



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Chase  
**Respondent 1:** Northern Housing Consortium Ltd  
**Respondent 2:** Mrs T Harrison

**Heard at:** Newcastle

**On:** 31/8/2022; 1-2/9 2022; 5-6/9 2022

Submissions  
13/2/23

Deliberations  
20,21,22 Feb  
3-4 April 23

**Before:** Employment Judge Pitt  
Mr Adams  
Mrs Maughan

## **Representation**

**Claimant:** In person Assisted by Ms Crammock, Support through Court

**Respondent:** Mr Bronze, of Counsel

# RESERVED JUDGMENT

1. The claimant was not discriminated against because of her association with a disabled person.
2. The claimant was not subjected to direct discrimination on the grounds of her disability.

3. The respondent did not fail in its duty to make reasonable adjustments.
4. The claimant was not subjected to less favourable treatment because of making any Public Interest Disclosures
5. The claimant was not unfairly dismissed.
6. The claimant was not dismissed because of the Public Interest Disclosures she made.
7. Accordingly, all claims are dismissed.

## **REASONS**

1. The claimant, date of birth of 15 May 1986, was employed by the respondent between 14 November 2011 and 25<sup>th</sup> of June 2024. The claimant's claims are for disability discrimination, including discrimination based on her husband's disability of attention deficit disorder, and her disability of Anxiety Disorder. In addition, she claims unfair treatment following the making of a public interest disclosure, and unfair, constructive dismissal because of the respondent's behaviour, both ordinary unfair dismissal and automatically unfair dismissal. The claim was presented to the tribunal on 29<sup>th</sup> November 2021 and the respondents responded following an extension of time on 26<sup>th</sup> January 2022.
2. The claimant represented herself and was supported by Ms F. Crammock from Support Through Court. Her husband, Mr Chase, was present throughout the proceedings. The respondent was represented by Mr Bronze of Counsel.
3. A bundle of 1705 pages was produced, which included emails the claimant relied upon about her disclosures and medical evidence. Some of the documents the claimant had requested to be added were also presented. These mainly consisted of emails between herself and various people at the respondents.
4. The Tribunal read witness statements and heard evidence from the claimant; respondent 2, Tracey Harrison, Chief Executive Officer of respondent 1; Catherine Wilmot, Executive Director (Operations And Finance); Kay Wiseman, HR officer; James Fairless, Head of IT; Jill Duffy, External HR Consultant; Sam Walton, Account Executive; Greg Robinson, Chair Audit And Risk Committee; Paul Smith, Account Executive; Bryan Robson, Executive Director (Policy And Public Affairs);
5. Other people of significance are Joseph Gardiner, Commercial Director; Linda Redshaw, Executive Assistant to respondent; 2 Yvonne Castle, Chair of the Audit and Risk Committee; Paul Fiddaman, Chair of Board And

Management; Nigel Wilson, Board Director, Paul Shevlin, Board Director; Ian Waddle Board Director; Drew Frame, Senior Procurement Specialist; Rachel Wheeler Senior Procurement Specialist; Nicola Benson, Procurement Support Assistant; Sue Clugston Occupational Health Assessor; Simon Almond, Investigator for RSM; Tim Care, Partner Ward Hadaway Solicitors; Ian McCombie, Partner Ward Hadaway Solicitors; David Chase, the claimant's husband.

## **CASE MANAGEMENT**

6. There have been several case management hearings concerning the progress of the case including applications for disclosure. At a case management hearing on 21st February 2022 before Employment Judge Sweeney the claims were identified as follows:
7. Direct Associated Discrimination Section 13 Equality Act 2010 which was limited to the period 5th March 2021 to 24th March 2021 about communications from the respondent to the claimant's husband who has attention deficit disorder.
8. Direct Discrimination, Section 13 Equality Act 2010 about the claimant's disability was identified as being limited to the period 10th March 2021 sent the letter 10 March 2021 secondly the letter of 18 March 2021 to pressurise her into attending a meeting.
9. Failure To Make Reasonable Adjustments, Section 20 and 21 Equality Act 2010, this complaint relates to the requirement to attend the meeting on 14th January 2021 on condition that it would not be recorded, this put the claimant at a substantial disadvantage as a person with a panic disorder it caused her anxiety and induced and had the potential to induce a further panic at on the basis that she was to attend a meeting managed by personal persons respected whom she had made disclosures. The reasonable adjustment was to allow the claimant to record the matter. This was confirmed by the claimant as the sole complaint filed to make reasonable adjustments.
10. Protected Disclosure Complaints section 47B and section 103A Employment Rights Act 1996. In the extensive document supplied with the ET1, the claimant identified 23 public interest disclosures. Having set them out in the claim form it was agreed that the claimant would set out clearly what the detriments were indicating which disclosure led to which detriment. The list of issues, below, was drawn up.
11. Unfair dismissal, automatic, section 103A Employment Rights Act and simple section 98 Employment Rights Act 1996.

## **12. The Issues**

A list of issues was drawn up by the parties as follows.

### Out of Time

- i. Are any of the complaints brought by the claimant out of time (that is did they happen more than three months less a day from the date the claimant commenced proceedings, such time being extended by the ACAS EC process)?
- ii. If so do they form part of a series of continuing events linked by cause such as the time limits should be considered to run from the date of the last act complained of?
- iii. Has a claim been brought timeously within three months less a day (as extended by EC) from the date of the last act complained of or the Effective date of Termination?
- iv. If not, should the Tribunal exercise its discretion to allow the claims to continue?

### Claims

13. A complaint of automatically unfair constructive dismissal in contravention of section 103A Employment Rights Act 1996 and a complaint of ordinary unfair constructive dismissal under section 98 Employment Rights Act 1996:

- i. What were the reasons for the claimant's resignation?
- ii. What was the principal reason for the claimant's resignation?
- iii. Was the resignation in response to a breach of contract?
- iv. Was the breach of contract so serious as to justify the claimant terminating her employment without notice?
- v. Was the resignation timeous as to the breaches relied on?

### Direct Associative Disability Discrimination:- Mr Close

- i. At the commencement of the hearing, the respondent admitted that Mr Close's impairment amounted to a disability but did not admit that he knew or should have known of it. i.e., knowledge of disability is in issue.
- ii. Did the respondents treat the claimant less favourably on the grounds of her association with her husband?

### Direct Disability Discrimination: the claimant

- i. Does the claimant satisfy the legal definition of disability in Section 6 Equality Act 2010?

- ii. What is the physical or mental impairment complained of?
- iii. How long has the claimant suffered from or likely to suffer from that impairment?
- iv. Does it have an adverse effect on the claimant being able to carry out normal day-to-day activities?
- v. Is that adverse effect substantial?
- vi. Did the respondent have actual/or constructive knowledge of these issues at the relevant time?
- vii. Did the respondent treat the claimant less favourably on the grounds of her alleged disability?
- viii. What is the less favourable treatment complained of
- ix. What were the detriments?
- x. If there was any difference in treatment, was it for any other reason than the claimant's alleged disability?

Failure to Make Reasonable Adjustments

- i. Is the claimant disabled within the meaning of section 6 Equality Act 2010
- ii. Was the respondent under a duty to make reasonable adjustments?
- iii. Was there a provision, criteria or practice (PCP) that gave rise to the duty to make reasonable adjustments? If so, what was it?
- iv. Did the respondent take such steps as it was reasonable to avoid the claimant being at a substantial disadvantage in relation to the PCP?
- v. Did the respondent know, or should it have been expected to know that the claimant has a disability and was likely to be at a substantial disadvantage compared with other persons who are not disabled?

Detriment complaint under section 48 Employment Rights Act 1996  
contravention of section 47B ERA

- i. Did the claimant make qualifying disclosures?
- ii. Did the claimant make a disclosure of information? To Whom?

- iii. Did the subject matter of the disclosure relate to one of the six types of relevant failure?
- iv. If so which one?
- v. Did the claimant have a reasonable belief that the disclosure was in the public interest?
- vi. Are the alleged detriments provided within the claimant's Particulars of claim, further and better particulars, witness statement and those identified during proceedings, detriments?
- vii. Are the alleged detriments found to have occurred?
- viii. In so far as they are (a) found to be detriments and (b) found to have occurred was the claimant subjected to the alleged detriments on the ground that she had made a protected disclosure?

## **THE DISCLOSURES**

14. The Disclosures were set out in an extensive Schedule to her ET1 by the claimant. They are set out here in brief in list format. As most of them are accepted by the respondent as qualifying for protection under section 47B Employment Rights Act 1996, they are not discussed further here. The disputed PDs are further explored in the discussion and conclusions.

### **PD 1**

15. On 7<sup>th</sup> February 2020 in an email from the claimant to Mrs Wilmot that credit notes were being raised and sent to Suppliers for commission to be paid where the supply agreement had expired.

### **PD2**

16. On 19 February 2020, the claimant to Mrs Wilmott that account executives should advise Members that continuing arrangement with Supply Partners after the expiry of a contract risks a legal challenge.

