal, must establish that there was an actual or anticipatory fundamental breach of contract on the part of the employer; that the employer's breach caused the employee to resign; and that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

101. Where an employee claims that he was constructively dismissed contrary to section 103A the question for consideration is whether the protected disclosure was the principal reason that the employer committed the fundamental breach of the employee's contract of employment that precipitated the resignation. If it was, then the dismissal will be automatically unfair because of a protected disclosure.

102. Where the employer reacts in a hostile, provocative or insensitive manner towards an employee who makes a protected disclosure, this can could be a breach of the fundamental term of trust and confidence that is implied into every contract of employment.

103. Section 94 ERA provides that an employee must not be unfairly dismissed. Section 98(1) ERA provides that in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within section 98(2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. Where the employer has shown a potentially fair reason, the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.

Protected disclosures and detriments

104. For the reasons we set out below, other than in respect of disclosure 2 and disclosure 9, the claimant's disclosures were not protected disclosures because in all instances, other than the claimant's asserted belief to that effect, the disclosures are not in the reasonable belief of the claimant made in the public interest.

105. Disclosure 1: The disclosure on 31 July 2015 is not a protected disclosure because the information does not tend to show any breach of section 17(3) and 17(4) of the Health Professions Order 2001. Section 17 of the Health Professions Order 2001 provides:

> (1) This article applies to any institution in the United Kingdom by which, or under whose direction, whether inside or outside the United Kingdom—
>
> (a)any relevant course of education or training is, or is proposed to be, given; or
>
> (b)any test of competence is, or is proposed to be, conducted in connection with any such course or for any other purpose connected with this Order.

> (2) In paragraph (1) "relevant course of education or training" has the same meaning as in article 16(3).
>
> (3) Whenever required to do so by the Education and Training Committee or the Council, any such institution shall give to the Committee such information and assistance as the Committee may reasonably require in connection with the exercise of its functions under this Order.
>
> (4) Where an institution refuses any reasonable request for information made by the Committee or the Council under this article, the Committee with the approval of the Council may in accordance with article 18 refuse to approve, or withdraw approval from, as the case may be, any education, training, qualification or institution to which the information relates.
>
> (5) In this article a reference to education or training includes any course of education or training or test referred to in article 15(5).

106. The Information conveyed, which the claimant alleges is that he asked if the agreement of the HCPC had been obtained and implicitly that it was required for the change to the course by the HCPC. This does not tend to show that the health or safety of the respondent's patients could be endangered. This does not tend to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. The claimant could not have had a reasonable belief that his alleged disclosure was in the public interest. The obligation to do any reporting was that of the OBU not the respondent.

107. Notwithstanding our conclusion that there was no protected disclosure we deal with the claimant's assertion that he was subjected to a detriment because of the disclosure.

108. The claimant complains that in an email on 19 August 2015 Ms Robertson undermined the claimant by trivialising the wrongful conduct he complained of when she justified the change to the Student paramedic Programme by making reference to additional funds being made available to train more employees as paramedic in the future as a result of the changes to the Student Paramedic Programme.

109. We do not consider that the claimant has shown that he was subjected to any detriment in this. The claimant's complaint as expressed in the letter he wrote on 12 August 2015 was forwarded to Mr Catterall by Ms Robertson. This resulted in a response to the claimant from Mr Catterall in a letter dated 14 August 2015, the letter explained the reasons for the change and the considerations given to matter by OBU before making the decision to effect the change in supernumerary hours. It does not trivialise the claimant's concerns.

110. The email of 19 August 2015 sent to clinical mentors and other managers is not a detriment either. The email was not intended for students or the claimant and was not sent to the claimant by Ms Robertson, the email was intended for the operational management team to give them information they needed about the

practice placements. The email was not intended to filter down to the student paramedics. In the email Ms Robertson wrote that the change to supernumerary hours *"supports the additional opportunities being afforded to staff."* There is no reference to making additional funds available. The Major Change process is a process undertaken by OBU and not the respondent. There is no detriment to the claimant in respect of this issue. Further, the alleged detriment could not have been because of the claimant making any protected disclosure as it arose prior to the claimant's first purported disclosure to Professor Williams.

111. The claimant says that he suffered a detriment when in an email dated 29 August 2015 Ms Robertson undermined him by suggesting he defer to the January 2016 cohort. The conclusion of the Tribunal is that there was no detriment to the claimant in this regard. The claimant was not being required to defer and the only reason it was mentioned by Ms Robertson was because she thought that if the claimant deferred she could see how the new system bedded in and she hoped it would allay his concerns. Ms Robertson made the proposal intending to be supportive to the claimant who was unhappy with the change to supernumerary hours and the programme was about to start in September. It "was only an option which was open to the claimant"; Ms Robertson did not say that the claimant must defer. The claimant was not subjected to a detriment in this regard, it was not a detriment.

