



# THE EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Ms S-J Elvin

v

(1) Queen's Crescent  
Community Association  
(2) Mr F Miah

Heard at: London Central

On: 9-12, 15-19 and 22 May 2023  
In chambers 23 May and 12 July 2023

Before: Employment Judge Glennie  
Ms Z Darmas  
Ms J Marshall

## Representation:

Claimant: Ms F West  
Respondent: Ms E Evans-Jarvis

## JUDGMENT

The unanimous judgment of the Tribunal is that the claim is dismissed.

## REASONS

1. By her claim to the Tribunal the Claimant, Ms Elvin, made complaints of automatic unfair dismissal (for the reason of making a protected disclosure or disclosures), and detriment for making a protected disclosure or disclosures. The Respondents, Queen's Crescent Community Association ("QCCA") and Mr Miah, resist those complaints.
2. The Tribunal is unanimous in these reasons.

### Preliminary matters

3. A number of preliminary matters arose. One was the format of the hearing. There had been some correspondence on the subject prior to the hearing; but the practical situation on day 1 was that Ms Elvin and Ms West were

present in person at the Tribunal, and wished to continue in that way, while Ms Evans-Jarvis was present via video, and wished to continue in that way herself and for the Respondents' witnesses. Reasons that were particular to each person (which do not need to be set out here) were advanced for their preferred ways of attending. The Tribunal decided that there would be a hybrid hearing, with Ms Elvin and Ms West attending in person, and Ms Evans-Jarvis attending remotely. A decision was not made about the Respondents' witnesses at this stage. There was a considerable quantity of documents, and the Tribunal decided that it would spend the remainder of day 1 and the whole of day 2 reading, with the intention of commencing with the Ms Elvin's oral evidence on day 3 (11 May).

4. Two matters arose while the Tribunal was reading on day 2. The first was that the Tribunal noticed that in the Claimant's bundle, and on one document in the main bundle, the names of minors and others appeared in various documents. An email was therefore sent to the parties stating that the bundles should be checked and redacted as necessary before the hearing could proceed.
5. The second was that the Claimant applied to renew an earlier application to strike out the response, while the Respondents applied to strike out the claim, or to renew a previous application for a postponement of the hearing, with both applications being essentially concerned with disputes about the documents and bundles.
6. The parties addressed these applications at the commencement of the hearing on day 3. Ms Evans-Jarvis contended that on 3 May 2023 Employment Judge Nash had decided not to hear the Claimant's application, meaning that there was a binding judicial decision to that effect. The Tribunal referred to rule 29 of the Rules of Procedure, which provides that a case management order may vary an earlier case management order where that is necessary in the interests of justice. Given that EJ Nash's decision had not involved a decision on the merits of the application, and given that the Respondents were now making a strike-out application on related grounds, we concluded that it would be in the interests of justice to allow the Claimant's application to be heard as well.
7. The Tribunal then suggested that, rather than embark on the competing strike-out applications (which would probably mean that, if neither succeeded, there would not be sufficient time remaining to complete the trial) the parties might prefer to agree to withdraw both applications and to proceed with the trial. Ms West and Ms Evans-Jarvis took some time to discuss this suggestion, and in the event agreed with it.
8. There was then an issue about a witness, "Sean", whom Ms Elvin wished to call, but whose statement had not been provided at the due time under the case management orders. His statement contained evidence about how Mr Miah had behaved at a particular meeting that was unconnected with the subject matter of the present case. Ms West argued that this evidence was relevant as showing whether it was probable that Mr Miah would have

reacted in a particular way to issues raised by Ms Elvin. The Tribunal concluded that the evidence had no real relevance, because it concerned a single occasion and different subject matter, and because Sean himself stated that when he asked others present about the alleged behaviour, he was told that it was uncharacteristic of Mr Miah. Allowing it would also have inevitably have meant allowing evidence from the Respondent about what happened on this occasion, when it was not directly in issue. The Tribunal therefore did not allow the statement into evidence or the witness to be called.

9. There remained the question as to the Respondents' witnesses giving evidence by video (as Ms Evans-Jarvis sought) or in person (as Ms West sought). Ms Evans-Jarvis said that four of the witnesses were unpaid trustees with day jobs, that they were able to have access to private rooms while giving their evidence, and could do so at short notice without leaving their places of work. The same would not be possible if they were to attend the hearing in person. One of these also had a chest infection. Ms Evans-Jarvis continued that Ms Gallop has a hearing impairment and finds attendance by video preferable to attendance in person in that regard, and that Mr Miah is dyslexic and finds it easier to deal with documents in electronic form. Ms West emphasised that Ms Elvin had expressed a preference for a hearing in person.
10. Ms Evans-Jarvis also made a submission, which the tribunal expressly rejected, that keeping the Respondents' witnesses remote from the hearing would shield them from any approaches which might be made in the absence of her own physical presence. The Tribunal could see no reason to believe that any improper approaches might be made, and expressed the view that, in the absence of any such reason, this was a submission which should not have been made.
11. That said, the Tribunal accepted that for the other reasons given, it would be in the interests of justice to continue with the hearing in hybrid form, with Ms West and Ms Elvin present in person, and Ms Evans-Jarvis and the Respondents' witnesses attending remotely.
12. The Tribunal decided to hear and determine the issues on liability in the first instance.

### **The issues**

13. The issues on liability were as follows, as agreed at a preliminary hearing before Employment Judge Hopton on 27 July 2022.
14. **Protected disclosures.** Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Claimant's case is that she made the following disclosures:
  - 14.1 August 2020 in a series of questions with handwritten notes from the handover period concerning potential breaches of funding

arrangements and failure to comply with obligations under the Charities Act 2011. This disclosure was made to Mr Walji, the previous Youth Services Manager, in a series of conversations they had during the handover.