### **PD3**

17. On 19<sup>th</sup> February 2020 the claimant in emails to Mr Walton and Mr Gardiner that the requested Terms and Conditions on a framework agreement were not permissible.

### **PD4**

18. On 2nd March 2020 in an email to Ms Harrison, PD3 pressure from Mr Gardiner for an illegal direct award to Tunstall Healthcare

**PD 5**

19. During a meeting on 18<sup>th</sup> March 2020 with Mrs Wilmot, Mrs Surtees and Mr Gardiner the claimant raised issues about taking commission from suppliers in breach of the Framework Agreement with them.

**PD6**

20. On 18<sup>th</sup> March 2020 in an email to Mrs Wilmot, Mr Gardiner and Mrs Surtees and Mr Fairless the claimant raised her previously discussed disclosures at 5.

**PD7**

21. On 18<sup>th</sup> March the claimant informed Mrs Wilmot she was updating the operational risk register. The update read 'Informal Extensions and No contracts Commission collection- non compliance with procurement regulations. Risk of legal challenge, NHC reputational damage financial regulations.'

**PD8**

22. On 20<sup>th</sup> April 2020 in an email to Mrs Wilmot and Mr Gardiner allowing a competitor to attend a procurement round table would be sharing sensitive information.

**PD 9**

23. On 29<sup>th</sup> April 2020 during a meeting with Mrs Harrison and Mrs Wilmot, the claimant informed them that taking of commission from a supplier when the supply agreement had been reworded with a different framework provider.

**PD10**

24. On 6th May 2020 during a meeting with Ms Harrison, Mrs Wilmot and Mrs Wiseman, again raised the continuing to take of commission from supplier Sure.

**PD11**

25. On 14<sup>th</sup> May 2020 in a meeting with Ms Harrison, the respondent had not informed its Members on the risk of continuing arrangement with a Supplier Tunstall after a contract had expired and without following a tender process.

**PD 12**

26. On 8<sup>th</sup> June 2020 during a meeting with Ms Harrison and Mrs Wilmot regarding a failure to comply with the Public Contract Regulations by failing to perform a tender exercise and continuing to receive commission from Tunstall Healthcare.

**PD 13**

27. On 11<sup>th</sup> June the claimant sent an email to Mrs Wilmot raising PD7

**PD14**

28. On 12<sup>th</sup> June during a meeting with Ms Harrison, Mrs Wilmot and Mr Gardiner, the claimant, repeated her PDs 2, 5 and 9.

**PD 15**

29. On 12<sup>th</sup> June 2020 in an email to Ms Harrison and Mrs Wilmot raised PD 10 and provided evidence of the failure referred to.

**PD16**

30. On 28<sup>th</sup> July in a call to Mr Brian Robson, Executive Director of Policy and Public Affairs raised her PDs 2 and 15.

**PD 17**

31. On 15<sup>th</sup> October in an email to Mr Gregg Robinson, Ms Harrison was giving Preferential treatment to Tunstall Healthcare when changing the framework agreement clause for them in an attempt to conceal possible theft/fraud.

**PD 18**

32. On 3<sup>rd</sup> December 2020 during an interview with REM UK External Auditors raised PD1 -17.

**PD19**

33. On 22<sup>nd</sup> December 2020, an email to RSM UK advised them that Tunstall Healthcare was prepared to pay commission to the respondent on previous/voided agreements.



**PD20**

34. On 11<sup>th</sup> January 2021 an email to Mrs Wilmot raised breaches of GDPR by Mrs Jill Duffy External Human Resource Consultant.

**PD 21**

On 19<sup>th</sup> February 2021, an email to Ms Harrison and Mrs Wilmot raised a potential conflict of interest which could affect the external audit or any appeal outcome.

**PD22**

35. Between 21<sup>st</sup> May 2021 – 12<sup>th</sup> October 2021 submitted information to the Serious Fraud Office about breaches of the Procurement regulations since 2011 by the respondent.

**PD 23**

36. On 21<sup>st</sup> and 22<sup>nd</sup> October 2021 in emails to Mr Paul Fiddaman, Nigel Wilson, Paul Shelvin, and Ian Wardle evidence contradicted explanations given to RSM and suggested that persons involved were committing fraud.

**THE DETRIMENTS**

37. The claimant identified a list of 93 detriments arising from the above disclosures. For clarity, they are set out here in list form and discussed in full later in the Judgment.

1. 19<sup>th</sup> February 2020. Mr Walton sent a pressuring email to the claimant.
2. 20<sup>th</sup> February 2020 Ms Harrison failed to address Mr Walton's pressuring behaviour.
3. 20<sup>th</sup> February 2020 Mr Walton deliberately created extra work by asking the member to send all additional enquiries to the claimant.
4. 28<sup>th</sup> February 2020 Mr Gardiner sent a pressuring email to allow procurement activity he was aware would be illegal.
5. 2<sup>nd</sup> March 2020 Ms Wiseman deliberately omitted key details of Mr Walton's pressuring/intimidating behaviour in her HR report.

6. 2<sup>nd</sup> March 2020 Mrs Wilmot requested an email discussion be taken off line.
7. 2<sup>nd</sup> March 2020 the Claimant became upset following a discussion with Ms Wiseman about lack of support and isolation from management.
8. 3<sup>rd</sup> March 2020 Mrs Wilmott made veiled threats of constructive dismissal and restructuring in routine catch up.
9. 4<sup>th</sup> March Mrs Wilmott attempted to intimidate the claimant when sending updated Financial Regs naming her and omitting Mr Gardiner's responsibilities.
10. 5<sup>th</sup> March 2020, in a meeting with Mrs Wilmott and Mr Gardiner
  - i. Given additional workloads, repeat training and conduct weekly surgery with Account executives.
  - ii. Mrs Wilmott did not take action to investigate PD and prioritised the investigation of a manufactured conflict between the claimant and Mr Gardiner
  - iii. Ignored addressing PD1,2 because she, Mrs Wilmott was involved.
  - iv. Mr Gardiner informed the claimant there was a pre-agreed process for Account Executives to escalate the claimant's decisions.
  - v. Mrs Wilmot falsely represented the discussion in her email in an effort to claim complaint of detrimental treatment had been resolved.
11. On 9<sup>th</sup> March 2020 Ms Harrison made unfounded/unjustified accusations that the claimant was stressed and communications with Mr Gardiner were aggressive.
12. 10<sup>th</sup> March 2020 Mrs Wilmot deliberately ignored a request for support responding to Mr Gardiner's pressure. Instructed to call Mr Gardiner.
13. 17<sup>th</sup> March 2020 Ms Harrison deliberately and publicly ignored an award announcement that the claimant had made about her team but showed support for an announcement by Mr Walton.
14. 18<sup>th</sup> March 2020, during a meeting with Mrs Wilmot and Mr Gardiner
  - i. Mr Gardiner falsely accused her of being obstructive.
  - ii. Mrs Wilmot pressured her to keep the commission owed to the respondent unless the supplier noticed.
  - iii. Mrs Wilmot ignored a request for further investigation.
15. 20<sup>th</sup> March 2020 Mr Smith undermined her role and provided procurement advice to Mr Gardiner. Mr Gardiner attempted to intimidate the claimant.

16. 7<sup>th</sup> April 2020 Mr Smith undermined the claimant's role when agreeing to a procurement exercise linked to the claimant's complaint in PD 8.
17. 16<sup>th</sup> April 2020 Mrs Wilmot disregarded the claimant's concerns about anticompetitive behaviour by allowing a competitor to attend private events and then instructed the claimant to conceal this from members.
18. 17<sup>th</sup> April 2020 Mrs Wilmot encouraged the claimant to chase Mr Gardiner for a response to agreed actions, then made unfounded accusations regarding the claimant's conduct when she did this.
19. 20<sup>th</sup> April 2020 Mrs Wilmot took no action on the complaint of Mr Smith undermining her role.
20. 21<sup>st</sup> April 2020 Mrs Wilmot refused to discuss the complaint of being pressured to mislead members.
21. 24<sup>th</sup> April 2020 Mrs Wilmot assisted Mr Gardiner's evasion regarding PD 2 by failing to address his intimidating and abrupt response while requesting further discussion be conducted 'by conversation'. Mrs Wilmot also withheld information confirming possible criminality.
22. 29<sup>th</sup> April 2020 During a meeting Mrs Wilmot and Ms Harrison intimidated, pressured coerced the claimant.
  - i. Not informed by Ms Harrison that she had been invited to a disciplinary meeting or given the accusations against me or to prepare representations.
  - ii. Both ignored, thwarted and dismissed multiple attempts to address PD including claims of fraud.
  - iii. Ms Harrison reprimanded the claimant following complaints from Mr Gardiner, Mr Fairless and Mrs Surtees.
  - iv. Ms Harrison did not provide sufficient information to assist the claimant's understanding of the claims against her or timescales for improvement and possible consequences.
  - v. Ms Harrison shamed the claimant for not having children by reference to Mr Gardiner's schooling responsibilities.
  - vi. Ms Harrison made false accusations and threatened the claimant in feedback on her PDR days earlier.
  - vii. Ms Harrison made several hurtful, demeaning and personally insulting remarks in an aggressive, intimidating and offensive manner.
  - viii. Both ignore complaints of the claimant's anxiety condition due to ongoing PDs not being addressed.
  - ix. Both denied HR rep and support.
  - x. Mrs Wilmot denied the claimant access to updated disciplinary policy and procedures.