112. Disclosure 2: In the letter dated 31 August 2015 to Professor Williams, the claimant provided information that the HCPC had not been notified or approved the changes to the paramedic course, in failing to do so the claimant contends that the respondent was failing to meet its legal obligations, and in failing to do so it posed a risk to the health and safety of the public. The claimant contends that the disclosure was a qualifying disclosure.

113. In his letter of the 31 August 2015 the claimant writes to Professor Williams as follows:

> "Please find attached documents pertinent to concerns raised following a meeting with South Central Ambulance Service managers on 30 July 2015. I am referring this matter to you under Section 7.7.1 of the Trust's Whistleblowing Policy.
>
> I have a more than reasonable belief that proposed changes to practice placements of Internal Student Paramedics this year are inappropriate, pose a threat to patients and the reputation of the Trust. Students have been informed that the Health and Care Professions Council have not been notified and have not approved major changes to their degree programme. In failing to inform the HCPC, I believe that the trust is failing to meet it's legal obligations. Further obligations to respond to the cohorts individual and collective concerns have also not been met.

> Attempts have been made to conceal the events of the past month or so. Ignorance of the concerns of staff that failing to notify the HCPC poses a risk to the public, is, in my view, unethical at best.
>
> Before completing and forwarding an 'Education Provider Concern Form' to the Director of Education at the HCPC, I must exhaust internal procedures. Practice Placements begin in October. I would be grateful if you could investigate and respond to all these concerns comprehensively as a matter of urgency.
>
> I have enclosed relevant documents to assist you with your investigation. A swift response would be appreciated so that I may be able to determine the Trust's final position on this matter. Please be advised that any undue delay will leave me with no option but to notify the Education Committee so they can assess the changes and ensure protection of the public, my colleagues and I. I look forward to hearing from you soon."

114. The claimant stated that the health and safety of patients is forefront in the minds of all employees. The stated role of the HCPC as regulator is also the safety of patients. The claimant knew that patient safety was in the public interest. Bringing to the attention the Trust a potential failure to ensure HCPC approval was obtained for the 'major change' in the course would necessarily therefore have been made in the public interest. The respondent says that the claimant has not established that he had reasonable belief that his disclosure was in the public interest.

115. The information conveyed demonstrates the claimant's knowledge of the requirement for major changes to be notified to the HCPC. Therefore, the claimant held the subjective belief that agreement of the HCPC was required and viewed objectively he could reasonably have held that belief. The respondent contends that the claimant in fact has made any reference to a legal obligation.

116. The claimant's case is put as follows: understanding the consequences of the potential failure to ensure paramedics were correctly trained to a standard agreed by the HCPC, he believed the information tended to show that (i) the safety of patients could be endangered and (ii) could lead to a breach of the respondent's legal duty of care to its patients. The claimant says, given the circumstances and facts, he reasonably believed that there would be such a relevant failure.

117. The respondent takes issue with this analysis making several points as follows. That the letter does not set out any specific legal obligation. The respondent states that the claimant's rationale that patient safety would be endangered by the change is eccentric. He does not suggest that there is any endangerment during the course of the supervision period. Instead, and notwithstanding successful completion of the Course and annual confirmation that the registrant is fit to practice, he points to the risk that the removal of the additional 525 mandatory supernumerary hours paramedics would be unfit to practice. The respondent says that the Tribunal *"has been given thin gruel from the claimant as to the reasonableness of belief necessary for s43B ERA 1996."* The respondent says that "*the claimant's approach to this issue is characterised by belligerence such that there is little room for a*

reasonable belief as to the alleged wrongdoing particularly given his "insider" knowledge." The counterintuitive effects of the conclusion that there was a reasonable belief in the endangerment of health and safety when the change in hours was brought about to release the constraints on delivery of paramedic care to patients and thereby avoid endangering patient safety: to endanger the very patient safety the reduction in supernumerary hours was designed to protect. The respondent says that the claimant has failed to satisfy show that the disclosure was in the public interest.

118. In respect of the letter of the 31 August 2015 the Tribunal is satisfied that the was a disclosure of information, namely that there had been a change to practise placements that had not been reported to the HCPC and that the change posed a danger to patients. The Tribunal is not satisfied that the claimant had a reasonable belief that was the case. The claimant had been informed about the reason for the change and the considerations given before making it. At best the claimant might not have believed what he was told but he did not have a reasonable basis for concluding it was wrong. Without a reasonable basis for dismissing the respondent's explanation we cannot be satisfied that the disclosure of information was in the public interest. We are not satisfied that the disclosure was a protected disclosure.

119. The claimant complains that he was subjected to a detriment because on 11 November 2015 at 11:27 Mr Catterall informed him, in an email, that he heard defamatory comments were being posted on Facebook.

120. The claimant criticises Ms Robertson's evidence that she could remember neither if she had raised the issue with Mr Catterall nor the contents of the Facebook entries as not credible. Her failure to recall crucial information should go to the weight to be given to her evidence. The evidence that Ms Robertson gives does not assist us in deciding whether there was a detriment to the claimant the effect of her evidence is that she was copied into Mr Catterall's email of 11 November 2015 but remembers nothing else about the matter. Whether we accept or reject her evidence has no different impact in this case, she essentially says nothing about the matter.