- 14.2 August 2020 a copy of questions with handwritten notes, concerning potential breaches of funding arrangements and failure to comply with obligations under the Charities Act 2011 in relation to proper accounting, which was discussed at the Claimant's first meeting with the Second Respondent.
  - 14.3 December 2020 the Claimant wrote an e-mail to the Second Respondent regarding her concerns around staffing budgets and grants salaries. She also discussed this in a one to one meeting with the Second Respondent.
  - 14.4 March 2021 the Claimant raised concerns verbally to the Second Respondent about inaccurate reporting and the First Respondent potentially claiming funding spend for the same activity from 2 organisations (Camden Youth Safety Fund and Mayor's Office for Policing and Crime). These were GOAL (Gospel Oak Action Link) grants that the First Respondent was managing on behalf of GOAL.
  - 14.5 April 2021 the Claimant spoke to the Second Respondent about discrepancies around the budget allocation, in relation to the Haverstock Community Interest Levy and her concern that the First Respondent may be in breach of restricted funding arrangements whereby the money should have been spent within the first 12 months but was spent over 18 months.
  - 14.6 In November 2021 the Claimant provided a table of her concerns around the financial management at the First Respondent, and the grant programme she was working on. She provided this to Lucian Randall, the chair of the board of the First Respondent by e-mail as part of her grievance Part 2.
15. In relation to each disclosure:
- 15.1 Did the Claimant disclose information?
  - 15.2 Did she believe that the disclosure was made in the public interest?
  - 15.3 If so, was that belief reasonable?
  - 15.4 Did the Claimant believe that the information tended to show that:
    - 15.4.1 a criminal offence had been, was being or was likely to be committed (issue 6.4);

15.4.2 a person had failed, was failing or was likely to fail to comply with any legal obligation (all issues including 6.4).

- 15.5 If so, was that belief reasonable?
16. If the Claimant made a qualifying disclosure, was it made to her employer?
17. **Unfair dismissal.** The dismissal is admitted. Was the reason or the principal reason for it that the Claimant had made a protected disclosure or disclosures?
18. **Detriment (section 48 Employment Rights Act).** Did the Respondents do the following things:
- 18.1 Fail to investigate the Claimant's concerns regarding fraud or misreporting by the Second Respondent and overall by the First Respondent.
- 18.2 Pressurise the Claimant to file reports when funding allocation concerns remained outstanding.
- 18.3 Threaten and commence capability proceedings against the Claimant because she had not filed reports rather than seeking to understand and address her concerns.
- 18.4 Suggesting to the Claimant that her job was at risk if she continued to question activities under her predecessor, Mr Walji.
- 18.5 The Second Respondent's failure to consider any alternatives to dismissal such as retraining or performance improvement.
- 18.6 The Second Respondent's decision to dismiss the Claimant as it was materially influenced by her protected disclosures to the board in November 2021 (the Claimant relying on **Timis and another v Osipov [2019] ICR 655**).
- 18.7 On 12 July 2022, after the Claimant's employment had ended, making a false and malicious report to a local safeguarding officer alleging that the Claimant had had inappropriate boundaries with a young person at the boat club connected to the charity at which she now works.
19. By doing so, did the Respondents subject the Claimant to detriment?
20. If so, was it done on the ground that she had made a protected disclosure or disclosures?

**Evidence and findings of fact**

21. The Tribunal heard evidence from the following witnesses:

- 21.1 The Claimant, Ms Elvin.
  - 21.2 Ms Benaifer Bhandari, who had worked with QCCA on various committees.
  - 21.3 Ms Frances White, Sports Coordinator for QCCA.
  - 21.4 Ms Dinah Gallop, Treasurer of the Gospel Oak Action Link Youth Club (GOAL or GOALYC).
  - 21.5 Mr Lucian Randall, Chair of the board of directors of QCCA
  - 21.6 Ms Anne Wynne, a Trustee of QCCA.
  - 21.7 The Second Respondent, Mr Foyezur Miah, who is CEO of QCCA.
22. There were two bundles of documents. One was the original bundle prepared by the Respondents pursuant to the case management orders, and simple page numbers in these reasons refer to that bundle. There was also a separate bundle prepared on behalf of the Claimant, and references to this are preceded by the letter C.
  23. The First Respondent, QCCA is a charity which operates in the London Borough of Camden, being active in various fields, including youth work. In July 2020 Ms Elvin, who had considerable experience of youth and charity work, was appointed as the Youth Services Manager. Mr Miah was a member of the panel that interviewed her and recommended her for appointment.
  24. There was a degree of disagreement about when Ms Elvin started work. Her evidence was that she received the job offer on 30 July 2020, and that her predecessor, Mr Walji, asked her to come to QCCA's office for a handover on 3 August 2020. She said that she returned on 4 August, and although a colleague expressed surprise at seeing her, she continued to attend the office thereafter. Ms Elvin signed a statement of main terms of employment at pages 72-75 on 24 August 2020. When Ms Evans-Jarvis put it to Ms Elvin that the date on which her employment started was 24 August 2020, she pointed out that on page 72 it is stated that her employment began on 03.08.2020, and said that she had had a QCCA email address since 3 August.
  25. Mr Miah's evidence was that Ms Elvin's employment began "officially" on 24 August 2020, but that he backdated this to 3 August as a gesture of goodwill as she told him she had been coming in to the office since then (he had been away on leave until 19 August). In answer to Ms West Mr Miah replied that he could not say that Ms Elvin officially started on 3 August.

26. In the event, little turns on this, but the Tribunal found that Ms Elvin had been going in to the office since 3 August, and that Mr Miah backdated the start of her employment so that she would be paid for that. We found that her employment had begun on 3 August 2020.
27. Returning to the meeting with Mr Walji on 3 August 2020, Ms Elvin relied on this as the first of a series of conversations with him in which she made the first protected disclosure. In paragraphs 3 and 4 of her witness statement Ms Elvin said that Mr Walji did not seem well prepared and that he did not have much of an answer to her questions what staff were paid, how grants from funders were broken down, and what sessions they related to. She did not give any evidence of any further conversations with Mr Walji, saying only that he cancelled and never re-arranged a planned later meeting.
28. Ms Elvin referred to notes she made at page C29 (headed 03 August 2020 11.56) and an email at page C30 timed at 10.55 on 3 August 2020 to Mr Walji and Mr Loughran. The notes contained a series of typed questions, many of which the Tribunal accepted were the sort of matters one might expect a new employee in Ms Elvin's position to be asking. They included (for example): "DBS status of staff?"; "Staff personnel files?"; and "Please can I have any website logins you have....?" Others were evidently more specific to matters Ms Elvin had observed, such as: "1<sup>st</sup> July team meeting – notice of restructuring – do I have to follow through??"; and "Kitchen social 500pw? What we doing with it now? When it up to". There were also some informal manuscript notes, including the names of three members of staff alongside "level 3 ?", another which read "in kind – prize products discounted" and others which were more difficult to interpret.
29. The email at page C30 also contained a number of questions about grants, budgets and staffing costs. In paragraph 4 of her witness statement Ms Elvin said that the questions for Mr Walji were "...regarding what I believed was ignoring agreed funding arrangements and the improper accounting he had been doing."
30. Ms Evans-Jarvis asked where was the disclosure in the questions asked, whether at the meeting on 3 August 2020 or in the email of the same date, Ms Elvin pointed to question 6 in the email. This read as follows:
- "How did you calculate your staffing costs? Grants might say £13.30ph for senior youth worker, yet Triston said he is not on that rate eg: your BBC Children in Need grant.
- "I cannot get either to match the amount on the grant of £11062.19 for senior worker, £17646.91 for 2 youth workers at "between 10-12ph" do you auto ad your NI and EIC at 17%?"
31. When pressed further about identifying the disclosure, Ms Elvin said that she was asking Mr Walji who funded what, and that he was unable to tell her. She added, "It can be hard to make direct accusations when there is so much chaos. How is anyone meant to operate in that situation?"