- xi. Ms Harrison pressured the claimant to make a complaint to HR and then made a false record of events in her email, deliberately omitting PDs and detrimental treatment.
23. 5<sup>th</sup> May 2020 the claimant was targeted by a 'phishing attack' exercise by Mr Fairless in which he specifically referenced Mr Gardiner and financial data the day before the meeting on 6<sup>th</sup> May 2020 discussing several previous PDs.
24. 6<sup>th</sup> May 2020 Before during and following a meeting with Mrs Wilmott Mr Gardiner, Ms Wiseman, and Ms Harrison discussing PD3,4,5,6,7 the claimant was bullied intimidated pressured and coerced on a number of occasions including
- i. Mrs Wilmott Deliberately omitted key information in a way that could falsely implicate the claimant in failures relating to her PD the evening prior, causing anxiety.
  - ii. Ms Harrison created unnecessary tension between the claimant and JG by implying HW was in attendance due to his actions when it was due to Ms Harrison's
  - iii. Ms Harrison overruled my request for HR support but had instructed Mrs Wiseman to keep a formal record of all contact with the claimant.
  - iv. The claimant was given additional workload by Ms Harrison in response to PD 3 and PD 4. The claimant and her team were given the account executives' duties which were acknowledged as being unpleasant, without consultation and in response to complaints against them.
  - v. Ms Harrison made a number of derogatory and unjustified comments and accusations towards the claimant's team throughout both meetings in response to PD 3
  - vi. Mrs Wilmot, Mr Gardiner and Ms Harrison provided misleading explanation regarding the claimant's PD which are neutral be unfair through forcing the claimant to correct their statements and as a result creating unnecessary conflict.
  - vii. Ms Harrison and Mrs Wilmot repeatedly pressured the claimant to take on an additional workload, which would have resulted in the claimant unknowingly completing actions concealing possible criminality.
  - viii. Mrs Wiseman undermined the claimant's role when she contacted her team to arrange a meeting to

discuss their new duties without allowing the claimant to consult with them, as she had stated was required.

- ix. Ms Harrison pressured the claimant to assist in an “off the record” investigation by evidence to delay her escalation of PD during the external finance audit.

25. 27<sup>th</sup> of May 2020 Mrs Wilmott deliberately pressurising/intimidating behaviour in relation to anxiety caused by making PD and detrimental treatment.

26. 28<sup>th</sup> of May 2020 Mrs Wilmot excluded the claimant from minutes/actions of a finance meeting she attended discussing my PD but later falsely accused the claimant of not having proactively asked to see the details.

27. 1st June 2020 Mrs Wilmot and Mrs Surtees excluded the claimant from emails to a member of her team when requesting assistance investigating PD 567 in an effort to damage my reputation and conceal information from the claimant.

28. 3rd June 2020 Ms Harrison made a demeaning comment that the claimant was “twisting my face” when discussing her response to PD 4 with the claimant and her team.

29. 3rd June 2020 Ms Harrison instructed Mrs Wiseman to send a false claim in her name that the claimant had notified her of work-related stress and to conceal input from Work Nest when requesting she completed a stress risk assessment. The claimant believes in an effort to dismiss her for “any other substantial reason”.

30. 4 June 2020 Ms Harrison took no action regarding Mr Gardiner’s failure to complete the agreed training relating to PD 3 and PD 4. In contrast, the claimant was treated less favourably when reprimanded for not completing her related actions quickly enough despite there being no set deadline for her to do so.

31. 8th June 2020 during and following a meeting with Mrs Wilmot and Ms Harrison discussing PD 5,6,7, the claimant was coerced intimidated and victimised in an effort to dissuade her from escalating her PD including;

- i. Ms Harrison attempted to blame the claimant for failures in her PD, in full knowledge it would be impossible for the claimant to do so, causing significant anxiety.
- ii. Ms Harrison lied to the claimant when providing an explanation that also appeared to implicate the claimant in the wrongdoing of PD 5.
- iii. Ms Harrison and Mrs Wilmot denied the claimant the opportunity to consider information regarding my PD and then pressured the claimant to contact the

members with misleading information which would conceal potential criminality

- iv. Ms Harrison and Mrs Wilmott manipulated and threatened the claimant with responsibility for redundancy and liquidation of the organisation after she asked for legal clarification on my PDS.

32. 8<sup>th</sup> June 2020

Ms Harrison and Mrs Wilmot isolated the claimant from a key aspect of her role (seeking procurement legal advice) and provided a summary which did not appropriately address the PDS in which they were involved.

33. 10<sup>th</sup> June 2020

Ms Harrison pressured and intimidated the claimant to submit her verbal resignation and enter a 'Protected Conversation' to negotiate her exit following a discussion on PD12 which she was involved in.

34. 11<sup>th</sup> June 2020

Mrs Wilmot falsely claimed the claimant had requested a 'Protected Conversation' with Ms Harrison.

35. 12<sup>th</sup> June 2020

During and following, a meeting with Mrs Wilmot, Mr Gardiner and Ms Harrison, discussing PD5, PD6, and PD7 (involving them), the claimant was bullied, intimidated and victimised by Ms Harrison and Mrs Wilmot, including;

- i. Ms Harrison was aggressive, condescending, threatening and abrupt, constantly interrupting the claimant
- ii. And making sarcastic comments
- iii. Ms Harrison asked the claimant to provide evidence by the end of the day in contrast to Mr Gardiner who was given days to confirm if he could provide evidence.
- iv. Ms Harrison made several unjustified and unfounded accusations and allegations against the claimant when she challenged their false statements.
- v. Mrs Wilmot rejected the claimant's request for an investigation into the PDS involving her.
- vi. Ms Harrison threatened the claimant with insubordination when she asked to review the legal summary she had provided regarding PD5a-c.

36. 12<sup>th</sup> June 2020

Ms Harrison pressured and intimidated the claimant again to enter a 'Protected Conversation' to negotiate her exit within hours of making PD14 to her.

37. 12<sup>th</sup> June 2020

Ms Harrison and Mrs Wilmot made false accusations/statements regarding both the claimant's involvement and suspected causes of PD1 after she had provided evidence demonstrating this was not true.

38. 15<sup>th</sup> June 2020

In relation to the claimant's sickness absence with work-related anxiety as a result of detrimental treatment:

- a. Mrs Wilmot falsely recorded the claimant's absence, concealing the cause of the claimant's absence was due to detrimental treatment and continued to pressure the claimant to discuss this.
- b. Ms Harrison pressured the claimant to confirm 'Protected Conversation' arrangements within hours of reporting her absence, showing no concern for the claimant's well-being.

39. 14<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup> July 2020

In relation to a 'welfare meeting' with Mrs Wilmot;

- i. The claimant was not provided with clear information regarding the purpose of the meeting by Mrs Wilmot, causing anxiety.
- ii. Mrs Wilmot, with involvement from Ms Harrison, Mrs Wiseman and Worknest, pressured the claimant to provide her complaints of detrimental treatment in an effort to obtain her evidence.
- iii. Mrs Wilmot attempted to investigate herself in relation to the claimant's detrimental treatment when she had named her as being involved.
- iv. Ms Harrison made unusual and derogatory comments about the claimant regarding 'background drivers' to the claimant's current circumstances as justification for deviating from the Respondent's absence policy.
- v. Mrs Wilmot showed no regard for the claimant's condition, or the further anxiety completing the request to provide evidence and claims against those involved in her detrimental treatment

40. 17<sup>th</sup> July 2020

Mrs Wilmot deliberately excluded the claimant from an online award ceremony, in which my team were finalists for 'National Procurement Team of the Year', causing deep upset.

41.21st July 2020

Mrs Wilmot pressured the claimant to attend an unreasonable 'grievance hearing' and separate 'whistle-blowing investigation meetings' making false claims to justify her requests. Ms Harrison falsely claimed the claimant did not provide details of harassment in April 2020 and that at no time had she or the Respondent acted outside of the law regarding my PD.

42.27<sup>th</sup> July 2020

Ms Harrison pressured the claimant to attend an investigation meeting into her harassment unless I provided details in writing and a 'whistleblowing investigation' for her PDS when the claimant had named her as being involved and she was aware of her claims/objections.

43.28<sup>th</sup> July 2020

Mr Robson did not support the claimant after she disclosed PD16 to him and raised concerns of harassment by Mrs Wilmot and Ms Harrison. He ignored complaints of there being no fair grievance process.

44.6<sup>th</sup> August 2020

Ms Harrison intentionally obstructed the claimant's escalation of PDS involving her to Mr Robinson but advised him that the claimant intended to do so, placing pressure on the claimant whilst absent with anxiety.

