EMPLOYMENT TRIBUNALS

Claimant:	Ms K Blakey
Respondent:	Newcastle University
Heard at:	Newcastle Employment Tribunal
On:	12, 13, 14, 15, 16, 19 June 2023, 2 August 2023 evidence and submissions; 3 August 2023 deliberations; 4 August 2023 further submissions.
Before:	Employment Judge Jeram, Mr P Curtis Mrs D Winter
Representation:	
Claimant:	In Person
Respondent:	Ms C Millns of Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the claimant's claims of unfair dismissal, automatic unfair dismissal, whistleblowing detriment and discrimination arising in consequence of disability are not well founded and are dismissed.

REASONS

1. By a claim presented on 28 January 2021, the claimant made complaints of unfair dismissal, disability discrimination and whistleblowing.

Case Management and Issues

2. This claim has been subject to a number of attempts to identify the claims said to be advanced. Orders were made on 9 March 2021, and hearings after which further orders were made, were conducted on 26 April 2021 before EJ Shore, 1 July 2021 before EJ Johnson, 27 August 2021 before EJ Shore, 6 October 2022

before EJ Jeram and a final case management hearing with a time estimate of 1 day took place before EJ Moss on 23 November 2022.

3. The issues were once again discussed in detail on the first and second days of the final hearing. The claimant having confirmed that she did not intend to apply to amend her claim, a list containing the agreed issues was finalised and circulated. The list of issues are as follows.

Unfair Dismissal

4. Was the reason, or if more than one the principal reason, for dismissal redundancy or for a substantial reason of a kind such as justifying dismissal of an employee holding the position of the claimant.

5. If the reason was redundancy, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant. Matters that the Tribunal will usually consider include:
    a. whether the claim was adequately warned and consulted
    b. whether the respondent adopted a reasonable selection decision including its approach to a selection pool
    c. whether the respondent took reasonable steps to find the claimant suitable alternative employment
    d. whether dismissal was in the band of reasonable responses

6. The claimant says that the dismissal was unfair because what was happening on surface did not represent the underlying reality.

Automatic Unfair Dismissal

7. Was the reason or principal reason for dismissal that the claimant made a protected disclosure?

Protected Disclosures

Disclosure 1

8. The claimant says she disclosed information about the smell of sewer gas leaking into the office continuously between March 2018 and June 2019 to Richard McNally, the health and safety officer (David Martin), Maxine Oliver (Occupational Health Nurse), Audrey McIntyre (colleague responsible for logging such matters)

Disclosure 2

9. The claimant say she made a disclosure about the manner in which the Registry Secretary was carrying out her duties was increasing the risk of a data breach on 20 May 2020 to Richard McNally

Disclosure 3

10. The claimant says she stated she had evidence to support the Registry Secretary was accessing data without any lawful basis to do so on 12 June 2020 to Richard McNally

Disclosure 4

11. The claimant says she provided information that a colleague had shared the screen and displayed patient data during a zoom call on 15 June 2020 to Salome Bolton (her trade union representative), Prof Catherine Exley (Dean of Population Health Sciences Institute) on 2 October 2020, AND Leanne Morrison (Deputy Dean of Research Operations) on 25 August 2020

Disclosure 5

12. The claimant says she made a disclosure on 29 September 2020 that Richard McNally was covering up a data breach to Sarah Kendall and Prof Exley.

13. In relation to each of the disclosures above:
    a. Did the claimant disclose information?
    b. Did she believe the disclosure of information was made in the public interest?
    c. Was that belief reasonable?
    d. Did she believe that the information tended to show that:
        i. a criminal offence had been, was being or was likely to be committed;
        ii. a person had failed, was failing or was likely to fail to comply with any legal obligation;
        iii. the health or safety of any individual had been, was being or was likely to be endangered?
    e. Was that belief reasonable?

14. If the claimant made a qualifying disclosure, it was a protected disclosure if made to her line manager. Otherwise, does it fulfil relevant requirements of sections 43C, 43D, 43E, 43F, 43G or 43H of the Employment Rights Act 1996. If so it was a protected disclosure.

Detriments

15. Did the respondent do the following things:
    a. Activate the sickness absence procedure – April 2019

b. Activate the performance management procedure on 20 May 2020
c. Require all emails sent by the claimant to be vetted started on 28 May 2020
d. Activate the redundancy procedure in October 2018

16. By doing so, did it subject the claimant to detriment?

17. If so, was it done on the ground that she made a protected disclosure?

Discrimination Arising In Consequence of Disability

18. Did the respondent treat the claimant unfavourably by bringing forward the redundancy from December 2020 to September 2020

19. If so, did the following thing arise in consequence of the claimant's disability: The claimant's continued sickness absence between 14 and 24 August 2020

20. Was the unfavourable treatment because of that thing?

Witness evidence

21. We read the claimant's witness statement consisting of 975 paragraphs over 125 pages and heard her give evidence over 2.5 days.

22. As for the respondent's case, we read the statements of and heard from the following witnesses: Dr Richard McNally (Reader in Epidemiology and Director of the Northern Region Young Persons Malignant Disease Registry) ('RM'), Prof Catherine Exley (Dean of the Population Health Sciences Institute) ('CE'), Leanne Hughes (former Deputy Head of Operations at the Population Health Sciences Institute) (LH') and Marie Atkins (Midlands Renal Operation Delivery Network Manager for NHS England Midlands) ('MA').

Documentary Evidence

23. We had regard to:
    a. Those documents we were taken to in a file of documents, agreed between the parties, consisting of 2285 pages together (although further documents were inserted in the claimant's request).
    b. Two documents prepared by the respondent, containing relevant legal principles and written submissions.
    c. The claimant's written submissions.

24. We did not have regard to a further set of claimant's written submissions, which were presented without warning, after the Tribunal had concluded its deliberations. The respondent resisted the claimant's application; the claimant had no compelling explanation for why she had not warned the respondent or the

Tribunal of her intention to prepare and submit written representations despite having had ample opportunity to do so.

Credibility

25. The Tribunal had before it a large bundle containing significant amounts of correspondence written by the claimant, as well as her detailed witness statement. We found that the claimant had not insignificant difficulties expressing herself in a consistent manner, verbally or in writing. Whilst she clearly holds a strong conviction in her interpretation of the facts, the Tribunal noted that those views were not fixed views. The Tribunal was troubled in particular by a dearth of supporting contemporaneous evidence in what was a document heavy case. It was also concerned to note that many criticisms made of the respondent's witnesses were not only absent from her witness statement and made for the first time during her oral evidence, but also developed over the duration of the hearing. The contemporaneous documentation, as well as the evidence of the respondent witnesses, suggests that her relationships with each of them were at one time good only to dissolve at some later stage.