32. For ease of reference, the Tribunal will express at this point some of its findings about this proposed disclosure which are relevant to the test for a protected disclosure under the Employment Rights Act. One is that, when cross-examined, Mr Miah suggested that page C29 had been falsified in that the date and time 3 August 11.56 could not be correct. He explained that this was partly because the typed part contained information which Ms Elvin could not have known in advance of the handover (e.g. a funding figure of £15,850 pa for a particular project) and because Mr Walji was well known for not getting to the office before 11 am. This had not been put to Ms Elvin, and in the absence of that the Tribunal was not prepared to make a finding that the document was other than what it purported to be.
33. The Tribunal found that the questions on page C29 and the email at page C30 contained very little that could be regarded as a disclosure of information about alleged improper accounting. We found that on page C29 the question “What are staff hourly rates? (Why they different to budgets?)” could fairly be interpreted as disclosing the information that the staff hourly rates were different from the budgets, and that the same was true of point 6 in the email at page C30, in that it stated that Ms Elvin could not get the rates paid to staff to match the grants.
34. Ms Elvin’s evidence was that she was concerned about what she believed was Mr Walji ignoring funding arrangements and engaging in improper accounting. Her case as expressed in the issues was that this involved a failure to comply with obligations under the Charities Act 2011. The Tribunal accepted that, in the course of the handover meeting with Mr Walji, Ms Elvin had formed the impression that QCCA’s accounting was disorganised. We considered it unlikely, however, that Ms Elvin could have formed a reasonable belief at the time that the information that she was giving tended to show that there was a failure to comply with a legal obligation. It was unlikely that she could have done so within the first few hours of her first day with the organisation. The Tribunal found that Ms Elvin was doing no more than asking questions about matters which had come to her attention, and that she had not at this stage formed a belief that a legal obligation had been or was being breached.
35. There was also at page C39 an email dated 11 August 2020 from Ms Elvin to Mr Walji which contained 23 out of 30 of the questions on page C29, with the added message “Here are my questions as discussed”. Ms Elvin referred to this in paragraph 6 of her witness statement as “a list of questions that were still outstanding and to address the deficiencies in his handover of the role to me and so I could start ordering the general and total lack of organisation.” The list did not include the question noted above about staff hourly rates and budgets. The Tribunal found that this email contained questions and did not disclose any information.
36. In paragraphs 7-10 of her witness statement Ms Elvin described attending the premises known as The Dome and finding a colleague’s (Triston) office in a mess, with documents in disarray and a £10 note on the floor. The



latter led her to the discovery that there was no procedure for petty cash. Ms Elvin also described concerns such as projects without clear funding arrangements, unnecessary applications for funding, and a query about whether permission was needed or had been obtained for selling food and drinks from a market stall.

37. Mr Miah returned from a period of annual leave on 19 August 2020. In paragraphs 11-13 of her witness statement Ms Elvin referred to a single induction meeting in which she told Mr Miah that her handover meeting with Mr Walji had left her with a lot of questions. She continued that she outlined the issues she had uncovered, and Mr Miah agreed to explore her immediate concerns. Ms Elvin stated: "I asked my questions around funding streams and how QCCA allocated activities or sessions to funders, this was my second disclosure. I didn't get any clear answers, but an agreement that he would assist me in finding out....." Ms Elvin also stated that in the meeting they went through the induction items, although many were not completed. In cross-examination Ms Elvin confirmed that she raised her questions first, and then they went on to the induction.
38. In paragraph 9 of his witness statement Mr Miah mentioned a meeting on 21 August 2020, which he described as a brief general welcoming chat, and a meeting regarding Ms Elvin's contract and role on 24 August 2023. When cross-examined, Mr Miah said that Ms Elvin did not raise her questions on 21 August, as they were trying to establish basic things such as DBS checks, health and safety, Ms Elvin's contract and the staff handbook, and that there would not have been time to discuss her questions. Mr Miah said that the meeting on 24 August lasted 2 hours, and that Ms Elvin "absolutely did not" go through her questions. He said that the meeting involved going through the staff handbook, and that again there would not have been time to discuss anything else.
39. Whether there were two meetings or one, the Tribunal found as a matter of probability that Ms Elvin did refer to the questions about funding streams and allocation of sessions or activities to funders. It would be natural for her to do so, having identified those questions. Her evidence about what she said, however, does not refer to or identify any information that she gave in the course of the meeting or meetings, but only to questions. The Tribunal recognised that a question can give information (to take a simple example, "why is the door open" imparts the information that the door is open). Ms Elvin's evidence did not, however, include anything that would support a finding that she disclosed information in this sort of way.
40. Ms Elvin stated that over the 2 months following her induction her concerns about the organisation increased. These included how her salary was being funded (it appeared to her that there was donor funding amounting to 150% of the value of her salary, when it should have been 100%) and that there had been an underspend on a particular fund ("MOPAC"). In paragraph 17 of her witness statement Ms Elvin said that by October 2020 "the lack of proper financial recording and accounting was becoming more evident and I was getting a clear sense that there were more severe issues

with the way that the charity maintained and reported its finances internally, and reported them externally, than I had initially anticipated.”