121. The claimant says that making him believe that his fellow students, employees of the trust, were hostile to him and taking no action to remedy it was objectively detrimental to him. That characterisation of this issue misses out the fact that Mr Catterall was trying to take action to address the issue by contacting the claimant. Mr Catterall was not trying to make the claimant believe anything, he wanted to address a matter which caused him, Mr Catterall, concern. The claimant was not victimised by Mr Catterall, to the extent that the claimant was being victimised it was by other students, that was the issue that Mr Catterall wanted to address and bring to an end. We are unable to draw an inference that Ms Robertson deliberately failed to act or was influenced by her knowledge of the matters that the claimant seeks to rely on as protected disclosures.

122. The Tribunal do not consider that in relation to the comments posted on Facebook that the claimant was subjected to any detriment by Ms Robertson. The claimant was not subjected to any detriment by Mr Catterall and further Mr Catterall was in any event not an employee of the respondent in respect of whom the respondent would have been vicariously liable for the purposes of section 47B.

123. The claimant says that he suffered a detriment when in an email dated 29 August 2015 Ms Robertson undermined the claimant by suggesting he defer to the January 2016 cohort. The conclusion of the Tribunal is that there was no detriment to the claimant in this regard. The claimant was not being forced to defer and the only reason it was mentioned by Ms Robertson was because she thought that if the claimant deferred, he could see how the new system bedded in and she hoped it would allay his concerns. Ms Robertson made the proposal intending to be supportive to the claimant who was unhappy with the change to supernumerary hours at a time when the programme was about to start in September. It *"was only an option which was open to the claimant"*; Ms Robertson did not say that the claimant must defer. The claimant was not subjected to a detriment in this regard it was not a detriment.

124. The claimant complains of a detriment, that in an email on 19 August 2015 Ms Robertson undermined him by trivialising the wrongful conduct he complained of when she justified the change to the Student Paramedic Programme by making reference to additional funds being made available to train more employees as paramedics in the future as a result of the changes to the Student Paramedic Programme. Further by Ms Robertson making no reference to the "Major Change" process of the professional regulator HCPC.

125. The email of the 19 August 2015 was not intended for students and was not sent to the claimant by Ms Robertson, the email was intended for the operational management team to give them information they needed to know about the practice placements. The email was not intended to filter down to the student paramedics. In the email Ms Robertson wrote that the change to supernumerary hours *"supports the additional opportunities being afforded to staff."* There is no reference to making additional funds available. The Major Change process is a process undertaken by OBU and not the respondent. There is no detriment to the claimant in respect of this issue. Further, the alleged detriment could not have been because of the claimant making any protected disclosure as it arose prior to the claimant's first purported disclosure to Professor Williams.

126. The claimant alleges that he was subjected to a detriment because the respondent deliberately failed to act in commissioning an investigation into the claimant's concerns until Mr Ian Teague informed the claimant in an email on 9 October 2015 that the respondent had appointed an independent investigating officer. The Tribunal consider that there was a delay from 31 August to 9 October. The Tribunal do not consider that there was any detriment to the claimant in the delay, the delay

was not so extensive as to be a detriment in itself and further the issue was not so urgent that action was required to be expedited. There was no requirement to carry out an investigation it was something that was determined upon by the respondent. The time taken to appoint the independent investigator was the time taken, there was no deliberate delay, the delay was not because the claimant had made a disclosure.

127. The claimant says that the respondent undertook a protracted process in addressing his concerns, failed to regularly update him on the progress or outcome of the investigation and did not give him sight of the report as at 27 May 2016. The claimant is correct that once the Independent Investigation was commissioned it was treated as being for Professor Williams, the claimant was not kept informed and he was not provided with a copy of the report. There was no obligation on the part of the respondent to do so. We have no evidence that in a comparable situation an employee was or would have been updated in the way that the claimant says that he was not. Professor Williams only updated the claimant when the investigation process had been concluded on 14 January 2016 to tell him that it had concluded, and it was not until much later that he wrote to him with an outcome on 31 May 2016. Professor Williams summarised the findings of the investigating officer, the lessons learned, and the steps being taken by the respondent. The claimant was invited to meet with Ms Saunders if he had remaining concerns but did not choose to do so. The claimant did not write to Professor Williams requesting a copy of the investigation report. The Tribunal do not consider that the claimant was subjected to any detriment in respect of the way that the respondent dealt with the Investigation Report. It was not unusual, in the sense that it was not out of step with how the process was envisaged to operate or had operated in other cases, there is no evidence of that.