45.10<sup>th</sup> September 2020

Mr Robson responded to PD16 by requesting a 'Without Prejudice Conversation' to negotiate the claimant's exit, which included a false account of previous 'Protected Conversation' discussions, provided by Ms Harrison.

46.10<sup>th</sup> September 2020

Mrs Wiseman sent a formal letter pressuring the claimant for a grievance within hours of the claimant being contacted by Mr Robson regarding a 'Without Prejudice Conversation' of which she was aware.

47.1<sup>st</sup> October 2020

Ms Harrison made derogatory comments and altered her previous account of the 'Protected Conversation' requests following the



claimant's statement to Mrs Wiseman that she was in the process of making PDS

48. 1<sup>st</sup> October 2020

Mrs Wiseman, with the involvement of Ms Harrison, Mrs Duffy and Worknest, omitted known causes of the claimant's anxiety, whilst refusing to answer a false claim made about her relating to detrimental treatment. The letter pressured the claimant for a grievance and to make PDS.

49. 8<sup>th</sup> October 2020

Ms Harrison, with the involvement of Mrs Wiseman, instructed Mr Robson to send a further letter containing a deliberately misleading account of previous 'Protected Conversation' requests after the claimant had made PDS to him involving Ms Harrison.

50. 15<sup>th</sup> October 2020

Mr Robinson (Chair of Audit & Risk) deliberately failed to support the claimant against detrimental treatment and discussed the claimant's communications regarding PD17, involving Ms Harrison, with her by text, on the day the claimant disclosed to him.

51. 15<sup>th</sup> October 2020

Mrs Surtees, with the involvement of Worknest, sent the claimant a letter advising the claimant that her occupational sick pay was due to end the day after I contacted Mr Robinson regarding PD17.

52. 21<sup>st</sup> October 2020

Ms Duffy breached GDPR, wrote the claimant's Occupational Health referral form without the claimant's consent and with Ms Harrison's involvement, assumed my 'welfare' support days after making PD17, failed to allow the claimant input to the referral and failed to provide requested reassurance on the purpose of her assessment, causing anxiety.

53. 23<sup>rd</sup> October 2020

Ms Harrison and Mrs Duffy excluded all details provided to date regarding detrimental treatment after making PDS causing my anxiety in my Occupational Health referral form, preventing a suitable assessment taking place. The claimant's assessment was intentionally delayed, initially by Worknest, and then by Ms Harrison and Mrs Duffy who waited for a specific assessor (Dr Clugston) to

conduct the assessment. Dr Clugston intimidated the claimant during it.

54. 23<sup>rd</sup> October 2020

During an extremely difficult Occupational Health Assessment, Dr Clugston encouraged the claimant to leave her role, refused to include detrimental treatment after making PDS as the cause of anxiety in my report and blamed the claimant for her condition.

55. 27<sup>th</sup> October 2020

Following an apparent threat by Mrs Duffy, Dr Clugston permitted her and Ms Harrison to 'sign off' amendments to my Occupational Health report recommendations, incorporating Mrs Duffy's suggestions, and significantly altering the recommendations I had agreed to. Following this pressure, Dr Clugston then supported a breach of a recommended 'no-contact' period whilst also breaching GDPR and my privacy in doing so.

56. 17<sup>th</sup> November 2020

Mr Robinson deliberately failed to support the claimant against detrimental treatment and allowed it to continue whilst disregarding her concern that the requested grievance would prejudice PD17 investigations.

57. 18<sup>th</sup> November 2020

The claimant's request to extend occupational sick pay due to her anxiety being created and worsened by the respondent was rejected the day after discussing PD17 investigations and grievance pressure with Mr Robinson

58. 24<sup>th</sup> November 2020

Mrs Duffy lied to the claimant regarding Ms Harrison receiving her emails. Ms Harrison instructed Mr Fairless to forward all the claimant's emails to her despite being involved in detrimental treatment and PDS. Mrs Duffy also lied to the claimant regarding her not having breached GDPR as Mr Fairless confirmed receipt to her personal address was a breach.

59. 1<sup>st</sup> December 2020

Mrs Duffy, with the involvement of Ms Harrison, sent a pressuring and intimidating email within hours of the claimant being advised she was to attend an investigation meeting into my PDS with the external

auditors. Mrs Duffy also made several false accusations in her email including that the claimant had declined a 'welfare meeting.'

60.15<sup>th</sup> December 2020

Mrs Castle disregarded the claimant's request for support for suitable mediation to avoid contacting ACAS. The claimant was offered inappropriate support to address detrimental treatment days before the outcome of an investigation into my PDS.

61.18<sup>th</sup> December 2020

Ms Harrison intentionally blocked the claimant's emails to the organisation the day she received the outcome of my PDS investigation. The claimant was unable to submit her fit-note, causing anxiety and was also excluded from the online Christmas party that day.

62.21<sup>st</sup> December 2020

Mrs Castle deliberately ignored the claimant's complaints and failed to support the claimant against detrimental treatment, allowing it to continue whilst also disregarding complaints on her PDS investigation outcome.

63.21<sup>st</sup> December 2020

Mrs Duffy lied to the claimant regarding the blocking of her emails as she was aware Mr Fairless had intentionally done so until after the Christmas period at the instruction of Ms Harrison.

64.24<sup>th</sup> December 2020

Mrs Castle unnecessarily repeated the investigation outcome for the claimant's PDs to her and refused to provide the investigation outcome report, despite it affecting the claimant's role, whilst showing no concern for her well-being.

65.4<sup>th</sup> January 2021

Mrs Castle deliberately failed to support the claimant against detrimental treatment within days of the claimant rejecting PD19 outcome and pressured the claimant to interact with Ms Harrison, whilst aware of her, Ms Harrison's involvement in bullying and the PDS.

66.7<sup>th</sup> January 2021

Mrs Duffy pressured the claimant to attend a 'welfare meeting', making false claims in doing so, and within days of the claimant rejecting PD17-19 investigation outcome.

67. 13<sup>th</sup> January 2021

Mrs Wilmot pressured the claimant to attend an unrecorded meeting with Mrs Duffy, in full knowledge of her condition, and that this caused anxiety. I was prescribed sleeping tablets as a result of increased anxiety.

68. 14<sup>th</sup> January 2020

Mrs Wilmot made false claims about the claimant's agreement to the 'welfare meeting' to disguise her refusal to record this as a reasonable adjustment.

69. 15<sup>th</sup> January 2021

Mrs Castle deliberately failed to support the claimant with ongoing detrimental treatment within days of the claimant making PD20 to her. Instructing the claimant to direct 'any future correspondence' to Mrs Wilmot whilst aware of her involvement in bullying.

70. 17<sup>th</sup> January 2021

The Police were sent to the claimant's home to conduct an unnecessary welfare visit at the request of a 'concerned colleague' following her refusal of PD19 investigation outcome days before. The claimant's emails, sent only to Mrs Wilmot and Ms Harrison, were referenced during their visit.

71. 20<sup>th</sup> January 2021

Mrs Wilmot, with the involvement of Ms Harrison, responded to PD20 by pressuring the claimant to attend a 'grievance hearing' against Mrs Duffy, despite Occupational Health recommendations, and pressured the claimant for access to her medical records.

72. 2<sup>nd</sup> February 2021

Ms Harrison deliberately ignored the claimant's request to discuss the PDS investigation outcome to assist my return to work. Mrs Wilmot's response to this included

- i. A false claim the claimant had made a complaint against Mrs Castle in my previous email, causing anxiety.
- ii. Unfairly and unjustly blaming the claimant for creating excessive communications, initiated by the Respondent.

- iii. Pressure for access to the claimant's medical data, ignoring responses to her welfare questionnaire and access conditions.
- iv. Pressure to complete a grievance despite Occupational Health recommendation to do so once the claimant had been signed fit to return to work by my GP.
- v. Notification of a two-week 'no-contact' period whilst reminding the claimant of several upcoming stressful events.
- vi. Rejection of the claimant's request for responses to examples of oppressive behaviour, including the Police Welfare visit.
- vii. A vague threat of formal action regarding the claimant's absence without being clear on the process being followed.

73.19<sup>th</sup> February 2021

Mrs Wilmot failed to inform the claimant the office was permanently closing until it was due to do so and pressured the claimant to collect her belongings within days of being informed.

74.25<sup>th</sup> February 2020

Mrs Redshaw (Executive Assistant to Ms Harrison, Mrs Wilmot and Mr Robson and would be aware of my PDS), treated the claimant with suspicion and uncharacteristic coldness, confirming her reputation had been damaged.

75.26<sup>th</sup> February 2021

- i. Mrs Wilmot responded to PD21 by sending the claimant an extremely hostile and psychologically harmful email including, but not limited to;
- ii. A veiled threat of dismissal if she did not provide my medical records.
- iii. An unjustified and intrusive request to speak directly to the claimant's counsellor.
- iv. The outcome of her investigation regarding Mrs Duffy/PD20, whilst not providing any information regarding the findings or the claimant's right to appeal.
- v. Pressure for a grievance, despite being advised of the claimant's intention to contact ACAS due to unfair internal procedures.