41. Ms Elvin continued that in November 2020, managers were asked to review staffing budgets. She stated that she used the information provided to compare what had been paid by funders with what had been allocated, and found that QCCA had more staff funding than capacity. She said that she also found that grants included specific hourly wages that were higher than those actually being paid, and that the London Living Wage was not being paid when grants specifically required this.
42. The third protected disclosure relied on by Ms Elvin was said to be contained in an email to Mr Miah sent in December 2020 and repeated in a one to one meeting with him. In paragraph 22 of her witness statement Ms Elvin stated that the email said that “we couldn’t increase expenditure of staffing and we were “short” on funded salaries and that we were unable to meet the funders’ requirements of the total across all the grants.” In cross-examination Ms Elvin said that the shortfall was around £40,000, in that the funding received included around £100,000 for salaries, but only around £60,000 to £70,000 had been paid to staff.
43. Ms Elvin stated that the email itself was missing, but that later emails suggested that the work behind it must have been done. That may be so, but in the absence of the email itself, the Tribunal was unable to make findings about what it said in terms that would enable an analysis of whether it amounted to a protected disclosure. Ms Elvin’s witness statement did not include anything about a one to one meeting on the subject, and none of her evidence in answer to cross-examination took this aspect any further. The Tribunal found that Ms Elvin had not established the factual basis of the third disclosure on which she relied.
44. Ms Elvin was furloughed in January 2021 and then worked 2 days per week in February 2021. She placed some importance on a in-person meeting that she said took place in March 2021 between herself, Mr Miah and Ms Gallop, and which she relied on as containing the fourth protected disclosure. Ms Elvin referred to this meeting in paragraphs 24 and 34-35 of her witness statement. She said that it came about because MOPAC had sent a generic email to the effect that it would be acceptable for any underspend of funding to be reallocated to core costs so as to support organisations during the pandemic. Ms Elvin stated that she said that there were difficulties with convoluted and opaque financial arrangements, and that there were issues with how aspects of the project funded by MOPAC were carried out and recorded. She said that she gave the particular example that:

“a meeting.....in February 2020 was reported to both MOPAC and CYSF [another funder] as having achieved part of their deliverables. I explained that I felt that it was unclear to me and when I asked Triston for clarification on the MOPAC funding and CYSF he too was unclear. From an organisational perspective no one knew what was being funded by MOPAC

and what was CYSF, we were putting this down as match funded but in that case we would have to double the spend and that was not the case.”

45. In paragraph 36 of her witness statement Ms Elvin referred to a conversation with Mr Miah in April or May 2021 when she said that QCCA’s internal allocation of funds differed from the allocation of grants made by funders. Ms Elvin continued that Mr Miah replied that “...the grant didn’t matter how we internally spent it” (which the Tribunal understood as meaning that it did not matter if the internal allocation differed from the grant) and that she should continue in the same vein. She added, “By this I took him to mean that it was encouraged to ignore our obligations, to our funders and under the law, that to not deliver what we claimed we would was not a failure but a benefit of the dysfunctional system we operated within.”
46. Ms Elvin also stated that at the meeting in March 2021 Ms Gallop said to her sternly that she was not to mention Mr Walji again, or use him as an excuse, as she had been with the organisation nearly 8 months.
47. Ms Gallop did not mention any meeting in March 2021 in her witness statement. In cross-examination she was referred to an email she sent on 19 March 2021 at pages C617-618. In this email Ms Gallop described Ms Elvin as being experienced, knowledgeable, hard working and having a good heart. She also said that everything was late (including funders’ reports) and often over complicated. Ms Gallop wrote that she recognised that Ms Elvin had inherited the project paperwork “in a mess” but had been with the organisation 7 months. She concluded with a PS: “Since the beginning of the year I have been actively discouraging moaning about predecessor (we have to move on).” Ms Gallop said that she could not remember any particular meeting which, she observed, did not mean that none had taken place. She did not recall any meeting at which she and Mr Miah had both discouraged moaning about Mr Walji.
48. Mr Miah’s witness statement went from events in January 2021 to others in April 2021 without mention of any meeting or other matters in March. In cross-examination he said that he also did not recall any meeting in March 2021, and did not recall any issue of double reporting being raised. He added that where there was a surplus of a restricted fund, his advice would be to discuss with the funder what to do with the surplus. When pressed on the point, he said that it was not right that it was raised, and commented to the effect of, why not put it in an email or the reports.
49. The Tribunal found as a matter of probability that, whether or not at a particular meeting, during March 2021 Ms Elvin told Mr Miah and Ms Gallop that she was finding the internal arrangements for allocation of funding obscure and referred to a particular example from February 2020 (when Mr Walji had been responsible). The Tribunal further found that Ms Gallop accepted that the paperwork was a mess, but also discouraged further complaints about Mr Walji.

50. Ms Elvin's evidence did not include any assertion that, at the time of making these observations in March 2021, she believed that QCCA was failing to comply with a legal obligation, or that she believed that she was acting in the public interest. In fact, her evidence about breach of a legal obligation referred to what she described Mr Miah as saying to her in April or May 2021, as opposed to what she had said to him. In the light of that, and absence of evidence from Ms Elvin about having such beliefs in March 2021, the Tribunal found, as a matter of probability, that she did not have them at that time.
51. In paragraph 28 of her witness statement Ms Elvin described the fifth disclosure on which she relied. She stated that she made this in a conversation with Mr Miah in April 2021. It was not clear how this related chronologically to the decision by Mr Miah to extend Ms Elvin's probationary period. They both agreed that this occurred, but Mr Miah stated that this occurred at a meeting on 22 April 2021, while Ms Elvin put the meeting in May 2021. In any event, in paragraph 28 of her witness statement, Ms Elvin said that she was being asked to draw up the specifications for allocation of the budget for a particular project and that:
- "The funding was allocated by QCCA over an 18 month period, while the grant clearly stated it should be spent in 12 months, this was a significant change in spending arrangements that was not discussed or approved by the original funder. When I asked him [Mr Miah], he explained that once Goal YC were invoiced and we received the money we could decide how to allocate it internally."
52. Neither Ms Elvin nor Mr Miah was cross-examined about this disclosure. The Tribunal accepted Ms Elvin's evidence about this. This was consistent with the concerns she had previously expressed about internal funding arrangements not corresponding with the funders' proposals and with what she said about Mr Miah's response to concerns of this nature.
53. Again, Ms Elvin's evidence did not contain any statement that she believed that what she said in this regard tended to show a breach of a legal obligation, or that she believed that she was making the disclosure in the public interest. The Tribunal considered that it could be inferred that failing to comply with funding requirements or proposals could involve breach of a legal obligation. That was not, however, the same Ms Elvin believing that there was such a breach. A similar point can be made about the public interest element. It might be said that the public interest is, or could be, engaged if it is said that a charity is failing to utilise funds in accordance with the funders' requirements. That is not the same as Ms Elvin having a belief that she was making the disclosure in the public interest as opposed to, for example, in the charity's interests or indeed her own interests, in explaining why she was having difficulty drawing up a budget. In the absence of evidence from Ms Elvin on these points, the Tribunal concluded that it was unable to find that she had the relevant beliefs at the time of making the disclosure.