128. The claimant says that on 18 December 2017 Ms Dymond failed to take his complaint seriously, trivialised the complaint by asserting, "*I can see that in the letter dated 31 May, you were given responses to the questions that you appear to continue to raise… we now consider this matter closed."* The Tribunal is of the view that this was a not a detriment. Firstly, we do not consider that Ms Dymond trivialised the claimant's complaint. Secondly, we consider that the approach taken by Ms Dymond was one that she was entitled to take where the claimant's concerns had been dealt with. It wouldn't have been appropriate to keep resurrecting the same issues, the respondent was of the view that the case had been concluded in May 2016. Ms Dymond wanted to close the issue down because there had been an independent investigation into the claimant's concerns, from which there had been learning points identified and actioned. Her view was that there was no benefit in allowing the claimant to resurrect his concerns and likewise no further recourse under the Whistleblowing Policy for him to raise the same concerns again. We are of the view that there was no detriment to the claimant in this issue. In any event we do not consider that any detriment that there might have been to the claimant was because he made a protected disclosure. The reasons for Ms Dymond's approach was because she was of the

view that the matter had been dealt with and it was not appropriate to continue to raise the same issues.

129. Disclosure 3: On 21 January 2018 the claimant wrote to Mrs Gregory, Mr McDonald, Mr Heigold and others notifying them that their attendance as witnesses was required at the disciplinary hearing of colleague X. The claimant contends that this was a qualifying disclosure.

130. It is contended by the claimant that the letters disclosed information to each individual that evidence relating to an investigation into the care and treatment of a patient was likely to go untested. The claimant also relies on a number of other features arising from Colleague X's case as showing that the claimant believed that the disclosure was made in the public interest, that such a belief was reasonably held; that the claimant believed that the disclosure tends to show the health and safety of patients was likely to be endangered, and that the belief was reasonably held.

131. The respondent's position is that these letters sent on 21 January 2018 were demanding the attendance of various people at the disciplinary hearing on 30 January 2018 as witnesses. They are, the respondent states, requests or demands for information and witness participation. No information is disclosed; the claimant was requesting information, not disclosing it.

132. The respondent says that the claimant could not have a reasonable belief that the gateways of section 43B ERA 1996 were triggered. No legal obligation is identified which is said to have been contravened. The cross-examination on this issue of the respondent's witnesses stayed firmly in the realm of hypotheticals. This is inadequate for the purposes of establishing that section 43B ERA 1996 is engaged. The disclosures were a private matter rather than one in the public interest. These were representations designed to assist one individual in their disciplinary proceedings.

133. The Tribunal is of the view that there was no disclosure of information in the letters that was capable of being in the reasonable belief of the claimant in the public interest, or that could engage gateways of section 43B ERA.

134. Disclosure 4: On 25 January 2018 the claimant informed Mr Jefferies, Ms Kinton, Human Resources Advisor and Darren Weston, that there was a culture inconsistent with the open and transparent culture the public expect from NHS bodies.

135. The claimant states that the disclosure was a qualifying disclosure because it contained information tending to show that the health or safety of workers and service users of the Trust had been, was being or was likely to be endangered, the danger being that the emotional and psychological wellbeing of workers was being or was likely to be endangered due to a lack of an open and transparent culture,

impacting on the standards of care received by service users of the Trust. The claimant contends that it was in the public interest because he believed at the time of the disclosure that the health or safety of workers and service users of the Trust had been, was being or was likely to be endangered, and that the belief was objectively reasonable.

136. The respondent says that the claimant's handwritten statement dated 24 January 2018 was made in connection with Colleague X's disciplinary hearing. The respondent denies that the handwritten statement was a qualifying disclosure. The respondent says that the claimant has not made a disclosure of information which in his reasonable belief tended to show that the health and safety of any individual had been, or was likely to be, endangered, rather the claimant was simply expressing an opinion. The respondent says that the disclosure was not in the public interest.

137. To amount to a disclosure of information we consider that it is necessary for the claimant to have conveyed facts and not merely express an opinion. We bear in mind that information, in the context of section 43B is capable of covering statements that could also be characterised as allegations. However, in our view the passage relied on by the claimant is general and devoid of specific factual content and cannot in our view be said to be a disclosure of information tending to show a relevant failure. We also have considered whether in the light of what the putative information is whether the claimant could reasonably believe that the information 'tends to show' that the health or safety of workers and service users of the Trust had been, was being or was likely to be endangered. We are not satisfied that the claimant has made a protected disclosure.

138. Disclosure 5: On 25 April 2018 the claimant informed Paul Jefferies, that Darren Weston had not provided evidence that had been requested relating to allegations made against Colleague X. The nature of the material requested was, evidence that a relevant patient or their family/carer had been informed that a suspected patient safety incident has occurred within at most 10 working days of the incident being reported to the local systems, and evidence that an apology has been provided, regulations required that "an apology for any suspected harm caused must be provided verbally and in writing."

139. The claimant contends that this was a qualifying disclosure because it contained information tending to show that: "The Trust had failed or was failing to comply with a legal obligation to which it was subject, that obligation being found in Regulation 20(2)(a), 20(3) and 20(4) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. The claimant considers that the disclosure was in the public interest because he believed at the time of the disclosure that the respondent had failed or was failing to comply with a legal obligation to which it was subject and that belief was objectively reasonable.