76.3<sup>rd</sup> March 2021

Mrs Wilmot's response to PD21 caused a mental breakdown, this email and over a year of detrimental treatment was described as abusive by a mental health expert.

77.9<sup>th</sup> March 2021

Mrs Wilmot, in full knowledge of the claimant's condition at the time, deliberately used long dense sentences in an email request for her consent to communicate directly with Mr Chase on the claimant's behalf following PD21 email.

78.10<sup>th</sup> March 2021

Mrs Wilmot, with the involvement of Ms Harrison, pressured the claimant to attend a meeting and threatened dismissal when aware that she intended to make further PDS and would not be able to participate due to depression.

79.18<sup>th</sup> March 2021

Mrs Wilmot deliberately ignored Mr Chase's previous comments regarding the claimant's recent depression difficulties and continued to pressure the claimant to attend a meeting with her whilst threatening dismissal

80.24<sup>th</sup> March 2021

The claimant was forced to submit her resignation following continued detrimental treatment and the Respondent(s) failure to address my PDS but serve notice due to anxiety created by Worknest in previous 'Without Prejudice' correspondence.

81.24<sup>th</sup> March 2021

Mrs Wilmot responded to the resignation as a result of detrimental treatment after making PDS, by making a number of false accusations and cancelling the meeting intended to support the claimant's well-being including that:

- i. The claimant had declined a 'medical capability meeting' when she was unaware, she had been invited to attend this.
- ii. The claimant had not agreed to 'an Occupational Health review' when she did so in my welfare questionnaire.
- iii. The claimant was being deceptive regarding her condition when she referred to 'the alleged deterioration of [her] health'.

82.26<sup>th</sup> March 2021

Mrs Wilmot continued to pressure for a grievance within two days of the claimant's resignation in her acceptance response, whilst falsely denying any involvement in the claimant's detrimental treatment for raising PDS against her.

83.26<sup>th</sup> March 2021

Mrs Wilmot deliberately failed to enquire about the claimant's deteriorating health or provide any additional support, when aware she would continue to make PDS, breaching Health and Safety duties during her notice period.

84. 29<sup>th</sup> March 2021

Ms Harrison announced the claimant's resignation within days and appears not to have provided an explanation of my reasons for leaving to colleagues, concealing that it was as a result of detrimental treatment after making PDS.

85. 22<sup>nd</sup> April 2021

Mrs Duffy also made several false, derogatory, hurtful, offensive and insulting comments about the claimant's mental state in her report to the Respondent, using information appearing to be provided by Ms Harrison, in retaliation for the claimant making PDS involving her.

86. 21<sup>st</sup> May 2021

Ms Harrison lied to the claimant, falsely claiming a particular framework regarding PD12 and PD14 was the origin of failures in the claimant's PDS, concealing her involvement. Mrs Wilmot also lied when falsely claiming it was an anomaly receiving commission from a Supplier after the contract had been renewed with a different framework provider regarding PD10a-d and PD15, there are several other confirmed instances of this.

87. 24<sup>th</sup> May 2021

The Respondent's removal of the claimant's details from the website before she left the organisation damaged her reputation. She was still serving her notice and felt unable to state why she had resigned.

88. 7<sup>th</sup> June 2021

The claimant felt forced to resign from her Board position with Age UK due to connection with Ms Harrison as a result of her trustee position there and the nature of the PDS involving her.

89. 15<sup>th</sup> June 2021

Ms Harrison's hosting of a webinar regarding the Respondent's approach to supporting employees' mental health was deliberately spiteful. It was held on the anniversary of the claimant's absence with work-related anxiety, caused by her actions, whilst aware the claimant was continuing to make PDS involving her on 22<sup>nd</sup> June 2021.

90.22<sup>nd</sup> June 2021

Mrs Wilmot's public article claiming to have supported employees with their mental health during the pandemic was deliberately spiteful. It was published days before the claimant left the organisation and whilst aware she was continuing to make PDS involving her.

91.25<sup>th</sup> June 2021

The claimant's Effective Date of Termination was observed without well wishes from Ms Harrison or Mrs Wilmot. Ms Harrison made a demeaning comment on her work days after to Mrs Wiseman regarding her 'stupid formatting' in a document.

92.2<sup>nd</sup> July 2021

The Respondent's unusual wording used in its announcement regarding the claimant's former team's Procurement Team of the Year Award shortlisting appeared to relate to my PDS. Mrs Wilmot and Ms Harrison were aware of the claimant's intent to continue making PDS and oversaw the procurement department.

93.21<sup>st</sup> October 2021

Following making PD23, the claimant was threatened with legal action and to 'cease' making further PDS 'immediately' by Ward Hadaway Solicitors on behalf of Ms Harrison, Mrs Wilmot and the Respondent. Ms Harrison also made a defamatory comment about the claimant to the entire organisation on the same day.

## **The Law**

### **Disability**

38. Disability is defined in section 6 Equality Act 2010

A person (P) has a disability if:-

- (a) P has a physical or mental impairment and
- (b) the impairment has a substantial and long term adverse on P's ability to carry out normal day to day activities.

39. Substantial is defined by Section 212 as 'more than minor or trivial'

40. Schedule 1 of The Act provides further information on the definition of disability. Paragraph 2 deals with Long Term Effects as follows, 'as the effect of an impairment to be considered long term it must have lasted 12 months or is likely to last for at least 12 months or is likely to last for the rest of the life of the person affected. Paragraph 2(2) provides for impairments which



cease to have a substantial adverse effect to be considered to have that effect if it is likely to recur.

41. Paragraph 5 deals with the effect of medical treatment 'An impairment is considered to be treated as having a substantial adverse effect on the person concerned to carry out normal day to day activities if it is likely to recur.
42. Schedule 8 Paragraph 20 removes the duty to make reasonable adjustments of the employer does not know and could not be reasonably expected to know the person is disabled and that the PCP is likely to place them at a substantial disadvantage.
43. Guidance may also be found in the Equality and Human Rights Commission Code of Practice on Employment (2011). A Tribunal must take into account any part of the Code that appears to them relevant to any questions arising in proceedings.
44. Normal day to day activities are defined as, such activities which are carried out by most men and women on a fairly regular and frequent basis. They may include but are not limited to walking, driving, cooking, nourishing and caring for oneself.
45. The Tribunal must therefore ask itself, does the person have an impairment, in the claimant's case she asserts a mental impairment.
  - i. Does the impairment affect the claimant's ability to carry out normal day to day activities?
  - ii. Is the effect on such activities adverse?
  - iii. Is the effect long term?
46. The tribunal must determine if the claimant was disabled at the relevant time, that being the date of the alleged discrimination, in this case between 10th - 18th March 2021 McDougall v Richmond Adult Community College [2008] IRLR 227
47. The word 'Likely' was held in SCA Packaging v Boyle [2009] UKHL IRLR 746 to mean 'could well happen'.
48. J v DLA Piper UK LLP [2010] IRLR 936, [2010] ICR 1052 In this case The EAT considered that there was a legitimate distinction to be drawn between a case where a person suffers from low mood and anxiety due to clinical depression—which would amount to an impairment under the Disability Discrimination Act 1995, and where the same symptoms were a reaction to

an adverse life event, which would not amount to an impairment. The EAT suggested that a Tribunal could deal with this difficult distinction by addressing the impact upon a claimant first. That is to determine if the claimant's ability to carry out day to day activities has been affected on a long term basis. If it does it is possible to draw an inference that the claimant is suffering from an impairment and does not have to deal with the medical distinction

### **Associative Discrimination**

#### **Direct Discrimination**

##### **49. Section 13 Equality Act 2010**

- i. A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others

50. The treatment must be less favourable when compared to others, these are called comparators. This person may be a real person or a hypothetical person constructed by the Tribunal. Section 23(1) Equality Act 2010 sets out comparison by reference to a comparator as follows: 'On a comparison of cases for section 13, 14, and 19 there must be no material difference between the circumstances relating to each case

51. This was clarified in Shamoon v Chief Constable of Royal Ulster Constabulary 2003 ICR 337 HL. The comparator must be in the same position in all material aspects as the victim save only that he or she is not a member of the protected class.

52. The relevant circumstances need not be identical 'what matters is that the circumstances relevant to the treatment are the same or nearly the same for the claimant and the comparator EHRC Employment Code para 3.23. Macdonald v Ministry of Defence; Pearce v Governing Body of Mayfield Secondary School 2003 ICR 937 HL 'all the characteristics of the complainant which are relevant to the way his case was dealt with must be found also in the comparator,

53. For the less favourable treatment to amount to discrimination it must be 'because of a person's disability, Nagarajan v London Regional Transport [1999] IRLR 572 HL if the protected characteristic had a 'significant influence on the outcome, discrimination would be made out.

#### **Discrimination by Association**

54. It is well established that the wording of section 13 is wide enough to cover situations of discrimination by association. However, an employer must have actual or constructive knowledge of the disability.