26. We had no such concerns about the evidence given by the respondent's witnesses. We were unable to identify any evidence of the bad faith alleged of them and for reasons set out below, we concluded that the contrary was the true position.

Background Facts

27. The claimant commenced employment as a Research Assistant at the Institute of Health and Society on 8 October 2008, initially on a fixed term contract for one year.

28. At all times during her employment, as the claimant accepted, her post was wholly reliant upon securing external public funding. She was aware, funding for her post was generally renewed on an annual basis. She worked on a number of different projects during her employment.

29. In partnership with specific NHS trusts, the respondent, established and maintained a number of medical registries. The purpose of those registries was to collect and maintain information on patients who were diagnosed with specific medical conditions in a particular geographical region. The information collected was then to be used to examine and improve quality of care and treatment as well as to investigate the causes of disease and identify environmental and genetic risk factors.

30. In or around 2010/2011, the claimant came to work on two diabetes registries for children and young people, based in the North East and North Cumbria ('the North East Registry') and also in the North West ('the North West Registry'); soon

thereafter a registry in the East Midlands region was to be set up ('the East Midlands Registry').

31. The claimant's role was limited to establishing those registries; this involved following the necessary ethics, regulatory and governance processes to secure the necessary consent to enable them to collect data. Once established, it was for others, and not the claimant, to collect and analyse the data. Thus, the claimant's work on the registries was necessarily time limited.

32. The claimant carried out two additional tasks. First, she was tasked on a specific project for the East Midlands and North West Registries, namely the submission of an application to the National Institute for Health and Care Research for 'portfolio adoption' i.e. support for a portfolio of research projects.

33. Second, the claimant was given the role of securing approvals to allow the respondent's Cancer Registry to process necessary data lawfully. Around 2014, the respondent identified the need to secure new, or renewed, ethics and governance permissions to enable data sharing and linking. The application process required application for approval to the Health Research Authority Confidentiality Advice Group ('CAG').

34. The claimant's work was funded from four sources: the three regional diabetes registries were funded by their respective regional diabetes networks, and the work necessary to gain CAG approval for the cancer registry was funded by the North of England Children's Cancer Research Fund ('NECCR').

35. The sources of income raised broadly similar amounts, albeit the NECCR fund contributed the most; the combined total was sufficient to pay for the claimant's post for 5 days per week.

36. By 2016/2017 however, Marie Atkins of the East Midlands Registry was sufficiently concerned about the level of activity on its project that the frequency of payments had been reduced to quarterly, albeit she was content to make payments in six monthly tranches.

37. The claimant's line manager was Dr Richard McNally ('RM'), Reader in Epidemiology and Director of the Northern Region Young Persons Malignant Disease Registry. He had invested many years personally and professionally on the registries and their area of research. It was his role to secure funds from each of the sources above in advance of the relevant year to which it was applied. Occasionally, funding decisions were delayed, and in which case RM secured a memorandum of understanding from the funders and/or a bridging loan from the respondent's own Finance Department to ensure the claimant's continued employment.

38. The claimant and RM had worked together over a period of 12 years. For much of that time, the relationship functioned without significant difficulty.

39. We are satisfied of the oral evidence of LH that the Institute of Health and Society, in which the claimant's role sat before there was a reconfiguration of Institutes in 2019, did not routinely place research assistants at risk of redundancy each year pending confirmation of the renewal of their funding, as was the case in other institutes; rather, the approach as to who was to be placed at risk, and in what circumstances was approached on an ad hoc basis. Indeed, the emails of late December 2017 to early January 2019 reveal that an exchange about funding between human resources and management, that did not involve RM, as to whether to 'start the process' or 'take the risk', is consistent with that evidence.

October 2018 –At Risk of Redundancy

40. By autumn 2018, RM had not received confirmation of renewed funding for the claimant's post from the Diabetes Networks or the NECCR; in the latter case, he was aware that a request for further information was likely to require significant work on the part of the claimant before that further information could be provided.

41. Unlike the previous year, Brady Scott was the HR administrator whose responsibility it was to deal with the claimant's contract renewal. He sent to the claimant on 24 October 2018 a document that appears to be produced from a standard template. It reminded the claimant that her contract was due to end on 31 March 2019, and that she may have already started a discussion with her line manager '*regarding potential opportunities beyond this date'*. The letter informed the claimant that it was now necessary to commence the redundancy procedure with her, but that confirmation of funding for further project work would result in the process being halted with immediate effect. This, the Tribunal understands, was the first time the claimant had been formally notified that she was at risk of redundancy.

42. Confirmation of further funding had not been received by end of 2018, so on 7 January 2019, the claimant was provided with notice of redundancy with an anticipated termination date of 7 April 2019.

43. Concerned about having received that notice, on or around 5 February 2019, the claimant met with RM.

44. RM informed the claimant that he had secured funding from all three Diabetes Registries, the NECCR, as well as a separate grant from the NIHR for a thyroid study to be undertaken. No allocation of that funding had yet been identified. In order to allow the claimant to continue with her work, RM applied for bridging funding pending confirmation of the final grant and allocation to individual roles and asked for the redundancy process in respect of the claimant to be halted, emphasising in his correspondence that he did so because he did not anticipate

any difficulties with the funding and that he was concerned to allay the claimant's distress.

45. Initially, only sufficient funding was secured so as to allow the claimant's role to continue until 30 September 2019. Further funding was identified, enabling RM to apply for a further extension; on 6 April 2019 the claimant was notified that the contract was extended until 31 March 2020.

April 2019 – Stage 1 Absence Review

46. Throughout 2018, 2019 and indeed later, in 2020, the clamant was absent from work for a number of different reasons. RM managed those absences by securing adjustments to equipment, providing an adapted chair, and engaging with Access to Work.

47. The respondent's Effective Management of Sickness Absence policy provides that an Informal Absence Counselling meeting is convened where there have been 3 occasions of absence in any six-month rolling period, and that Stage 1 of the formal Absence Review Procedure is triggered if there is a further 3 absences in the six months following the date of the absence counselling.