54. On 23 June 2021 in an email at pages 284-285 Mr Miah expressed concern that Ms Elvin had not prioritised the BBC “Children in Need” (CIN) grant, and asked her to ensure that the report that was needed for the grant to be renewed was submitted as a matter of urgency. In paragraph 40 of her witness statement Ms Elvin said that it was often impossible to complete reports both punctually and accurately, not just because of her dyslexia, but also because she found it difficult to complete them accurately and with integrity as a result of poor record-keeping and communication.
55. On 2 July 2021 Mr Miah and Ms Elvin spoke by telephone. Mr Miah followed up this conversation with an email at page 292 summarising what had been said. This recorded that Mr Miah had stated that Ms Elvin needed authorisation to work from home. He had also asked about a particular report, and said that Ms Elvin had told him that the online form remained blank, although she had had a conversation about it with two colleagues. There had also been discussion of Ms Elvin’s decision to close the youth club the previous night.
56. A meeting then took place on 6 July 2021 attended by Mr Miah, Ms Elvin and a notetaker, the notes being at pages 296-316. In paragraph 41 of her witness statement Ms Elvin said that this was originally described as a disciplinary meeting, later revised to a fact-finding meeting. There was discussion about the delay in completing the BBC CIN grant application and about what was the correct deadline for that. Another charity grant (the John Lyons Charity) and the time the Claimant had taken to deal with this was also discussed. Mr Miah also raised the issue of working from home.
57. Ms Elvin said (at page 309) that she had the sense that Mr Miah was gathering evidence for a disciplinary hearing. In paragraph 42 of her witness statement she said that “it felt like he had chosen to put me in a position where he could grill me on things I might have or had slipped up on and completely ignore instances where I hadn’t. I was being put under the spotlight and blamed for organisational failures.....” Ms Elvin continued that she was told to prioritise report writing over all else, although Mr Miah knew that she was having difficulty with this, and that “he also made clear that my asking questions about finance and desire for accuracy in submitting reports was undesired.”
58. There was a one-to-one meeting between Mr Miah and Ms Elvin on 30 September 2021. Mr Miah produced notes of this in an email dated 1 October 2021 on pages 349-350. When cross-examined about these notes and this meeting, Ms Elvin said that the notes were not full; that she believed at the time and continued to believe that they had been produced in an effort to get rid of her; and that the meeting itself was directed to producing the material necessary to get rid of her. She added that she had been raising issues since March 2021, further explaining that she was not disregarding the earlier disclosures, but that from March onwards there had been a real shift in how she was being treated.

59. The notes recorded that Mr Miah said that he was concerned about the non-completion of reports and that the delays were not satisfactory. It was recorded that Ms Elvin said that this was fair and that she struggled to prioritise time for preparing reports; and that she said that Youth Services Manager was a more than one person role. The note continued that Mr Miah said that Ms Elvin's performance had been unsatisfactory and that she asked why, if that were so, he had not terminated her contract. Mr Miah was recorded as replying that he wanted to give Ms Elvin the opportunity to achieve the targets.
60. The Tribunal concluded that the concerns noted by Mr Miah were genuinely held by him (which is not the same as saying that they were objectively justified or "correct", which is not the issue here). While acknowledging Ms Elvin's evidence that the notes had been produced with a view to getting rid of her, the Tribunal also noted that Mr Miah had previously raised the question of delays in producing reports (such as the BBC CIN and John Lyons reports referred to above) and that Ms Elvin, in giving reasons why this had happened, accepted that there had been delays. Ms Gallop had also criticised the delays in producing reports. The Tribunal considered that Ms Elvin's remark asking why Mr Miah had not terminated her contract, and his reply, ran counter to the idea that he was manufacturing a case for ending her employment, as he had not taken what might have been an opportunity to do that.
61. On 1 November 2021 Mr Miah sent Ms Elvin an email (page 365) inviting her to attend a formal capability hearing, originally to take place on 5 November. At about the same time (Ms Elvin and Mr Miah both said in their statements that this was on 1 November, but the relevant email at page 356 is dated 2 November 2021) Mr Miah asked Ms Elvin about her health and whether she would agree to an occupational health assessment. The email contained the following:
- "I am writing to enquire about your alleged state of health. This is because we need to make sure we have as much information as possible to help you remain comfortable and safe in the working environment.
- "I am concerned that your alleged state of health may be preventing you from carrying out your work activity safely, and I would like to assess whether you will be able to continue working in your position of Youth Services Manager and if there are any reasonable adjustments that we need to make.
- "I am therefore writing to request your consent to approach Health Assured for a confidential occupational health report on your state of health....."
62. Ms Elvin said in paragraph 47 of her witness statement that she was confused by the reference to her "alleged state of health" and that it seemed as if Mr Miah was suggesting that she was not capable of fulfilling her role from a medical perspective as well as from the more general perspective of capability.

63. In his oral evidence on this aspect Mr Miah said that the reference to Ms Elvin's state of health related to her mental health, dyslexia and diabetes and that in raising the question whether she was able to work "safely" he meant that she had said that she did not feel safe in certain environments. Ms West put it to him that he wanted Ms Elvin removed so that she could not contribute to any whistleblowing investigation, which he denied.
64. The Tribunal considered that the letter was expressed in a somewhat heavy-handed way, and we could understand why it may have made Ms Elvin feel uncomfortable. With all respect to Ms West's suggestion, however, the Tribunal could not see how this could realistically have been a subterfuge with a view to securing Ms Elvin's removal. Mr Miah would presumably have expected that any OH referral would be conducted honestly and on a factual basis: if he knew that there was no basis for any concerns about Ms Elvin's health, he would have expected that to be the outcome, and the subterfuge would not work. Alternatively, if he genuinely believed that there were or might be genuine health issues in play, that is sufficient to explain why he suggested the referral.
65. Ms Elvin declined to attend an occupational health assessment. On 3 November 2021 she raised a grievance (pages 361-362 for the substantive email and pages 388-393 for the table attached to it). She relied on this as her sixth disclosure. The table contained various assertions about funding, including to the effect that amounts reported to funders were not accurate and that funds were misallocated. The Tribunal found the following to be the clearest examples:
- 65.1 Item 1: "Underspend total for year 1 & 2, compared to Mopac Quickbooks report & report to funders differs. This is just 1 example of how money / misallocation has been at QCCA. £40k (plus the balance invoices, Dinah [Ms Gallop] refused to pay – 13k + 4k) makes almost £57k that was not spent."
- 65.2 Item 2: "Wrong information sent to funders about a spend that did not exist This was not uncommon with grants and reports that Mo [Mr Miah] (and previous managers before him) were doing....."
66. In paragraph 48 of her witness statement Ms Elvin said the following about raising the grievance:
- "The reason I did this was because I felt all previous attempts to get me to leave the organisation as a direct consequence of me raising my concerns about the finances had been ignored and that now [Mr Miah] was explicitly trying to force the issue and was becoming increasingly desperate he was attempting to harm my professional reputation and personal wellbeing and this felt to me like harassment. I felt that the best option for my concerns to be heard and appreciated was to go above [Mr Miah]."