140. The respondent says that this was yet another putative disclosure which was made in the course of the disciplinary hearing of Colleague X. This was a request or demand for information and no information is disclosed which tends to show the engagement of a relevant gateway. The respondent disputes that there was any breach of a legal obligation identified and that the request for information was a private matter and not one that is in the public interest.

141. The conclusion of the Tribunal is that the claimant has not shown that there was a disclosure of information which in the reasonable belief of the claimant could show there was a breach of a legal obligation. In his submissions the point was put as follows on behalf of the claimant:

> The statement disclosed information that the Trust had been unable to confirm or provide any evidence that it had complied with the 2014 Regulations. It therefore being a reasonable conclusion that it had not. That this issue was not subsequently pursued during X's disciplinary hearing does not detract or takeaway from the fact that the information was disclosed.

142. In our view there was no disclosure of information but rather as the respondent contends an enquiry as to whether the legal obligation referred to has been complied with. The claimant's submission illustrates there was no disclosure of information. We note that the references made by the claimant as to whether the disclosure was made do not appear in the notes of the hearing on 25 April 2018. Further having regard to the fact that the request made here pertains to the matters surrounding the disciplinary hearing of Colleague X and the claimant's representation of Colleague X, we are not satisfied that it is shown that there was a reasonable belief that the putative disclosure was in the public interest.

143. Disclosure 6: Is another request for information made by the claimant in the context of the Colleague X's disciplinary hearing. The information requested was memoranda of understanding between trade unions and the respondent relating to the dispatch of single manned ambulances and Risk Assessments completed relating to dispatch of single manned ambulances. The claimant states that he informed Mr Jefferies that these documents had not been provided.

144. The claimant contends that this was a qualifying disclosure because it contained information tending to show that the health or safety of the Trust's service users had been or was being endangered, the danger being that systems or processes were not being operated effectively to assess, monitor and mitigate any risks relating to the health, safety and welfare of people using the Trust's services and others. The claimant says that the disclosure was in the public interest because the claimant believed at the time of the disclosure that the health and safety of the Trust's service users had been or was likely to be endangered and that such belief was objectively reasonable.

145. The conclusion of the Tribunal is that there was no protected disclosure made. There was no information conveying facts given by the claimant there was a request for production of documents.

146. Disclosure 7: Is also arising from the claimant's representations to Mr Jefferies during the disciplinary hearing of Colleague X. The claimant again explained that he had not been provided with documents that had been requested in this instance the Global Positioning Satellite co-ordinates, street, road, town and postal code of two vehicles 13 August 2017, the number of available ambulances in the respondent's area on that date and a map showing the location of ambulances with from line staff.

147. The claimant contends that the disclosure was a qualifying disclosure because it contained information tending to show that he health or safety of the Trust's service users had been or was being endangered, the danger being that systems or processes were not being operated effectively to assess, monitor and mitigate any risks relating the health, safety and welfare of people using the Trust's services and others. The claimant contends that the disclosure was in the public interest because he believed at the time of the disclosure that the health or safety of the Trust's service users had been or was being endangered and that the belief was objectively reasonable.

148. The conclusion of the Tribunal is that there was no protected disclosure made. There was no information conveying facts given by the claimant there was a request for information to be disclosed by the respondent. The request for that information did not in itself contain a disclosure of any information, it did not convey any facts.

149. Disclosure 8: The claimant states that on 25 April 2018, the claimant informed Mr Jefferies of his reasons for believing that Mr Weston had asked KH to amend a statement (which was being used in an internal disciplinary process) resulting in the statement reading significantly factually different to the statement KH had initially submitted to Mr Weston. The claimant states that this tended to show that the health or safety of the respondent's service users had been or was being endangered.

150. The notes of the Colleague X's disciplinary hearing show that Mr Weston was asked by the claimant whether he asked KH to change their statement because it *"was not good enough".* Mr Weston's response was that he did not tell KH that their statement was not good enough. Or ask them to redo it, *"I may have asked for clarification on some points, but I did not ask for the statement to be redone."*

151. Mr Jefferies states that the claimant asked Mr Weston a number of questions about whether KH had been asked to re-write her statement. The notes of the meeting do not record, and Mr Jefferies does not recall the claimant expressly disclosing any information confirming that he believed Mr Weston had asked KH to amend

their statement. Mr Jefferies stated that he had no reason to believe that the statement had been manipulated. Mr Weston states that had the claimant provided evidence which indicated that Mr Weston had manipulated the statement Mr Jefferies would have asked Mr Weston to respond to the allegation and asked for all correspondence between him and KH, with all versions of their statement. If Mr Jefferies determined that the statement had been manipulated, he would not have allowed the statement to be used.

152. The conclusion of the Tribunal is that there is no disclosure of information in this situation, the claimant was asking questions in the course of representing Colleague X during their hearing. Furthermore, the questions asked by the claimant, in so far as they do contain any facts which in our view they do not, it does not tend to show that the health or safety of the respondent's service users had been or was being endangered.