48. The claimant had had three absences for differing ailments in the period 18 April to 5 June 2018. An informal absence counselling meeting took place on 3 January 2019. On 11 April 2019, the claimant was invited to a Stage 1 Absence Review Meeting on 29 April 2019, having been absent for on a further 3 occasions. The claimant was informed at that meeting that a formal Stage 1 caution would be issued, which would remain live for 6 months, during which time, if a further two absences took place, Stage 2 of the procedure would be activated. She was informed of her right to appeal.

49. On 10 May 2019, the claimant was provided with written confirmation of the Stage 1 caution, the conditions in which Stage 2 of the procedure would be triggered and reminded of her right to appeal.

50. On the claimant's own evidence, the procedure was activated because the claimant met the threshold triggers.

51. The claimant did not appeal the Stage 1 caution. She was not absent on three occasions in the following six months and so the second stage of the absence procedure was not triggered.

52. On 1 November 2019, the seven medical institutes at the University were formally reconfigured to form three larger medical institutes; the claimant's role sat in the new Population and Health Sciences Institute.

October 2019 – July 2020 – redundancy

53. Meanwhile, the claimant's termination date of 31 March 2020 was quickly approaching. On 8 October 2019, Brady Scott sent an email to the claimant in which she was reminded that her contract was due to end on 31 March 2020. The email informed her that it was necessary to start the redundancy procedure, but that any subsequent confirmation of funding for the project work would result in the process being halted. The claimant was invited to a consultation meeting. She was told the purpose of the meeting was to explain the potential redundancy situation, to provide her with an opportunity to present her views, to discuss future employment possibilities were appropriate and to explain the redeployment procedure. She was given a contact within the People Services Team and was informed she had access to the redeployment vacancies site. The claimant was provided with a link to the redundancy procedure, the redeployment procedure, and supporting guidance for redeployees. The claimant was told of her right to be accompanied the consultation meeting. In fact, the claimant had remained on the redeployment register since the last time she was placed at risk of redundancy, in 2018.

54. The claimant attended a consultation meeting which took place, after a postponement due to unforeseen circumstances, on 3 December 2019. RM attended, together with LH. The claimant was worried about her job. By now, the North East Registry was up and running and any continued funding would be for the collection and analysis of data, which was not the claimant's role. There had been considerable delays with making progress on the other registries, thereby jeopardising renewal of the funding and finally, that funding which had recently been received was reduced in amount. The claimant was given an explanation of the current position and she was taken through the redeployment process, being reminded that she could apply for vacancies up to one week before they were advertised.

55. On 6 February 2020, the claimant received notice of termination of employment by reason of redundancy. Her last date of employment was identified as 6 May 2020. The reason for her redundancy was cited as being the end of the regional diabetes registry projects and the end of the cancer registry project.

56. The claimant was given the right to appeal the decision; she did not exercise that right.

57. By 19 February 2020, RN had received notification of funding in respect of the two remaining diabetes registries and the cancer registry; it was significantly reduced. NECCR agreed to provide 40% of the sum sought over a period of 12 months. The East Midlands and North West networks each agreed to fund 20% of the claimant's time, with a review after six months. No further funding was expected from the North East network.

58. RM was awaiting the outcome of an application he had made in December 2019, for the first time, to the JGW Patterson Foundation. A successful application would have secured 60% funding for work of the claimant for a period of 18 months.

59. RM sought approval to use the funding that had been confirmed to grant a six-month extension to the claimant's contract.

60. In late February 2020, the claimant sought reassurance from RM as to whether termination of her contract was likely, or whether there was further funding available, stating that should need to start looking for another job if there were no funds. RM conveyed his confidence that funding for the next six months was likely to be secured.

61. On 17 March 2020 Brady Scott emailed the claimant to confirm that her contract was indeed to be extended until 30 September 2020.

62. On 26 March 2020, the UK went into lockdown as a result of the Covid pandemic. The claimant could no longer work from the respondent premises, which is the only place at which she was able to access relevant data. The volume and quality of data that was being collected also plummeted; opportunities to collect data were kept to the minimum necessary, insofar as they occurred at all. The priorities of the NHS Trusts and of Research and Development shifted significantly away from non-covid work.

63. On 31 March 2020, the claimant was sent a letter providing formal confirmation that that the date of dismissal on grounds of redundancy had been postponed until 30 September 2020. The letter continued:

"the reason for this postponement is to continue to support registry governance and regulations for the Sir James Spence Institute for Child Health. I must inform you that your contract will terminate without further notice from the University on the date stated, unless previously renewed in writing".

64. The claimant was invited to make written comments in respect of dismissal within 5 days or seek a further meeting to discuss the postponement if she wished; she did neither.

65. Brady Scott emailed the claimant the same day apologising for the delay in providing the contract extension, acknowledging that this would cause concern in such uncertain times. He explained the delay, confirming that although the request to extend her contract was received in February, a requirement for further information together with the demands of remote working had meant that it had taken longer to finalise. He invited her to contact him if the need arose.

66. The claimant had spent time working from home and she commenced a period of sick leave in March 2020.

Early 2020 – A deterioration in the relationship between the claimant and SB

67. In 2019, SB was appointed as Cancer Registry Secretary at the Newcastle upon Tyne NHS Trust; she was not an employee of the respondent. SB's line manager at the Trust was ES. It was necessary for the claimant and SB to liaise in order to put in place procedures to ensure the Cancer Registry was complying with the various regulatory requirements. To this end, the claimant drafted a lengthy protocol, and sought feedback from SB; the feedback was positive and initially their relationship was a friendly one.

68. Their relationship deteriorated, however, so that by July 2019 there was a difference in perception as to how and when SB should make herself available to the claimant and the needs of the Registry. The tension in the correspondence is self-evident; ES intervened to explain to the claimant her view of SB's role, copying in RM.

69. By January 2020, the situation had not improved, so that the claimant and SB were invited to a meeting with RM. At that meeting, the claimant expressed concern that SB did not understand the scope of her own role or have a clear grasp of the information governance component of the registry. She said SB was '*increasing the risk of a data breach'* because SB had said that she did not understand what the claimant meant by *'data sharing'*. Matters had taken a personal turn when the claimant demanded to know why SB had removed the claimant from her Facebook account. The claimant complained that she was not getting support in her dealings with SB.