**Reasonable Adjustments Section 20 and 21 Equality Act 2010**

55. Section 20 imposes a duty on an employer to make a reasonable adjustment. The Duty has three requirements but only the first is relevant to this case.

(3) a requirement where a provision, criterion or practice of A puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled to take such steps as are reasonable to avoid the disadvantage

56. Paragraph 20(1) of Schedule 8 Equality Act 2010 makes it clear that for the duty to arise a person must have knowledge of the disability or could be reasonably expected to know of the disability.

57. Where a person fails to comply with the duty, they discriminate against a disabled person in Section 21 of the Act.

58. The Tribunal must therefore consider what is the practice criterion or policy which the respondent applied to its employees, whether the PCP put the claimant at a substantial disadvantage when compared to an employee who was, but for the disability in the same position in all material facts to the claimant. consideration of comparators; the nature and extent of the disadvantage suffered by the claimant. Environment Agency v Rowan 2008 ICR 218 EAT.

59. Having identified the substantial disadvantage the Tribunal should then go on to consider whether the adjustment proposed is a reasonable one Thompson v Vale of Glamorgan Council EAT 0065/20.

**Public Interest Disclosures**

**Disclosures**

60. Section 43 B Employment Rights Act defines a qualifying disclosure.

In this part a 'qualifying disclosure' means any disclosure of information which in the reasonable belief of the worker making the disclosure, tends to show one or more of the following-

That a criminal offence has been committed is being committed or is likely to be committed

That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

61. Section 47B Employment Rights Act 1996 gives rise to the right that a worker has the right not to be subjected to any detriment by any act or any deliberate

failure to act, by his employer done on the ground that the worker made a protected disclosure.

62. The worker must impart information. That is: - 'sufficient factual content and specificity such as is capable of tending to show one of the matters listed in the subsection.

63. The worker does not have to show that the wrongdoing actually occurred but 'reasonably believes it tends to show that is the case.' Chesterton Global Ltd v Nurmohammed [2017] EWCA Civ 979

64. If the worker honestly believes that the information tends to show wrongdoing and objectively viewed it has sufficient factual detail to be capable of doing so the belief will likely be reasonable'

### **Detriments**

65. There is no statutory definition of what acts or failures may amount to a detriment in the ERA. The test is set out in Jesudason v Alder Hay Children NHS Foundation Trust [2020] EWCA IRLR 374 as if a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment. The test is a mixed one that is to save, it is not just the opinion of the claimant which must be assessed but the Tribunal must consider if a reasonable worker would think of it as a detriment.

### **Causation**

66. The detriment must be done 'on the ground that the worker made a protected disclosure. It is for the employer to establish on the balance of probabilities that the act was not on the grounds of the protected act. Was the disclosure a 'material factor' leading to the detriment Fecitt v NHS Manchester 2011 EWCA Civ 1190

67. The person who allegedly treated the employee less favourably must know that the person had made a disclosure.

68. In considering causation the Tribunal must apply a subjective test and consider the motive in the mind of the person who allegedly made a detriment. The question this tribunal asked itself was; 'Why did the respondent, that is specific employees of the respondent act in the way they did?'

### **Unfair dismissal**

### Constructive Dismissal

69. Section 95 Employment Rights Act 1996, The Act, defines constructive dismissal as follows: (1)(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.'
70. Section 98 The Employment Rights Act 1996 confers on an employee a right not to be unfairly dismissed. In determining whether a dismissal is fair '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.'
71. The case of Western Excavating v Sharp 1978 IRLR 27 held that if the employer is guilty of conduct which is a significant breach of the contract going to the root of the contract or shows it no longer intends to be bound by one of the essential terms of the contract, then the employee is discharged from further performance.
72. This was expanded upon in Malik v The Bank of Credit and Commerce International 1997 ICR 606; the test to be applied is, 'the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between an employer and an employee.'
73. Lewis V Motor World Garages 1996 ICR 157CA established the principle of the last straw. That is to say, where the behaviour of the employer itself may not be a significant breach going to the root of the contract, the cumulative behaviour of the employer may lead to such a breach.
74. London Borough Council of Waltham Forest v Omilijau 2005 IRLR 35 establishes the last straw does not have to be of the same character as previous acts complained of. In addition, this should be looked at objectively.

### Automatically unfair Dismissal

75. Section 103 A Employment Rights Act 1996

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.

76. Kuzel v Roche Products Ltd [2008] IRLR 530. The Tribunal must determine the reason or the principal reason for the dismissal. The employer must show the reason for the dismissal. It is open to the Tribunal to reject both an employer's and an employee's stated reason for a dismissal and determine the true reason for was not advanced by either side.
77. Fecitt v NHS Manchester 2011 EWCA Civ 1190. Unlike a detriment case when considering an automatically unfair dismissal, the Tribunal must ask itself what was the reason, or if more than one reason the principal reason for the dismissal.
78. Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540. It is possible to consider the combined effect of more than one disclosure to determine the question of whether the dismissal was because of the disclosure.

## **The Facts**

### **Background**

79. In making our findings of fact the Tribunal has considered the witness statements and the oral evidence of the witnesses, the ET1, ET3, Further and Better Particulars, an amended response, and the documentary evidence contained in the bundle. In addition, we had the benefit of being able to view videos of meetings the claimant complained about. We have not made findings of fact about all matters but only those that are relevant to the issues in the case. We have applied the civil burden of proof, i.e., it is more likely than not.
80. The respondent is a small company which is a not-for-profit membership organisation. It employs 33 staff. Its members are organisations which provide social housing in the North of England. The respondent's role is to provide a framework complying with the Public Contract Regulations, The Regulations. These Regulations apply to all public bodies in relation to their procurement of goods and services.
81. The respondent provides a framework for its members to use when tendering goods or services. When a supplier is appointed, the respondent is able to collect commission from the suppliers. To this end, the members sign a contract with the respondent for its services. At the time of the events with which we were dealing the claimant was the Procurement Director, she had an excellent knowledge of how the Public Contract Regulations work and it was her role to ensure that the respondent organisation was compliant with those regulations. The second respondent is the Chief Executive Officer of the first respondent she has been in post since June 2019.
82. The claimant was employed by the respondent from the 14<sup>th</sup> of November 2011 most recently as the Head of Procurement reporting to the Deputy Chief Executive. The claimant's role changed as a result of a restructure in 2019 when she was appointed as a director within the organisation and her job title became Procurement Director; responsible to the Executive Director

and responsible for the procurement contracts team. This role appears to have been a more strategic position and as a director, the claimant carried more responsibility for the organisation as a whole.

83. The key tasks in her role included developing and delivering a programme of compliant procurement solutions to jointly meet member needs and the respondents' strategic objectives; working with the commercial director to develop products which support the respondent's entry into new markets in line with strategic objectives through the consortium procurement brand oversee the end-to-end process of procurement management, further competitions and contract management within the team. This included operating a 'buddy system' to promote quality assurance. Developing and managing the respondent's risk exposure in relation to procurement compliance including identifying, recording, managing and mitigating risks around the procurement work stream. She is responsible for the Procurement Regulation Team, PRT.
84. A failure to comply with the regulations may lead a contracting authority, the respondent's client, open to a challenge from an unsuccessful bidder in the civil courts. In addition to any other remedy, the court may impose a financial penalty upon them.
85. There is a dedicated Business Development Team, BDT, the Director is Mr Gardiner. The role of this team was to develop sales and assist members in the process of procurement. They would at times seek assistance from the procurement team as to whether a procedure they wish to adopt was permitted under The Regulations.
86. The claimant had produced a document headed 'Frequently Asked Questions' and delivered training to the BDT to ensure compliance. However, her team was asked on occasions for further advice from BDT. It was clear to the Tribunal that the claimant found this frustrating.
87. The claimant's case starts with historic matters set out in paragraph 11 of her ET1. She stated that since 2015 she had identified multiple shortcomings in the operation and functioning of the respondent. At that time and on more recent occasions in 2018 she had made qualifying disclosures to both Miss Harrison and Mrs Wilmot. The shortcomings, she believed, in some instances, amounted to legal breaches of legal obligations but also criminality.
88. In April 2018 the claimant says that she raised concerns to Mrs Wilmot and Ms Wiseman regarding sporadic pressure placed on her and her team by the BDT and that no action was taken about this.
89. It is clear to the tribunal that the claimant, whilst having an excellent knowledge of the regulations to which she must work, had few people skills. Having made her initial disclosure, she was resolute in pursuing the root cause of the issue and the persons responsible. She was not going to be fobbed off with the explanations given to her during the following months. It may be that this was partly because as a director she may bear some responsibility whilst having done nothing wrong.
90. The claimant made repeated demands for a full investigation into her disclosures and wanted somebody to be held accountable for the issues

that had arisen. The tribunal found her to be inflexible in her attitude towards her colleagues; she was unable to move forward having brought the matter to the attention of the respondent's senior officers. She was unable to see that in some ways her behaviour and attitude towards other members of staff and colleagues was at times confrontational and ill-advised. She had little self-awareness about her own style but was quick to criticise those around her.