67. Again, Ms Elvin did not make any express reference in her evidence to having a belief that her disclosure was made in the public interest, or that it tended to show a failure to comply with a legal obligation.
68. The Tribunal concluded that what Ms Elvin said in paragraph 48 of her witness statement was a fair reflection of her position. She raised the grievance as a form of self-defence against what she perceived as Mr Miah's efforts to get her to leave the organisation and to harm her reputation and wellbeing. Although with hindsight one might say that there was a public interest in the financial affairs of a charity being conducted correctly, this was not on Ms Elvin's own evidence something that she had in mind when she raised the grievance.
69. The Tribunal reached a similar conclusion on the issue of belief in the disclosure tending to show a failure to comply with a legal obligation. Ms Elvin's evidence did not contain an assertion that she had such a belief. The Tribunal asked itself whether it was nonetheless to be inferred from the nature and content of the disclosure that she did. We found that it was not possible to infer this. Misallocation (not misappropriation or anything similar) of funds does not necessarily imply breach of a legal obligation. Presumably no one would dispute that a charity "should", as a general proposition, apply funds for the purposes for which they were given, but it is more difficult to state the source or extent of any legal obligation to do so. Furthermore (and particularly in the context of the present case and the difficulties that Ms Elvin experienced with QCCA's records), "misallocation" could reflect inaccuracies in records as opposed to money being applied to the "wrong" project.
70. Mr Randall wrote to Ms Elvin on 8 November 2021 at page C1571, inviting her to a grievance meeting. He summarised the contents of the grievance in 7 bullet points, which included "you found discrepancies with grants and reports which you state have not been investigated". Mr Randall conducted the grievance meeting on 11 November 2021. There was a note-taker, and the meeting was recorded, the notes of it being at pages 373-385. On page 374 the following was noted as Ms Elvin's explanation of why she had raised the grievance:
- "When we spoke on the phone yesterday one is the point of what I'm raising it for. It's, can I just do my job? I feel frustration that that keeps lingering and we can't move beyond it. You can draw a line in all of that madness. The other is that I want to look at the job description, the role, and maybe think about hiring an additional role to address things I'm finding. I don't know quite what that looks like yet. One thing might be safeguarding."
71. The Tribunal found this to be consistent with what it has said above about there being no evidence of a belief that the grievance was being raised in the public interest or that it tended to show a failure to comply with a legal obligation. Ms Elvin's stated concerns were about being able to do her job, and about whether the job was too much for one person.



72. The meeting continued with a substantial statement by Ms Elvin on page 376 of the difficulties she had found with the job. On pages 378-379 the notes record what Ms Elvin said about misallocation of funds. In relation to the grant from MOPAC, she said: “when I came to write the report in September or October when I first started, we worked out that Mohammed had barely spent anything from the first year. Although it said 11,000 in the report that he sent to them in the first year, he hadn’t.” A little later, Ms Elvin said: “I was told I wasn’t allowed to raise it and if I did raise it, I would get into trouble. If I’m raising something I think is not good practice or could cause trouble with funders. My point with this one, he spent 11,000 and it’s 50,000 a year....”
73. Ms Elvin gave another example of money provided by way of a grant not being spent. Mr Randall asked: “Could that be accounts not being updated?” and Ms Elvin replied: “It’s misallocation. You class things to a funder. You have to classify things. Then, when you draw reports like this, this is not a specific funder, this is Children in Need, it would go under here as expenditure.” Mr Randall said that he did not really get it, and perhaps help was needed from someone with a financial background. He said: “What you’re saying is the funds were put somewhere else?” to which Ms Elvin replied: “It’s my understanding that any surplus from the youth centre, the centre has been put back into the core QCCA”.
74. As will be explained below, QCCA in fact sought advice from an external body (with a financial background) about the issue as to allocation of funds.
75. On 2 December 2021 Mr Randall sent the grievance outcome to Ms Elvin (pages 415-417). It is not necessary to set this out in any detail, as it forms no part of the issues to be decided. Mr Randall concluded that there had been some failures to follow normal employment procedures, but that the pandemic had created a one-off situation. He referred to Mr Miah having ongoing concerns about Ms Elvin’s performance. With regard to Ms Elvin’s financial concerns, Mr Randall wrote: “SJ has also raised financial concerns, which fall under the whistleblowing area and will be treated as a separate matter. A separate outcome will be provided.”
76. Mr Miah stated that in November 2021 a further issue arose about a report to a funder. On 25 November 2021 at page 398 the funder wrote to Mr Miah stating that the report was required by 3 December 2021. Mr Miah said that Ms Elvin had not previously informed him that the report had not been submitted, although there had been reminders earlier in the year. It was evident from an email exchange at page 443 between Ms Elvin and the funder that the former wrote on 6 December 2021 saying that she would submit the final report by the following day, and that the funder wrote on 15 December 2021 saying that the report was still incomplete and that the deadline could not be extended beyond 16 December.
77. Meanwhile, on 2 December 2021 Mr Miah sent Ms Elvin an invitation at page 400 to a capability meeting to be held the following day. In essence,

this was to be the meeting that had originally been proposed on 1 November. There were notes of the meeting at pages 418-425. Mr Miah began by referring to the letter of 1 November, raising the first point in it, namely an allegation of unacceptable work performance. Ms Elvin asked if she could read her opening statement, saying that she disagreed with the meeting and the timing of it and that she believed that it was unfair and should be postponed until the service returned to full capacity, to ensure that the demands placed on her role were realistic. She gave Mr Miah a written copy of her statement.