70. RM provided significant support to the claimant. The claimant's emails to SB, as well as to RM, were prolix, difficult to decipher and highly direct in manner. SB would respond to say that she did not understand what was being asked of her. The claimant retorted that her emails were being misunderstood, deliberately or otherwise. RM took it upon himself to arrange a set of times when the claimant and SB should speak thereby avoiding the lengthy written exchanges and addressing the claimant's concern that SB was avoiding her. The claimant would ask RM to read over her emails to ensure he was satisfied of their clarity. Feedback RM gave to the claimant about prioritising tasks and maintaining focus was taken as a personal criticism.

71. The claimant was keen to arrange a meeting to ensure clarity about rules and communication channels, and to include Sarah Kendall Deputy Head of Operations.

72. That meeting took place on 3 February 2020. The claimant, RM, SB and ES attended, as did SK. A plan was formulated, with the claimant's agreement, to assist with workflow communication: SB was to be trained on GDPR by a colleague of the claimant and all workflow for SB was to be routed through RM and ES, save in certain circumstances.

73. In an effort to support the claimant's concerns about SB's data handling, in February 2020, RM personally emailed SB to ensure that only necessary information was being collected by the Registry.

74. On 20 February 2020, SK emailed ES and RM to ask how the plan was working. In his response RM stated that given the large number of emails going back and forth routing them via him would *'not seem to be the optimal approach'*. He noted that whilst the claimant was adhering to the agreed plan to send emails via him, SB was not. He suggested that he was only copied into non-routine emails '*to be more efficient'.*

75. By 24 February 2020 the claimant was asking RM to copy ES into routine correspondence and asking for the involvement SK and Gillian Harrison ('GH') of Human Resources, to inform them of her view that the communications arrangements were not working. RM directed the claimant to simply adhere to the agreed process of preparing simple questions to be forwarded to SB.

76. The claimant remained unhappy. She sent routine information through RM. SB suggested that routine information was sent directly to her rather than via RM. RM agreed that this should be a better system. Their relationship, however continued to deteriorate. The claimant asked SB to copy all emails she received into the Cancer Registry shared folder, and there was a dispute as to whether that was necessary. Later, the claimant became concerned about the data that SB was accessing in her role as Cancer Registry Secretary. SB's role, at the Trust, was to receive and input information relevant to the Cancer Registry. In doing so, she received a pro forma which contained additional information – or *'outcomes data'* - such as psychosocial data, not relevant to the Registry and in respect of which the Registry had no permission to receive.

77. RM intervened by writing to ensure that SB collected only data necessary for the Registry.

78. The claimant continued to raise concerns about SB; she said SB was receiving *'outcomes data'* in relation to patients which was not required for the Cancer registry.

79. On 27 May 2020 there was a weekly Cancer Registry team meeting, involving RM, the claimant, SB and others. The following day, the claimant emailed KH, Lead Nurse at the NHS Trust in Newcastle, directly, to inform her that SB had confirmed that she received the outcomes data. The Trust was the respondent's

client. The claimant informed RM the following day that she had done this because whilst she had tried to contact RM, she had not been able to discuss issues and that this was a very serious issue that could jeopardise the future of the Registry.

80. RM was concerned that the claimant had contacted the Lead Nurse without his knowledge or approval. He was concerned about the tone of her email and also that there was potential to cause more issues with the Trust before he had had the opportunity to fully understand and discuss the issues. RM therefore emailed the claimant: '*Dear Karen Please discuss the emails with me before sending them to third parties. Please don't send any more until we can agree issues as a team. This was not agreed at yesterday's meeting. All actions must be discussed and agreed by all at our weekly team meetings. Please concentrate on your priorities – which are . . ..*

81. The claimant challenged the contents of RM's email. RM responded stating that this matter was not on the list of priorities he had given to the claimant, that the meetings were held in order to identify priorities to get the Registry back online and that because the meeting had ended with his internet connection having failed, she should have postponed the matter until the following meeting which was to take place on 1 June 2020.

82. The claimant remained unhappy with what she believed was unlawful data processing on the part of SB. RM spoke to the Lead Nurse at the NHS Trust. He attempted to reassure the claimant, that the data belonged to the Trust and that so long as outcomes data was not being transferred to the Trust, there was no governance issue. The claimant was not reassured and continued to raise this matter. By now, the claimant had a union representative, who also raised the matter on her behalf with RM. RM spoke to the Registry data owner, who was employed by the Trust. RM was advised that SB would see patient data that was not relevant to the Registry, but that as an employee of the Trust, she was bound by a duty of confidentiality and so long as unauthorised data did not leave the Trust, he was uncomfortable with the situation. Similarly, RM spoke to the respondent's own data officer, who confirmed that there was no cause for concern from a GDPR perspective.

83. Despite attempts to reassure the claimant of these matters, she could not move past her concerns. He encouraged her to contact occupational health the support.

84. On 12 June 2020 the claimant again commenced period of sick leave.

Performance Management - 20 May 2020

85. In the meantime, on 12 May 2020, MA of the East Midlands Registry contacted RM, ostensibly to catch up with progress with the registry, and enquire whether,

with the reduction in patient consents being obtained, whether a contingency plan was required to deal with the effects of Covid 19.

86. The claimant had been off work on sick leave since March 2020. She was reviewed by Occupational Health on 18 May 2020, who had certified her fit to return to work on 20 May 2020.

87. Also on 18 May 2020, a Zoom call took place between RM and MA. She raised her concerns about the lack of progress against the Registry objectives.

88. The claimant been absent for a significant period of the last six months of the funding, most recently during the two consecutive months. She had also been distracted by her difficulties in her relationship with colleague SB.

89. RM was concerned, not only that there may be merit in what was being said, but in particular because they were concerns conveyed by a funder. He decided he should notify his line manager, Professor Catherine Exley ('CE') of this, as a matter of professional courtesy, and did so the same day; he did not do so because MA directed him to do so. In evidence, the claimant accepted that it was proper for RM to speak with CE about the concerns voiced by MA.

90. CE suggested he deal with this with in the first instance with the assistance of LH, GH and Sarah Kendall ('SK'), Deputy Head of Operations.

91. Accordingly, RM contacted GH. On 19 May 2020, in email correspondence between RM and GH, GH gave RM guidance as to how to manage the claimant's phased return to work on 20 May 2020. She emphasised the importance of adhering to her advice. GH made a number of recommendations about longer term support for the claimant. She informed RM that, as regards the issue raised by East Midlands Registry *'you need to raise this with Karen and explore with her why there has been a delay in her meeting the deadlines'*. She advised that RM should provide the claimant with measurable objectives and that meeting deadlines and identify measurable objectives. She told RM that the process would be classed as '*informal performance management'* but informed RM that he was not to use these words to the claimant. She recommended that he should inform the claimant that the concerns were sufficiently serious to have been raised with CE.