153. Disclosure 9: The claimant contends that on the 25 September 2018 he informed Ms Jann about a number of matters during her investigation. The claimant relies on a list of seventeen acts or omissions by the respondent in the way it had dealt with the investigation into events around the matters giving rise to the disciplinary proceedings against Colleague X. The claimant states that these matters tended to show that the health or safety of service users of the respondent had been or was being endangered.

154. The Tribunal is satisfied that in respect of the claimant's assertion that "*an audit of a 999-call revealed that the call handler did not manage the clinical situation safely to reach a safe and appropriate outcome"* the claimant made a disclosure of facts that in the reasonable belief of the claimant tended to show that the health or safety of service users of the respondent had been or was being endangered. We are satisfied that such a disclosure was in the public interest.

155. In the paragraphs that follow we address the remaining alleged detriments on which the claimant relies and consider to the extent that they are detriments whether they were because of the claimant making protected disclosures. We have concluded that there was only one protected disclosure that is Disclosure 9.

156. The claimant complains of detriment in that on 22 January 2018, following a letter sent by the claimant on 21 January 2018, Mr McDonald undermined the claimant when he wrote an email to Colleague X in which he stated: (i) that if the claimant was representing them that they should be "aware that a work colleague does not have the same role as a representative", (ii) "with regards to your demand (not request) for my attendance at the hearing on 30th January", and (iii) "please may I also request that you do a similar thing for any other witness demands that you may have made." This was a letter from Mr McDonald to Colleague X, and in so far as it related to the claimant, as a work colleague in a disciplinary hearing, it stated what Mr McDonald thought was the case in respect of a disciplinary hearing

there was no denigration of the claimant or any intention to denigrate the claimant by Mr McDonald.

157. Mr McDonald gave evidence that he thought it was appropriate to describe the letter of 21 January 2018 as a "demand (not request)" because he did not think the letter was appropriate and that it needed challenging. He also wanted to know what value he could add to the formal disciplinary hearing as he was already scheduled to be conducting another hearing on the same day as Colleague X's hearing. Mr McDonald did not think he could add anything of real value as he had no involvement in the incident in question, so he requested that Colleague X provide clarity to him and all the other individuals to whom Colleague X and the claimant had sent identical letters. The Tribunal consider that Mr McDonald was entitled to respond in this way to Colleague X. Mr McDonald's letter was an appropriate and proportionate response to the letter. Other responses might also have been appropriate and proportionate. Mr McDonald did no detriment to the claimant in responding as he did.

158. The claimant states that on 24 January 2018 following a letter sent by the claimant on 21 January 2018, Mrs Gregory undermined the claimant when she wrote an email to Colleague X that: "with regards to the threatening letter I have received from yourself and [the claimant] demanding my attendance at the hearing on 30th January, can you please clarify what value you believe I would add on the day?" The Tribunal is satisfied that Mrs Gregory did consider the letter to be threatening and further that it was reasonable for her to say so and to ask Colleague X to clarify what value she believed Mrs Gregory would add to the hearing. The letter did not undermine the claimant and was not intended to do so. We do not consider that there was any detriment to the claimant in this response from Mrs Gregory to Colleague X.

159. The claimant states that on 25 January 2018 following a letter sent by the claimant on 21 January 2018, Mr Heigold undermined the claimant when he wrote an email to Colleague X that: "further to receiving late on Sunday evening what I perceived to be a blunt and threatening letter, I am unaware of any involvement or reason for me to be called as a witness." Mr Heigold states that he did perceive the letter of 21 January as threatening, it was not the normal way things were done, it came "*out of the blue*" and he did not know why he was being called as a witness. The letter stated that "*no response, refusal to attend, an evasive response, or non-attendance will engage* [Colleague X's] *and I's duties outlined in paragraph 3.0, above*". The letter went on to refer to the "Standards of Conduct, Performance and Ethics (Health and Care Professions Council)". Mr Heigold reasonably considered that he was being informed that if he did not confirm attendance at the hearing he could be reported to the Health and Care Professions Council. The letter made Mr Heigold feel like he had done something wrong. Mr Heigold in our view was reasonable when he requested clarification of why he was being called as a witness. There was no detriment to the claimant in this response to Colleague X made by Mr Heigold.

160. The claimant alleges that he suffered a detriment when by email on 29 January 2018, Ms Kinton undermined the claimant by overloading him with work by instructing him to provide hard copies of ninety-eight documents on the day before they were due for a hearing. The claimant had provided a large number of documents, by email on 25 January 2018, to be used at Colleague X's disciplinary hearing. Ms Kinton could not open the documents which were attachments to the email, so on 25 January 2018, around mid-day, Ms Kinton emailed the claimant to request that he send the documents to her in another format. The claimant did not respond. At 12.25pm on 29 January 2018, the day before the disciplinary hearing, Ms Kinton emailed the claimant and asked him to bring two hard copies of the documents Colleague X wished to rely on at the disciplinary hearing. The claimant did not respond to her email stating that he had too much work or ask for any assistance, such as help with photocopying of documents. The claimant arrived at the disciplinary hearing with the documents. We do not consider that the claimant was overloaded with work by Ms Kinton on this occasion. There was no detriment to the claimant.