78. Mr Miah then asked Ms Elvin about several reports which he said had been produced late. Ms Elvin made no comment in answer to any of them. The same was true of a series of further questions asked by Mr Miah.
79. On 13 December 2021 Mr Miah sent a letter to Ms Elvin at pages 441-442 giving the outcome of the capability meeting. He referred to 8 instances of the deadlines for reports being missed, and separately to the BC CIN deadline being missed. He said that actions agreed at 1-to-1 meetings had not been completed; that the police had not been called following a serious incident; that Ms Elvin had failed to reach her targets; that reports for the Trustees had not been completed; and that copies of contracts, DBS checks and other documents for new workers had not been obtained.
80. The letter continued that Ms Elvin had replied “no comment” to all the allegations raised at the meeting and then (somewhat oddly given that Ms Elvin had made no comments) that “having listened to your explanations I considered them to be unsatisfactory.....” Mr Miah stated that he believed that Ms Elvin’s performance had not reached an acceptable standard and that there was no realistic prospect that it would do so. He said that he had decided that her employment should be terminated, and that she would be given 2 months’ notice.
81. In paragraph 38 of his witness statement Mr Miah said that the matters in his letter of 13 December 2021 were the sole reasons for his decision. The Tribunal found that this was the case. Mr Miah had consistently raised concerns about the late production of reports in particular, and had been supported by Ms Gallop in this regard. Following the investigatory meeting there had been further instances of Ms Elvin failing to submit reports within the relevant deadlines. At the meeting, Ms Elvin had made no comment in response to the questions asked about her performance. Whether or not his view was objectively justifiable, the evidence was that Mr Miah was sufficiently troubled by the issues over reports in particular that it was (in the Tribunal’s judgement) unsurprising that he decided to dismiss Ms Elvin.
82. Conversely, the evidence did not suggest that Mr Miah was particularly troubled by Ms Elvin’s references to funds being misallocated. Ms Elvin’s account of the meeting in March 2021 was that Mr Miah said that it did not matter if the internal allocation of funds differed from the grant. Mr Miah disputed Ms Elvin’s recollection, but stated that if the matter had been raised, he would have said that any surplus of funds should be discussed

with the funder. Although Ms Elvin and Mr Miah differed in their evidence on this aspect, on neither account was Mr Miah unduly concerned about what Ms Elvin was saying. The evidence did not, therefore, suggest that her saying it would have been any substantial part of the reason for dismissing her.

83. Ms Elvin appealed against Mr Miah's decision and against Mr Randall's decision on the grievance. Those appeals do not form any part of the issues that the Tribunal has to decide. Ms Elvin's employment with QCCA ended in February 2022.
84. QCCA referred Ms Elvin's allegations about the allocation of funds and/or misreporting information to funders to a firm of chartered accountants and business advisers. On 8 March 2022 Mr Malik of that firm produced a report at pages 463-465 in which he advised that, in his opinion, QCCA were not in breach of the Charities Act or the Charities Statement of Recommended Practice (SORP). He also made some recommendations about how future problems might be avoided.
85. On 24 June 2022 (and so some months after Ms Elvin's employment had come to an end) a safeguarding meeting took place in which a concern was raised about Ms Elvin allegedly having had inappropriate contact by phone with a young person with whom she had previously worked (as evidenced by an email from Ms White of that date at pages 467-468). This came to Ms Elvin's attention in July 2022. She said in paragraph 57 of her witness statement that she did not know why the parent concerned had made a complaint against her and that no one from QCCA had contacted her to discuss it. Ms Elvin further contended that the referral was made 2 days before the preliminary hearing in the present claim, and that it was an attempt to intimidate her and damage her reputation.
86. Ms White referred the complaint to the Local Authority Designated Officer (LADO) on 6 July 2022 at pages C3035-3042. On 12 July 2022 at page C3052 the LADO advised that this was a code of conduct issue rather than an allegation of harm.
87. Mr Miah stated in paragraph 43 of his witness statement that the matter was brought to his attention as QCCA's safeguarding lead. He said that he reported the matter to the Board, who advised him to ask Ms White to lead on the complaint. He therefore asked Ms White to contact the LADO for advice and guidance, and had no further involvement in the matter. When cross-examined on this aspect, Mr Miah said that where a child is vulnerable there is a duty of care to report a complaint and that "where there is an accusation against someone you do not go back to that person because it puts the child at further risk". He added that "it wasn't for me to decide what the harm to the child might be. It puts undue pressure on staff to make such decisions, it is best to go to the LADO to make the decision".
88. The Tribunal accepted Mr Miah's evidence on this point. We could understand that an organisation such as QCCA would not try to deal with a

safeguarding complaint itself, as it would be very easy for any complainant to say that it had an interest in covering up the matter or minimising it. The Tribunal found that, realistically, there was little else that Mr Miah or anyone else within QCCA could properly have done other than take the matter to the LADO. In the event, the incident was not considered to raise any safeguarding concerns. That did not, in the Tribunal's judgment, mean that it was wrong to refer it to the LADO.

89. In submissions Ms West argued that the referral to LADO was spurious and an act of victimisation, and had been timed so as to cause the maximum upset to Ms Elvin, in being made shortly before the preliminary hearing. The Tribunal rejected these contentions. The referral was not, in the Tribunal's judgement, spurious: it was the correct thing to do in the circumstances. We found that the likely explanation for the date of the referral was to be found in the date of the complaint followed by Mr Miah's referral of it to the Board, and that the proximity of this to the date of the preliminary hearing was a coincidence.

### **The applicable law and conclusions**

#### **Protected disclosures**

90. The Employment Rights Act 1996 contains the following provisions about protected disclosures:

*43A In this Act 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.*

*43B .....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*

*43C (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –*

*(a) To his employer.*

91. The Tribunal considered each of the 6 proposed disclosures identified in the list of issues in terms of the elements of a protected disclosure.
92. So far as belief in the commission of a criminal offence or a failure to comply with a legal obligation is concerned, we will use the latter term to include both. There was no element where we considered that there might

have been a belief in the commission of a criminal offence, but not in a breach of a legal obligation.