92. GH asked about funding of the claimant's contract. RM replied: *'Currently-funding 100% until 9/20. Then reduced funding- approx. 40-60% - would need to check. Another grant is under review. However, this depends on end of lockdown because works involve R&D departments which are not open for non-Covid work. Also, this funding is not assured-it is a charity and could be affected by the economic downturn'.*

93. GH asked RM to make further enquiries about the possibility of reduced funding in order to assist with the future support of the claimant.

94. Later the same day, SK, who was not then fully appraised of the position, said she echoed GH's advice that review of missed work targets were documented clearly.

95. On 20 May 2020, RM emailed Sarah Kendall, Gillian Harrison and Leanne Morrison stating in a short email "*hi all, I had about work meeting with Karen I explained the issue that had been raised by the funder regarding the target that had not been met. She explained that this was a consequence of the cancer work not being completed. So, this is an additional consequence the late completion of that work. I have asked her to make this a priority so that we can meet the objective."*

96. In email the following day from SK and GH, they sought further clarity as to what has been discussed, agreed, and recorded. They informed RM that it was appropriate to set an objective that the claimant refrain from sending lengthy emails and instead communicate with him in a succinct fashion, to reduce the danger of him missing important information, as she claimed he had. On 26 May 2020, SK provided RM with a template suggesting he use that to track progress.

Mid 2020 – Funding Difficulties

97. In mid-June 2020, RM contacted MA as to when he would hear about renewal of funding for the claimant's post. She replied that it would not be until after the summer period.

98. Soon thereafter, in June 2020, RM heard that his application to the JGW Patterson Foundation had been unsuccessful.

99. On 23 June 2020, RM met with LH, GH and SK to discuss whether what funding had been secured could be used to extend the claimant's contract until 31 December 2020, and whether further funding could be secured; RM agreed to submit a revised proposal to the JGW Patterson Foundation.

100. GH received information from finance that there may be a possibility of deferring redundancy for another two months; RM felt it important to ensure that he spoke to the diabetes networks because of the concerns raised about lack of progress, but also because they were not yet in a position to fully restart the activities.

101. Enquiries by RM led to advice that suggested that not only was the Foundation's resources impacted by the pandemic, but that a successful application would require a science element, something that was not possible due to the lack of CAG approval. By July 2020, the cancer registry was suspended due to lack of CAG approval.

102. RM intended to discuss the position with the claimant on her return to work from sick leave, which was expected to be in the week of 11 August 2020. That return date was deferred until 20 August 2020, because of some unexpected medical tests that the claimant was required to undertake.

103. On 20 August, RM learned that the claimant had unfortunately received a diagnosis of breast cancer.

104. Meanwhile on 17 August 2020 Marie Atkins emailed RM, requesting a meeting. In common with the other registries, she felt she had seen little progress since the project had commenced in 2012/13 and she wanted to explore with RM the possibility of '*furloughing'* the Registry because, she said, she was paying for something that was not happening, through no fault of RM's – and the problems had been compounded by the effects of the pandemic. They arranged to meet on 21 August 2020. RM prepared for the discussion, aware that the lack of progress meant that there were difficult decisions to make. All options had to be considered and the receipt of public monies could not be justified.

105. The claimant did not, during her own oral evidence, seek to impugn MA's evidence to this Tribunal. She did not seek to suggest that RM had manipulated her, MA, into withdrawing the East Midlands grant; indeed, the claimant accepted in cross examination, that RM had no control over MA's approach.

106. On 18 August 2020, RM was contacted by Jonathan Maiden, of the North West Registry, asking for a response to an email of 26 June 2020, in which a catch up meeting about the registry had been requested.

107. On 21 August 2020. RM and LH met with MA. Progress with the registries had been slow. Consent from patients to gather registry data had been significantly impacted, and access to what data had been gathered could only be accessed from the university premises, which had been hampered by the arrangements made to allow the claimant to work from home for both medical and personal reasons.

108. MA proposed, and RM agreed, that the registry be suspended from 1 October 2020 for an indeterminate period of time. Given the poor historical progress, the challenges of the pandemic and the lack of any output of value, there was not enough work happening to justify continued use of public grant monies. The expectation was that once colleagues were back to working from campus, and there had been continual receipt of data for a period of 6 months, the East Midlands Network would agree to fund the project further, albeit on a halved budget.

109. The claimant returned to work on from sick leave on 24 August 2020. RM and LH met with the claimant the same day. They informed her that, subject to the

meeting with the North West registry, there was a significant chance that her contract would not be extended beyond 30 September 2020. She was warned that there was a significant chance that the meeting with the North West Network would lead to a similar outcome to that with the East Midlands.

110. On 7 September 2020, the meeting with the North West Diabetes Network took place. No progress was being made with the North West Registry; they confirmed that they wanted to fall in line with the East Midlands Network and suspend their Registry for the foreseeable future.

111. The claimant had also been working on the NIHR portfolio adoption for the East Midlands and North West Registries. That had stalled first due to closure of the NIHR Research and Development Offices, then due to the fact that they were not considering any studies other than those directly linked to Covid.

112. No other sources of funding were available. Prior to the pandemic, RM would have looked to make speculative applications for a new project, or to R&D offices; due to the pandemic, offices were either closed, or grants only being awarded for projects related to Covid research.

113. The claimant had had access to the jobs on the redeployment register since when she was formally placed at risk in 2018. It was not suggested by or on behalf of the claimant by her trade union representative that there were available any roles that were suitable for the claimant.

114. It was in those circumstances that the claimant's notice of redundancy expired on 30 September 2020. As the claimant readily repeated during her oral evidence, the respondent had complied with its own redundancy policy.

Grievance

115. The claimant submitted an email to CE on 25 September 2020. The claimant had no reservation about CE's integrity at the time, and indeed none were expressed during these proceedings, until such time as CE came to give evidence.

116. CE understood that the claimant's notice of termination was shortly to expire, that the claimant was unwell and that she was distressed; she responded immediately, on Friday evening, to ensure that the claimant was not left without a response over the weekend. CE was concerned to ensure that the claimant was not left without recourse and so arrangements were made to allow the claimant to submit a complete grievance after expiry of her contract; it was submitted on 2 October 2020.