91. A complaint about the letter in March 2021 from Mr Walton, set out below is a clear example of the manner in which the claimant has conducted this litigation. She sets out her case in her claim form, adds further information in her Schedules and witness statement and then adds even more in her submissions. This has made this a very difficult case for this Tribunal, and I would venture any Tribunal to dissect the wheat from the chaff and determine what is the real problem.
92. The initial disclosure was that the respondent had possibly received commission when its member organisations were out of contract; these were known as 'informal extensions'. The claimant was concerned that this was or may amount to fraud. She became aware of it during a conversation with Yvonne Surtees, the Finance Officer. Because of the previous incidents in 2018, the claimant believed that this was an ongoing problem which had not been addressed. On the evidence before us such a situation, of claiming commission when the member was not under contract to the respondent could have serious repercussions for the respondent and its Directors.
93. The claimant expressed the opinion that a system of automated commission requests had been developed without her input and this had been done to prevent her discovery of such issues as this. It appears that the respondent, rather than attempting to allocate blame or resolve or get to the bottom of the matter, wished to ensure that any monies it was not entitled to be repaid and to ensure that all members were in contract, finally to ensure it did not happen again. The claimant took a different view and considered that resolving how it had occurred in the first place and if necessary, apportioning blame was a priority. It appeared to the Tribunal that the claimant was anxious to ensure she did not bear responsibility, clearly pointing the finger at others such as Ms Harrison and Mr Gardiner.
94. Also in the background, there was tension between the claimant's team and the BDT. Mr Gardiner's team was directly responsible for sales, without their work the respondent would derive no income. The claimant's team was there to assist the BDT to ensure the respondent worked within The Regulations. However, BDT frequently complained that the claimant was inflexible in her approach and when attempts were made to resolve any issues the claimant quickly became offended and accused others of using threatening styles being abrupt and harassing his interaction led to one of the claimant's disclosures about the bullying behaviour of her colleagues. It is this clash of priorities which led to numerous complaints and further PD from the claimant, and ultimately her resignation.
95. The claimant's case is that she made a total of 21 disclosures as a result of those disclosures she says she was subjected to 93 separate detriments some of which occurred after her dismissal the last detriment being 21



October 2021 which appears to be what resulted in the claimant making her claim. Many of the detriments are across a period of time and are broken down by the claimant into individual facets, which means that her claims far exceed the 93 stated.

96. It is clear to the Tribunal that in presenting her claim the claimant has gone through the events and material she has collated with a fine tooth comb to find in her perception areas where she considers she has been poorly treated. It is this Tribunal's opinion that at the time of the events, many of the matters about which the claimant complains were not alarming or intimidating at the time rather she has constructed her case around them.

### **The Disclosures and Detriments**

97. The claimant made her first disclosure on 7th February 2020. On that day she was asked by the Finance Officer Mrs Surtees to sign off supplier commission invoices. This was usually Mr Gardiner's role, but he was not present in the office. Whilst checking the invoice the claimant noted two invoices that suppliers were disputing, the contract having expired. Having raised this with Mrs Surtees and accepted her explanation the claimant signed the invoices. During the conversation, Mrs Surtees raised other matters with the claimant about commission payments paid from suppliers in similar circumstances.
98. At the time the respondent was developing an automated system dealing with invoices which would contain information about contracts including the expiry dates. The claimant was not involved in this project. The claimant asserts that it is her belief that she was deliberately excluded from the project to 'prevent the claimant discovery of this (informal extensions) or similar issues' The Tribunal rejects such an assertion. The claimant acknowledges she has limited financial experience and has not proffered a reason why she should be included in such a programme.
99. As a result of the conversation the claimant emailed Mrs Wilmot as follows, 'I don't know the full details as it's not the claimant area, but Yvonne sent me an email about mand. I've provided advice on this issue before and assumed this has been followed up. Happy to discuss this to ensure this is resolved. Mrs Wilmot replied 'It is not something I'm aware of Can you give me some detail and I can check with Yvonne next week.' The Claimant responded, 'I'm aware that credit notes have had to be issued for invoices on expired contracts recently, I thought we were ensuring we didn't collect commission in error on expired contracts.
100. A couple of days later the claimant's assistance was requested again from Ms Surtees concerning another expired contract. Having provided advice the claimant asked whether there were any other expired contracts upon which commission was being paid. The claimant was concerned that there was fraud being perpetrated and advised Mrs Surtees to leave the matter with Ms Wilmot and the claimant and Mr Gardiner, to assess its severity.
101. Although the claimant believed that Ms Wilmot was investigating at that time there is nothing in the email correspondence which suggests that such an investigation was going to be undertaken. However, the claimant

printed out emails to discuss with the senior management team to aid in any investigation.

102. Following this, the claimant was approached by Ms Surtees again who confided that she was feeling better because she was not at fault. The claimant replied that this was not the case and had emails showing that Mr Gardner had instructed her not to take further commission. The claimant comments this is the last time Ms Surtees spoke to her about this matter. This is unsurprising and is evidence of the claimant's direct and sometimes confrontational approach to her colleagues.
103. On 14th February 2020, Ms Wilmot emailed the claimant, Mr Gardiner and Ms Surtees. The email was headed commission collection form/in formal extensions and expired contracts. It starts, 'I know there's been some confusion again around commission collection this time around both expired contracts and informal extensions.' It is clear that Ms Wilmot is taking the matter seriously as she states at one point, 'I'm generally nervous about some of these issues. 'She goes on, 'Can you come armed with things we need to clarify between us and further work we need to do? 'She asks generally the organisation needs to ensure and agree on the process for expired contracts and that priority one is always to try to renew the contract.
104. The claimant states she is optimistic because it appears an investigation had been instigated in line with the handbook and whistleblowing policy. The tribunal does not interpret the emails in the way in which the claimant does. The emails whilst inviting members of the senior management to look at the processes and identify issues including how many expired contracts there are there is nothing in to suggest a formal investigation was going to be undertaken.
105. The claimant saw the procurement regulations as black or white. That is to say, you could either do something or you could not. There were no workarounds, there was no way to bend the rules. This led to a conflict between the teams in their two roles.
106. In the context of this came the first instance on 19<sup>th</sup> February 2020 at this time Mr Walton from the BDT, emailed a member of the PRT. The team member was not available, and the claimant responded to Mr Walton. The claimant states that these requests were not unusual and occurred once every several months. Her concern about the request was that it was rubberstamping the avoidance of a required EU-wide tender.
107. The claimant advised Mr Walton that such a process was not permissible and refused to endorse it. She did not give a reason for her refusal which led to Mr Walton contacting her again. The email from him asks the simple question "Is that because they want to remit themselves or because they want to use the NHS terms?". He goes on to put his view about the situation as 'there are risks but they sit within the contracting authority, and as the respondent is trying to grow NHS customers it's counter-productive.' The claimant states that this email is combative. The email appears a perfectly acceptable piece of correspondence between colleagues who are approaching a problem from different angles, there is nothing within it which appears to be, combative. The claimant replies to the email also copying Mr Gardiner in. She explains her rationale and the

relevant regulations and asks what was counter-productive. This PD number 3.

108. Mr Walton referred the matter to Ms Harrison who requested to speak to the claimant. During this conversation, the claimant was of the view that Ms Harrison was being defensive in relation to Mr Walton's actions. She says that she formed this view because Ms Harrison said he, Mr Walton, was not trying to undermine the claimant.
109. Ms Harrison emailed Mr Walton following the conversation and advised him that in effect the claimant was correct. In particular, she is of the view that using the customer's own terms and conditions puts them and the respondent at risk, the tribunal takes this to mean in relation to the procurement regulations. She concludes the email with the word sorry and an unsmiling emoji. It seems that whilst this is a supportive claimant the claimant takes issue with the phrase 'I admire your tenacity drive to get the sale.' In the tribunal, this was a senior manager delivering bad news to a junior employee but trying to do it in an empathetic manner. The tribunal cannot see that this undermines the claimant or otherwise is unfavourable towards her.
110. Following this Mr Walton advises the member that their request is not permissible and that if they have any further queries they should raise it directly with the claimant. He wrote, "If the framework is all you are in need of further clarification, please contact Louise Chase our procurement director who will be able to assist." Included the claimant's professional contact details at the end of the email.
111. This seems a sensible suggestion to the tribunal, in no way is Mr Walton deliberately bypassing his responsibilities nor did the tribunal conclude it was retaliatory. It is a business email trying to keep a customer on side whilst delivering the news that they would have to use the respondent's terms and conditions.
112. On 24<sup>th</sup> February 2020, the claimant left a voicemail for Mr Walton to discuss the issue. She used the phrase 'regarding his misconduct,' The claimant then confronted Mr Walton about this. The tribunal did not see that Mr Walton had acted in a way which would amount to any kind of misconduct, and if he had it was a matter that should have been directed to Mr Gardiner as his line manager and not dealt with by the claimant in such a confrontational manner. It is usually better to preface such a suggestion with the phrase, possible misconduct,
113. Mr Walton refers the tribunal to the notes that were compiled by Ms Wiseman about this conversation, he does not disagree with any of the comments therein. It appears to have been a very short conversation, and there is no reference in the note that Mr Walton had acted in a way which amounted to misconduct. The claimant simply says that Mr Walton should have spoken to her before using her name in an email. Mr Walton said he disagreed with the claimant but understood what she said.
114. It is unclear why the claimant felt it necessary to inform HR about this conversation but she contacted Ms Wiseman and asked her to make a note on the file of the conversation this Ms Wiseman did. Mrs Wiseman then sent

a copy of the note to the claimant who disagreed with its contents and returned it with a number of amendments. It is unclear why the claimant wished to amend it, she does not assert in any amendments that Mr Walton's behaviour was unacceptable in any way in particular in a way that would amount to misconduct.