161. The claimant complains that at day 3 of Colleague X's disciplinary hearing on 25 April 2018, the respondent's managers deliberately demeaned him, undermined his position in the workplace and set him up to fail when Ms Pickard demonstrated hostility towards him, repeatedly interrupted him and stated "Declan we are not in a court of law". Ms Pickard accepts that she did say to the claimant that the disciplinary hearing was "*not a court of law*" or words to that effect. However, it was the claimant's behaviour during the hearing that led her to say it, when the claimant repeatedly asked Mr Weston a question which would have required Mr Weston to answer by providing an opinion. Ms Pickard states that she had already informed Mr Weston that he did not need to answer the question for that reason and yet the claimant persisted. Ms Pickard states that she did not make the remark with any hostility. The Tribunal consider that the evidence given by Ms Pickard on this issue was credible, and we accept that the way she describes the event was in keeping with her intentions. We note that the claimant has a different perception of this and considers that it was intended to demean and belittle him, we do not consider that is a fair reflection of what took place. The conclusion of the Tribunal is that this was not a detriment to the claimant.

162. A further instance of what the claimant complains of about the 25 April 2018 disciplinary hearing is his complaint that Ms Kinton asked the note taker to document statements which did not reflect what the claimant asked of Mr Weston leading the claimant to divert his attention to repeating his pre-prepared questions and ensuring the question was not falsely documented. The claimant states that he was asking questions of Mr Weston when Ms Kinton said to the note taker "*write down that he is accusing people of lying*." At this point the claimant says that he became very worried that the respondent was seeking to manipulate the official record so that disciplinary action could be instigated against him. This is denied by all the respondent's witnesses as having occurred.

163. Ms Kinton statement says that she cannot recall anything like that occurring, however she accepts that she may have asked the note-taker to read back the notes that had recently been taken or to ensure that a particular comment had been recorded but she would not have asked the note-taker to record anything which did not accurately reflect what had been said at the hearing. We accept the evidence of the respondents in respect of the way that the disciplinary hearing was conducted and that there was no deliberate misconduct. To the extent that the claimant feels he was mistreated in the disciplinary hearing we are of the view that this was part of the cut and thrust of the disciplinary hearing and was not a detriment.

164. On 19 November 2018 Mrs Gregory invited the claimant to attend an informal meeting after he had raised serious concerns about behaviour towards him. The claimant declined the invitation. Mrs Gregory subsequently arranged for the claimant to be stood down from his duties so he could attend that meeting despite the claimant having already declined. The claimant complains that this was a detriment. The claimant also complains that the Director of Human Resources and Organisational Development failed to prevent a future occurrence of the conduct complained of in the formal grievance dated 4 December 2018 when by email dated 13 December 2018 Mrs Gregory reiterated her intention to stand down the claimant from his duties to meet her.

165. In respect of this incident which arose from the claimant having been left a voicemail message by a Team Leader about his vehicle, a motorhome made from a converted decommissioned Ambulance, being at Didcot Ambulance Station "*almost permanently*". The claimant's response was to ask why he was being targeted. The claimant then received an invitation to an informal meeting from Mrs Gregory. The claimant declined to attend the proposed meeting. Mrs Gregory then caused the claimant to be stood down from emergency ambulance duties to enable him to attend the meeting.

166. Mrs Gregory states that the intention was to have a discussion with the claimant about parking his vehicle at Didcot and to request that the claimant stop parking his vehicle in the way that he had been doing. The claimant however wrote a lengthy email to the Team Leader which raised a number of concerns, the email was forwarded to Mrs Gregory and it was this that led her to contact the claimant about a meeting to gain an insight into his concerns. Mrs Gregory states that when the claimant declined to meet with her she stood him down from duty so that she could meet with him to explain that she took his concerns seriously and to be supportive of him.

167. The Tribunal consider that there is no detriment here. The claimant was given a reasonable request by his manager to meet with her in order to discus matters which she was concerned with that arose from his expressed concerns. The intention was to be supportive.

168. The claimant complains of a detriment when he learned on 21 December 2018 that attempts had been made to ostracise him in the workplace. The claimant says that he was ordinarily rostered on a fixed rotating shift pattern aligned with Red Team Clinical and Non-Clinical staff at Didcot Ambulance Station. This allegation made by the claimant in our view is an assertion that is unproved.