117. The claimant made a number of allegations against a number of people, stretching back to 2008. In relation to RM, she contended that he had

orchestrated her redundancy. She alleged that RM had not support her when she was in the office complaining about the smell in the office; that he treated her differently to others; that he had manipulated the funders into withdrawing the grants; in relation to her difficulties with SB, he failed to support her, he required her to use him as a conduit so that every email she sent had to be vetted, that he did not take her suggestion that SB was receiving information that she should not.

118. In November 2020, the claimant received documents in response to her Subject Access Request. The claimant was distressed to read the contents which, she informed the Tribunal, underscored the suspicion she held at the time i.e. that the views expressed by, or conduct of, her colleagues was not as it was being presented to her at the time.

119. The claimant and her trade union representative met with CE on 19 November 2020. The claimant confirmed she wished to be reinstated to the registries so that she could continue with her work and be recognised for all of the hard work she had done. She said she wished to be remunerated for the work she felt she had been doing which was more akin to a Registry Manager role. She wanted to know when her job would be readvertised.

120. The claimant informed CE that she was upset because RM did not inform the funders that a suspension of the funding would lead to her redundancy. She felt she should have been furloughed. She stated that RM had deliberately attempted to manipulate the grant, so as to lead to her redundancy.

121. In relation to SB, she said that although RM genuinely thought the issues relating to SB had been dealt with, they had not in her view; his insistence that there had been no data breach demonstrated a lack of support.

122. When she interviewed RM, he informed CE that he felt that his relationship with the claimant had been adversely affected in 2018 when he declined her request to act as her advocate in a sickness absence management meeting, on the basis that it was inappropriate for him to do so. He had since found it difficult to manage and support the claimant, leading to the arrangement of a daily catch up to reduce the amount of lengthy email correspondence the claimant sent.

123. SK in her interview informed CE that the attendees of the meeting on 3 February 2020 had agreed that requests made by the claimant would be routed through RM and ES. She added that although RM required support in managing the types of difficulties relating to the claimant, she had not had any concerns about a lack of support on his part.

124. CE drew conclusions from the evidence before her. She concluded that methods of deferring termination of the contract, such as bridging loans, or flexi-furlough

were inapplicable in the circumstances. She concluded it unlikely that RM, having applied and re-applied for funding in the past, would deliberately orchestrate a situation where suspension of the registries would have an adverse impact on his own career and the Faculty generally.

125. CE concluded that although the claimant felt wronged by RM and others, and that she was genuinely upset to the point of embittered, *'it seemed [the claimant] felt she was the only person with her version of the truth and she was just never going to budge from that'*.

126. In dismissing the grievance, CE considered that there was no evidence i to suggest that the redundancy was anything other than genuine or that she was 'got at' in some way; rather, she considered that there were emails which showed continual support of her.

Disclosures of Information

127. Disclosure 1. We are satisfied that the claimant made a disclosure of information as set out at Disclosure 1 i.e. that she complained of the smell of sewer gas to RM in 2019. There had been an earlier, identical, occurrence in 2010 when there were significant building investigations, including the need for a temporary office move. That earlier disclosure was not the basis of the claim, as the claimant clarified. Rather, she stated in evidence that in 2019, she informed RM that she was, again, able to smell sewer gas, that upon hearing about it, he did not seem 'too bothered' and he simply advised her to inform the same designated officer that she had dealt with in 2010. Although we were not taken to any contemporaneous evidence that this disclosure occurred, we note that in the following months, she discussed the smell of sewer gas with her Occupational Health practitioner and the health and safety officer in June 2019. Those documents, coupled with RM's inability to recall any specific exchange leads the Tribunal to conclude that the disclosure of information was made.

128. Disclosures 2-5. We note that the claimant had significant difficulties articulating her position in relation to these matters and we did not, generally, find her to be a reliable witness of fact. The lack of clarity in the claimant's allegations, in her evidence and the lack of contemporaneous documentary evidence led the Tribunal to conclude that it could not, on the balance of probability, be satisfied that the disclosures were made as alleged in the list of issues.

The Law

<u>Unfair Dismissal</u>

129. When considering whether a dismissal is fair or unfair, it is for the employer to show that the reason, or principal reason, for the dismissal is a potentially fair reason: section 98(1) ERA 1996. Redundancy is one such reason: section 98(2).

130. A person who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to three sets of circumstances, including the fact that the requirements of the business for employees to carry out work of a particular kind have ceased or diminished, or are expected to cease or diminish: section 139(1) ERA 1996.

131. A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee: Abernethy v Mott Hay and Anderson [1974] IRLR 213.

132. Section 98(4) of The Employment Rights Act 1996 provides:

"98 … (4) Where the employer has fulfilled the requirements of subsection (1) [in this case, redundancy], the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)— (a) 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 (b) shall be determined in accordance with equity and the substantial merits of the case."

133. It has long been established that, in a redundancy situation, reasonable employers should act in accordance with the five principles laid down in Williams v Compair Maxam Ltd [1982] ICR 156 at 162. They are the requirements to give as much warning as possible, for meaningful consultation and for fair selection criteria and procedures, and that the employer will seek to see whether, instead of dismissing an employee, he could offer him alternative employment.

134. Polkey v A E Dayton Services Ltd [1988] 1 ICR 142, a House of Lords decision, in which Lord Bridge said this:

"in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation. If an employer has failed to take the appropriate procedural steps in any particular case, the one question the industrial tribunal is not permitted to ask in applying the test of reasonableness posed by section 57(3) [now section 98(4)] is the hypothetical question whether it would have made any difference to the outcome if the appropriate procedural steps had been taken."

Protected Disclosures

132. Section 47B ERA 1996 provides:

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

135. Section 43A provides that a protected disclosure means a qualifying disclosure as defined by section 43B.

136. A disclosure qualifying for protection is defined at section 43B(1) and 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.

137. The concept of detriment is a very broad one and imports a mixed subjective/objective test. If a reasonable worker would or might take the view that the treatment accorded to them in all the circumstances been to their detriment, and the claimant genuinely does so, that is enough to amount to a detriment: Jesudason v Alder Hay Children's NHS Foundation Trust [2020] EWCA Civ 73.