93. Disclosure 1 concerned Ms Elvin's communications with Mr Walji in August 2020. The Tribunal has found that there was some limited disclosure of information in the conversation and the email of 3 August 2020, but that it was unlikely that at this stage Ms Elvin had formed a reasonable belief that there was a failure to comply with a legal obligation. We concluded that she had not in fact formed that belief. The Tribunal adds that, if she had, it would not have been a reasonable one, for the reasons that led us to hold that she had not in fact formed that belief. We also found that the same factors excluded a belief on Ms Elvin's part that she was acting in the public interest.
94. The Tribunal has found that the email of 11 August 2020 did not contain information. The Tribunal also makes the same finding as in relation to the disclosures on 3 August 2020 with regard to the relevant beliefs.
95. Disclosure 2 concerned the induction meeting or meetings between Ms Elvin and Mr Miah on around 21 August 2020. The Tribunal has found that Ms Elvin did not at this time disclose information, but only asked questions. For the reasons given in relation to 3 August 2020, the Tribunal also finds that Ms Elvin did not have at this time a belief that a legal obligation had been or was being breached, and that, had she had any such belief, that would not have been reasonable. Ms Elvin was only 2-3 weeks into her employment, and it was unlikely that she could have formed such a belief in that time and without having gone further into the way in which funds were being allocated. In a similar way to disclosure 1, the same factors excluded Ms Elvin having a belief that she was acting in the public interest.
96. The Tribunal has found that Ms Elvin's case as to disclosure 3 has not been made out on the facts, whether as to the alleged email, or as to a 1-to-1 meeting.
97. Disclosure 4 related to a meeting in March 2021 involving Ms Elvin, Mr Miah and Ms Gallop. The Tribunal found that, on this occasion, Ms Elvin disclosed information about the way in which funding allocation had been reported to 2 funders. There was no evidence, however, that Ms Elvin believed that this involved a failure to comply with a legal obligation, or that she believed that she made the disclosure in the public interest; and this led the Tribunal to conclude that she did not have such beliefs.
98. In short, the same conclusions apply to disclosure 5.
99. Disclosure 6 concerned the grievance Ms Elvin raised on 3 November 2021. This involved a disclosure of information, but the Tribunal has found that Ms Elvin did not have a belief that the disclosure tended to show a breach of a legal obligation, or that she was making the disclosure in the public interest.

100. The effect of these finding is that the Tribunal concludes that Ms Elvin did not make any protected disclosures. For this reason, her complaints of automatic unfair dismissal and detriment for making protected disclosures fail. We will, however, give our conclusions on the other issues.

**Reason or principal reason for the dismissal**

101. Section 103A of the Employment Rights Act provides that:

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

102. For the reasons given above, the Tribunal has concluded that (whether or not they amounted to protected disclosures) the disclosures made by Ms Elvin formed no substantial part of the reasons for her dismissal. They were not, therefore, the reason or the principal reason for the dismissal. This finding in itself means that the complaint of automatic unfair dismissal fails.

**Detriments**

103. Section 47B of the Employment Rights Act provides that:

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

104. Ms Elvin relied on 7 detriments. In respect of each of these, the Tribunal considered whether they occurred, whether they amounted to detriments, and whether they were done on the ground that Ms Elvin had made disclosures (regardless of whether or not these were protected disclosures).

105. In **Fecitt v NHS Manchester [2012] ICR 372** the Court of Appeal held that an act would be done “on the ground that” a protected disclosure had been made if the disclosure materially (in the sense of more than trivially) influences the employer’s treatment of the employee.

106. Detriment 1 alleged that QCCA failed to investigate Ms Elvin’s concerns about fraud or misreporting. Whether or not these are correctly characterised as involving allegations of fraud, these concerns were investigated when Ms Elvin raised her grievance. Prior to that, the Tribunal finds that Mr Miah did not consider or realise that there was anything to investigate: as we have stated, his position was that he would have said that any surplus should be discussed with the funders, while Ms Elvin’s evidence was that he in fact said that it did not matter if the internal allocation of funds differed from the grant. On the Tribunal’s findings, it was not the case that Ms Elvin’s making of the disclosures had any substantial influence on Mr Miah’s decision to investigate the issues about allocations.

107. Detriment 2 complained of Ms Elvin being pressurised to file reports when funding allocation concerns remained outstanding. The Tribunal found that Mr Miah did urge (and so, in that sense, pressure) Ms Elvin to file reports, but that he did so because he considered that they were needed. The Tribunal found no obvious logic in the suggestion that Mr Miah would have insisted on the reports being filed because Ms Elvin had said that there were discrepancies in the allocation of funds. The Tribunal concluded that her having said that did not have any substantial influence on Mr Miah's insistence that the reports should be filed.
108. Detriment 3 related to the capability proceedings. The Tribunal finds that the evidence shows that Mr Miah had had genuine concerns, in which he was supported by Ms Gallop, about Ms Elvin's ability to do the job. As already stated, the evidence did not suggest that Mr Miah was unduly concerned about Ms Elvin's disclosures, and the Tribunal found that these did not have any substantial influence on his decision to commence the capability proceedings.
109. Detriment 4 (suggesting that Ms Elvin's job was at risk if she continue to question Mr Walji's activities) was not made out on the facts. The Tribunal finds that this element did not go beyond Ms Elvin being discouraged from making further complaints about Mr Walji.
110. Detriments 5 and 6 can be considered together, involving as they do the decision to dismiss Ms Elvin and the alleged failure to consider alternatives to dismissal. Mr Miah's evidence was that he did consider alternatives, including further extending Ms Elvin's probationary period. The Tribunal considered, however, that the real complaint did not concern whether or not he thought about alternatives, but his failure to adopt one of them in preference to dismissing Ms Elvin.
111. By virtue of the decision in **Timis v Osipov [2019] ICR 655** a decision to dismiss made by a person other than the employer (e.g. a manager such as Mr Miah) may amount to a detriment done by that person. The Tribunal has accepted that the sole reasons for Mr Miah's decision were those in his letter of 13 December 2021, being that he believed that Ms Elvin's performance was unsatisfactory and that there was no realistic prospect that it would reach an acceptable standard. The disclosures therefore had no substantial influence on the decision to dismiss Ms Elvin.
112. Ms Elvin's case about detriment 7 is that the report to the LADO was "false and malicious". The Tribunal has found that it was not. This means that the allegation is not made out on the facts: furthermore, we found that there was no real alternative to referring the matter to the LADO, and that Ms Elvin's disclosures were not relevant to the decision to do so. They therefore had no substantial influence on that decision.
113. The Tribunal therefore found that the complaints also failed on the element of causation.

114. For all the reasons given above, the complaints are therefore all dismissed.

Employment Judge Glennie

Dated: .....9 October 2023.....

Judgment sent to the parties on:

09/10/2023

For the Tribunal Office