169. The respondent's Scheduling Team plans all shifts and shifts are not scheduled at the request of Ms Ellis. Scheduling is done automatically by the Central Scheduling Team and shifts are rostered four weeks in advance (unless there are exceptional circumstances). The claimant was on a fixed roster at Didcot Ambulance Station (Red Team). However, Relief Shifts are built into a fixed rota. The claimant was ordinarily on a fixed roster at Didcot Ambulance Station, on 21, 22 and 23 December 2018 he was scheduled to work Relief shifts. Scheduling the claimant to work in Oxford on 21 December 2018 by Central Scheduling Team was in accordance with the respondent's Operational Relief Working Policy. The claimant's base was Didcot. Under the Relief Policy the claimant could be required to work anywhere within 31 miles of his base station, or at the next two closest stations to his base, whichever is closest. The closest ambulance stations to Didcot were Oxford and Newbury. We do not consider that the claimant has shown any detriment on this point as we are satisfied that he was sent to work at Oxford as part of a standard scheduling exercise and not as any intention of ostracising the claimant or keeping him away from Didcot

170. The claimant complains of a detriment that on 13 February 2019, the claimant's position in the workplace was undermined when he was informed by PM that Mr Ainsworth informed PM during that telephone call that (i) Mr Ainsworth was not going to entertain any suggestion that Colleague X was not comfortable with or felt bullied by Mrs Gregory despite events in the years 2017 and 2018 or words to that effect. (ii) Mr Ainsworth was of the view that the reason Colleague X's indication that she did not feel comfortable with attending a meeting with Mrs Gregory was due to the claimant or words to that effect (iii) Mr Ainsworth would formalise the meeting if Colleague X indicated that she would not be comfortable attending a meeting led by Mrs Gregory again or words to that effect (iv) a section 42 of the Care Act report would be released that night the evening before a meeting scheduled to occur on 14 February 2019.

171. The claimant's assertion that Mr Ainsworth had said he was not going to entertain any suggestion that Colleague X was not comfortable with or felt bullied by Mrs Gregory despite events in the years 2017 and 2018 or words to that effect. Is denied by Mr Ainsworth. Bearing in mind that the claimant is reporting a hearsay statement which is denied by Mr Ainsworth we do not consider that this matter is proved on a balance of probabilities. In any event we do not consider that any alleged disclosure was the reason for the alleged comment, even relying on the claimant's account, but rather the way that the claimant had conducted the defence of Colleague X was the reasons for any comment along the lines alleged by the

claimant. It was not because of the claimant having made any alleged protected disclosure.

172. The claimant learned from Mr Leahy and Mr Wood that the Didcot Leadership Team had a Freedom of Information request, described in an email shown to the claimant as "strange". Mr Wood recall some conversation with the claimant about a Freedom of Information Request, he does not recall the detail of the conversation. Mr Wood recalls that he referred to the matter "rather unusual", because it was. The matter was concerning the ownership of a vehicle owned by the claimant and parked at Didcot station.

173. Mr Leahy, who has a Trade Union background, says that he did not tell the claimant that managers at the respondent had knowledge of an anonymous or "strange" Freedom of Information Act request because the claimant had raised any concerns, he told the claimant about the Freedom of Information Act request because the management team were trying to confirm who the vehicle belonged to and why it was parked on Didcot Ambulance Station. Had the Freedom of Information Act request been about another vehicle belonging to another member of staff he would have treated it in exactly the same way.

174. The conclusion of the Tribunal is that the claimant was not singled out for being a whistle blower or for any other reason other than the fact that the respondent had received a Freedom of Information Act request which related to his vehicle. We accept the respondent's evidence that this could have happened to anyone.

175. On 14 February 2019, the claimant was absent from work. The claimant learned from Thames Valley police that (i) the respondent had contacted Thames Valley Police and (ii) Mrs Gregory told the police officer that one of the reasons why Thames Valley Police were contacted was because the claimant "was living in a van". This is in substance accepted by the respondent. The claimant was understood to be living in his Motorhome at the time. We do not consider that there was any detriment in this contact with the police. The reason for the contact was out of concern for the claimant's welfare. The reason that the contact with the police was made was not in any sense related to the fact that the claimant had made the alleged protected disclosures.

176. The claimant was not fit for work due to the stress 9 February 2017 - 4 July 2017, 26 April 2018 – 25 August 2018, and 14 February 2019 – 27 May 2019. The Tribunal do not consider that the claimant's absence was due to any misconduct by the respondent.

177. The claimant complains that the respondent failed to (i) take any steps or any adequate steps to identify perpetrators or instigators of detrimental treatment of the claimant. (ii) Prevent or adequately prevent the condoning of detrimental treatment of the complaint (iii) meaningfully attempt to resolve the claimant

complaints of detrimental treatment. For the reasons set out above we do not consider that there is any justification for such complaints.

178. The claimant's complaint that he was subjected detriments because he made protected disclosures is not well founded and is dismissed.

179. The claimant, to claim constructive dismissal, must establish that there was an actual or anticipatory fundamental breach of contract on the part of the employer. The matters that the claimant relies upon as a breach of contract are set out above. We have not found that there is conduct that amounts to a breach of contract by the respondent. We have not been able to conclude that the respondent's breach caused the claimant to resign. We have not concluded that the claimant was dismissed. The claimant's complaints of unfair dismissal and wrongful dismissal are not well founded and are dismissed.

_____
Employment Judge Gumbiti-Zimuto

Date: 21 March 2023

Sent to the parties on: 24 March 2023

For the Tribunals Office