Automatic Unfair Dismissal

138. Section 103A of the ERA 1996 provides:

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

Discrimination Arising from Disability

139. Section 15 Equality Act 2010 provides:

(1)A person (A) discriminates against a disabled person (B) if—

(a)A treats B unfavourably because of something arising in consequence of B's disability, and

(b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Discussion and Conclusions

Unfair dismissal

140. The claimant in her closing submissions confirmed what the Tribunal had understood from her evidence, namely that the 'ordinary' issues arising in her claim of unfair dismissal do not reflect the case she advances. Nevertheless, since those issues were not formally withdrawn, we address them below, before turning to the crux of claimant's case on unfair dismissal.

141. The claimant's role was to establish the East Midlands and North West Diabetes Registries and to work on their portfolio adoption. She was tasked with taking steps to ensure that the Cancer Registry obtained CAG approval. She was the only person engaged to carry out these tasks.

142. The role the claimant occupied was wholly reliant on external publicly sourced funding. It was subject to periodic renewal. On 6 February 2020, notice of dismissal by reason of redundancy was given because funding beyond 30 September 2020 for the role occupied by the claimant had not been secured. That reason met the definition at s.139 ERA 1996 in that the requirement for employees carrying out work of the particular kind carried out by the claimant was expected to cease.

143. By July 2020, the cancer registry was suspended due to lack of CAG approval and there was no prospect of an external grant being secured to support that project. On 21 August 2020, East Midlands Network had decided to suspend work on its diabetes registry and suspend funding; on 7 September, the North West Network followed suit. That remained the situation on 30 September 2020 when notice expired.

144. At the date of dismissal, the Trust no longer required a person to carry out the tasks for which the claimant was engaged, we accept that the situation again met the statutory definition of redundancy i.e. the respondent's requirements for employees to carry out work of the particular kind carried out by claimant had ceased, or were expected to cease.

145. Thus, at both the date on which notice of dismissal was given to the claimant and when notice expired, the reason for dismissal met the statutory definition of redundancy; no other reason was evident to the Tribunal.

146. We are satisfied on the facts before us that that the suspension of the diabetes and cancer registries was the factual reason that led to the claimant's dismissal.

147. We then turn to the fairness of the dismissal.

148. The nature of the tasks carried out by the claimant were such that it was reasonable to focus on the claimant as the person at risk of redundancy, without developing a pool or even considering the development of a pool. The claimant had been involved in the setting up of the registries since their inception in 2010/2011. It was not suggested that any person had carried out any of the relevant tasks, or that there were other regional diabetes registries worked upon by others. The claimant alone was charged with working on portfolio adoption for two of those registries. She alone was concerned with obtaining approval for the running of the cancer registry; no other person was involved in that project. In short, the tasks associated with her role were carried out exclusively by her and over a prolonged period of time. This was not a situation which involved, on either party's case, actually or potentially, any person other than the claimant.

149. The claimant was given adequate warning. Her last contract was extended on 6 April 2019 until 31 March 2020. On 8 October 2019, she was again placed at risk of redundancy. Doing so allowed for a consultation meeting to take place on 3 December 2019, to explore opportunities for redeployment within the respondent as well as an opportunity to seek alternative employment with another employer, if she wished.

150. Consultation took place on 3 December 2019; we are satisfied that the claimant clearly understood the position the respondent was in, and the consequences for her role and for her personally; we have little doubt that the uncertainty of the funding position was stressful for her.

151. Notice of dismissal was given to the claimant on 6 February 2020. The claimant did not avail herself of the right of appeal. Notice was extended from 6 May 2020 to 30 September 2020. Despite having union representation by then, the claimant did not make any written comments, or seek a further meeting, as she was invited to do, and nor did she seek permission to appeal out of time.

152. It was not suggested at the time to the respondent, or before us, that there was suitable alternative employment that was available and that should have been offered to the claimant.

153. The claimant repeatedly accepted during the hearing that the respondent had complied with its own redundancy policy.

154. For those reasons, when applying the usual factors applicable in a claim for unfair dismissal where dismissal was by reason of redundancy, we are satisfied that the dismissal was fair.

155. Those issues, however, do not reflect the claimant's case, as she seeks to advance it before this Tribunal. She contends that under the surface, all was not as it appeared. We disagree.

156. This was a document heavy case. We were able to identify nothing in its contents that might lead us to question the fairness of the dismissal. On a number of occasions, the Tribunal asked the claimant to identify documents relevant to a criticism she sought to make. When we were taken to those documents, or the Tribunal were able to identify the relevant documents, their contents did not support the proposition advanced.

157. There are many documents that contain correspondence, or refer to events, of which the claimant would have been – quite properly - unaware at the relevant time. Obvious examples include discussions between RM and his clients or funders, and advice from, or meetings with, HR about the claimant, whether or not that advice was solicited. It is the function of HR to advise and support managers; when and how depends on the particular circumstances, including the extent to which an employee's conduct challenges a manager's abilities, but it is always the decision of managers as to whether to follow that advice and if so, how closely. As to whether it was appropriate to conduct, or be advised to conduct, a meeting with the claimant as an informal performance management meeting is in this particular case, a matter of academic debate; it was unconnected to her dismissal.

158. There are matters in relation to which the Tribunal would not necessarily expect to see documentation e.g. a record of the discussion on 18 May 2020 between RM and CE about MA's concerns.

159. Furthermore, we note that there were matters raised by the claimant that were advanced as factual, but which she could not possibly know, such as her conviction that on 18 May 2020 MA directed RM to speak to CE.

160. What was absent from the documents, however, including from the claimant's own witness statement, was mention of a number of serious allegations made, principally against RM, but also against CE.

161. Whilst the claimant sought to suggest in her closing submissions that she had not understood the significance of a list of issues until the end of evidence, she

did not seek to suggest that she had not understood that her witness statement was intended to contain her case. The criticisms were serious, and despite the claimant's ability to express herself in detail in writing, their notable absence from the claimant's witness statement, without adequate explanation, was troubling.

162. For example, absent from her statement were a number of serious allegations, made for the first time either in her own oral evidence, or in cross examination of RM. In summary, they relate to the claimant's contention that RM orchestrated events (including the commencement of the sickness absence procedure and the performance management procedure) and persons (including LM) with a view to terminating the claimant's contract of employment. There was no evidence at all – as distinct from the claimant's own firmly held conviction - to support the suggestion that RM had deliberately delayed applying for funding to jeopardise her role, only to subsequently secure it in 2018 so as to give the impression of saving the situation, whether that was intended to be part of or independent to a subsequent 'dry run' of the redundancy procedure in 2018 with a view to terminating her contract in the following funding year. There was no evidence to suggest that he. Not only, as CE observed, was that highly unlikely since it would be tantamount to professional self-sabotage, there was before the Tribunal no evidence at all to support this belief. Similarly, there was no evidence at all, other than the claimant's bare assertion that RM orchestrated persons, including CE, to rid the Trust of her.

163. On the contrary, the Tribunal was of the view that RM presented in person as he did in correspondence, as someone who is both mild mannered and patient. In response to the numerous allegations put to him by the claimant, he permitted himself to remark only that they were '*absurd'*. He had, during the claimant's employment, spent significant amounts of each day with her to assist her and to support her in her daily tasks, far beyond that one might expect for a person occupying the claimant's role. Even after termination, RM ensured that the claimant was correctly attributed for her input into published work. The Tribunal was taken to hundreds of pieces of correspondence involving RM. We saw nothing in their content that would lead the Tribunal to question his integrity or his good faith towards the claimant. What was evident, as CE also noted, was that the claimant's behaviour was not infrequently challenging yet the documents revealed little more than an occasional tersely worded email.

164. In cross examination, the claimant accepted that the regional diabetes networks decision to suspend their registries and withhold funding was beyond RM's control. Insofar as she sought to suggest otherwise, we accept that RM could not seek to argue with his own funders, practically, politically or credibly, that they should continue to apply their publicly funded resources to a project that had not come to fruition in almost a decade in ordinary circumstances, whilst suffering the immediate yet uncertain consequences for the registries in the immediate aftermath of Covid-19 pandemic.

165. We have concentrated on RM in our comments above, since the claim is one of unfair dismissal but, for the avoidance of doubt, to the extent that the claimant sought to expand her case to impugn the good faith of others, we reject those criticisms also.

166. We recognise that the response to a subject access request is likely to reveal any number of discussion and events that the claimant had not imagined and they are likely to confirm, as the claimant described it, that she did not at the time know the 'full story'; they may well confirm her suspicions that there was more to matters than what was being shared with her at the time. But we do not accept that it follows that what was not shared, ought to have been shared and having been taken through those documents, we are satisfied that what was not shared with the clamant at the time was unremarkable, and there was nothing to suggest that the decision to terminate the claimant's employment was anything other than fair.

167. The claim of unfair dismissal is not well founded.

Protected Disclosures

168. We are not satisfied that the claimant made disclosures of information and therefore the claimant has not satisfied us that she made one or more protected disclosures.

169. Further, and in any event, it was unnecessary to do so, since we were able to make positive findings of fact as to the reason for the detriments. The Tribunal is satisfied that, on the balance of probabilities, the burden of which rests with the respondent, the detriments complained of did were not done on the grounds that the claimant had done a protected act, but rather that its explanations for the acts complained of were wholly attributable to the reasons advanced by the respondent.

Automatic Unfair Dismissal

170. It is for the respondent to show what the reason was for the dismissal. The Tribunal is satisfied that the reason for the dismissal was, as the respondent asserts, namely redundancy for the reasons given above. The claim of automatic unfair dismissal fails.

Whistleblowing Detriment

171. We are satisfied that the reason the claimant was put at risk of redundancy in October 2018 was because the claimant was in fact at risk of redundancy. We are fortified in arriving at this conclusion by the evidence of LH that the Institute

prior to reconfiguration applied the redundancy procedure on an ad hoc basis and because the letter sent out by Brady Scott appears to be based a standard template. Finally, and at the risk of stating the obvious, it was procedurally proper for the respondent to place the claimant at risk in circumstances where the funding for a contract renewal had not been secured, albeit we recognise that destabilising effect that will have had on the claimant, after years of not being placed at risk of redundancy.

172. As the claimant herself recognised when questioned, her absences were sufficient to trigger the sickness absence procedure in April 2019 and they caused the triggering of the procedure. We are, independently, satisfied that the absence review procedure was triggered was wholly because the threshold had been met. We are fortified in this conclusion by the lack of progression from Stage 1 to Stage 2, in circumstances where the threshold for triggering Stage 2 had not been met. It was not materially influenced by any protected disclosures alleged to have been made by the claimant.

173. RM conducted a meeting on 20 May 2020 which amounted to an informal performance management meeting. During the claimant's sickness absence, MA raised concerns about her to RM. It was proper for RM to discuss those matters with his line manager CE. RM spoke to GH about the matter, on CE's recommendation / direction. GH advised RM to conduct the matter as an informal performance management meeting. The whole of the explanation as to why the meeting was conducted as an informal performance management meeting is because that was in accordance with GH's advice. It is no part of the claimant's complaint that she should have been advised that it was informal performance management hearing and so it is not necessary for us to determine that issue, but we observe that it was no part of the claimant's case that GH was motivated by any protected disclosure made by the claimant.

174. The claimant sought a meeting, and agreed at that meeting, which took place on 3 February 2020, to use RM as a conduit through which to send email correspondence to SB. Her motivation for doing so was to resolve communication issues between herself and SB. The agreement was entered into with not only RM but also with SB and ES. There was no evidence before us to suggest that RM demanded that she do so; indeed the evidence before us was that she would voluntarily seek RM's input into her emails and RM was soon after the meeting doubting the wisdom of the arrangement. The motivation on the part of RM was to facilitate communication in a deteriorating relationship and nothing whatsoever to do with any alleged protected disclosure.

175. In May 2020, RM directed the claimant to avoid sending emails to third parties until agreement was reached at the next weekly meeting involving the Trust. He did so because the claimant had approached the Lead Nurse at the NHS Trust about concerns she had about data handling within the Trust by SB. However

well-meaning that approach may have been, it was inappropriate to do this without obtaining authorisation from RM. He did not vet her emails during this time; he direct her to refrain from sending emails to third parties until agreement was reached. This event was wholly unconnected to any alleged protected disclosure.

176. The claims of detriment on the ground of making protected disclosures are not well founded.

Discrimination Arising In Consequence of Disability

177. We are not satisfied that the claimant suffered unfavourable treatment as alleged. There was no evidence before us that the respondent '*brought forward'* her redundancy from December 2020 to September 2020. Rather, on the clear contemporaneous documentation before us, RM and GH discussed the possibility of extending the date of termination from September 2020 for another two months but prioritised having a discussion with the regional diabetes networks. In any event, the failure to extend the contract for a further two months was wholly referable to the decision to suspend the registries from 1 October 2020, and nothing whatsoever to do with the claimant's disability.

178. The claim of disability discrimination is not well founded.

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Employment Judge Jeram

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Date: 25 October 2023