115. It is of note, in any event, that the claimant did not find it necessary even after this to raise the matter with Mr Gardiner or take it further with Ms Harrison.
116. A further issue arose between the teams later in February 2020. Mr Walton had approached PCT member, Mr Frame, to prepare a contract for him. The team member was concerned and sought advice from the claimant. That advice was given to Mr Walton who responded on 26<sup>th</sup> February copying the claimant, Ms Wilmot and Mr Gardiner, into the email. The email is addressed to the procurement team member Mr Drew and sets out why Mr Walton considers it may be permissible. He directly comments on Ms Wilmot and Mr Gardner's problem because further contracts might be issued, and forecasts might have to be revised if a competitor's framework offers this customer the exact solution they want. The claimant criticises this email describing it as pressurising Mr frame. this is not an interpretation that this tribunal puts upon it having viewed the email this is not an interpretation that this tribunal puts upon it. it is simply an attempt by Mr Walton to find a way around the regulations. Whilst the claimant might consider this inappropriate, Mr Walton is trying to ensure that he carries out his role as a salesman and find ways to assist customers in their requests.
117. In relation to the same issue Mr Gardiner sent an email to Mr Drew, and the claimant was copied in. Mr Frame told the claimant he was uncomfortable with Mr Gardiner's request as he felt that Mr Gardiner was trying to guilt him into allowing the request. The claimant replied on 2<sup>nd</sup> March 2020 at 9:11 a.m. As well as answering the questions she makes comments, akin to an aside, such as not for the first time, are you insinuating with regards to the business staying afloat that the claimant team's adherence to the regulations is putting the business at risk? Or do you present this information here to pressure is the illegal direct award? She suggests that solicitors can always be contacted for legal clarification She concludes the email thus, "The frequency and tone of these there are clearly wider issues to be discussed here. Can you please respond to the claimant's queries?"
118. On 2<sup>nd</sup> March 2020, Mr Gardiner sent an email to Mrs Wilmot saying he is not going to leave this for a bit as he doesn't want to start any argument. He was trying to engage and discuss his genuine concern about keeping people in jobs buddy sure that Louise's responses were unacceptable. Replied to Mr Gardner At 11:47, Ms Wilmot sent an email to the claimant Mr Gardiner copied in Mr Walton and Mr Frame. She asked that the conversation be taken offline please. She comments that there is a catch up about commissions on Thursday which might be more productive.
119. Having reviewed this series of emails there is clearly tension between the teams, which at some point the management team will have to get to grips with. The email from Miss Wilmot is an attempt to ensure that

the matter does not escalate further and to try and bring the two employees together to resolve their differences and nothing more.

120. It is noteworthy that Mr Gardiner responds to this stating that he tried to ring before the proposed Thursday meeting to defuse the situation. Whereas the claimant emails Ms Wiseman asking her to note this to please and then she sends an email to Ms Harrison as well. This shows the contrasting styles of the two, Mr Gardiner is accommodating whilst the claimant immediately becomes guarded and insistent.
121. This email at 14:45 is (PD for 4) and reads as follows: "Please see attached. I've asked to discuss this with Catherine in the claimant one-to-one tomorrow but after the direct award situation you said you wished I had come to you with the claimant concerns earlier, so I wanted to make you aware of this situation that urgency in the claimant's opinion this is even more concerning shows a continuing pattern behaviour." Attached to this email were the emails between Mr. Frame Mr Walton Mr Gardiner and the claimant
122. Whilst the email clearly refers to possible attempts to circumvent procurement regulations, the respondent is more concerned about the tone claimant Ms Harrison emails Ms Wilmot expressing concern using the phrase "escalating rapidly". She expresses the suspicion that the claimant is on the verge of quitting commenting she is vexatious.
123. Later that same day, Ms Wiseman approached the claimant to ask if she was okay. Ms Wiseman did this because of the claimant's earlier email. They had a discussion during which the claimant indicated she felt unsupported by the management team about the disclosure. Unfortunately, this occurred in public, this was a genuine attempt by Ms Wiseman to discuss the claimant's welfare. Ms Wiseman was not to know how the claimant would react to this approach and if the claimant had wanted to have a more formal discussion she was at liberty to ask to take it into the private office
124. Ms Wilmot also spoke to the claimant expressing concern for the claimant because she saw the claimant upset earlier in the day and this would seem to be an entirely appropriate response from a manager.
125. On 4<sup>th</sup> March 2020, the claimant approached and sought an update from Mrs Wilmot concerning discussions with Ms Harrison and Ms Wiseman, following their one-to-one meeting. Following the discussion, Ms Wiseman sent a copy of the respondent's financial regulations to some employee's document that had been reviewed by the capital audit and risk committee and is dated January 2020. She invites the team to refresh their memory of the document.
126. The document sets out the responsibilities of various sections of the respondent company. For example, it sets out the responsibilities of several people including the Chief Executive and also makes specific reference to the finance team. There is a section headed responsibilities of all staff. It also includes auditing requirements, monitoring and reviewing accounting

policies and accounting records and general information regarding banking arrangements, cash receipts and petty cash.

127. The responsibilities of the board include ultimately is to oversee the Consortium's accounting and financial procedures. The main responsibilities include appointing the Chief Executive, to approve the business strategy, approving the audited financial statements, and monitoring the financial performance of the respondent.
128. Under responsibilities of all staff, it reads "It is the responsibility of all staff to ensure that any financial arrangement and transaction they are involved in is in accordance with the policy, is legal, is correctly documented and is clearly capable of being fully checked and audited and in accordance with these financial regulations."
129. Under the heading Combine Procurement For Consortium Members, section 8. 2 It is made clear that all such activity must be carried out in compliance with the PCR. It goes on to define competitive tender exercise, a further competition exercise and a direct award. It concludes that procurement processes are the responsibility of the procurement director.
130. Having reviewed the document alongside the claimant's job description the Tribunal noted that the claimant was, as the Procurement Director, responsible for procurement, The job description for Director of Procurement describes her job in part as to 'identify opportunities and deliver procurement strategy which supports NHCs strategic vision, growth aspirations, income requirements and fulfil members needs' and 'ensure that the Procurement and Contracts Team comply at all times with NHCs agreed procedures for framework development, call off and contract monitoring. Her key roles and tasks amongst others were to 'oversee the end to end process of procurement management, further competitions and contract management within the team. This will include operating a 'buddy system to promote quality assurance.'
131. This in itself suggests that the claimant was responsible as were others to 'ensure that any financial arrangement and transaction they are involved in is in accordance with the policy, is legal, is correctly documented and is clearly capable being fully checked and audited and in accordance with these financial regulations.'
132. However, the Tribunal also noted that in the email Mrs Wilmot states there have been no major changes other than refreshing/updating current names and roles and personnel. The Tribunal understood this to mean that the fact that the claimant's name was not a change in the Policy. And does not raise it further with her line manager or the CEO.
133. On 5th March 2020, there was a meeting which included Ms Wilmot, Mr Gardiner and the claimant. This had been arranged to discuss the claimant's disclosures regarding the commission. However, it was agreed on 3rd March this meeting would be changed to deal with the breakdown of the relationship between BDT and the claimant's team. The tribunal has

seen notes produced by the claimant. This meeting was designed to ensure that the two teams work together and move forward. During it, a number of actions were noted including, according to the claimant's notes, an agreement that where PCR was asked to give their views they should make it clear to the BDT what is legal and what is a preference and in doing that they should set out the relevant regulations where it is a legal requirement. There was a discussion as to whether BDT requires training the claimant advised this has been done before and in any event, her concern was that any trend be ignored and her team would be pressured in the same way. Mrs Wilmot did suggest and it appears to be agreed that a weekly search surgery would be beneficial.

134. During the course of this meeting, the issue of people's jobs was raised. This was in the context of the BDT being the arm of the organisation which was to generate money as against the PCR team which was to ensure that the respondent was not at risk of action as a result of a breach and nothing more.
135. Having reviewed the notes and an email from Ms Wilmot to the claimant and Mr Gardiner she sets out what was agreed. There were seven actions or suggested courses of action, this included the conclusion that recent events and escalation from Mr Walton were perhaps due to Mr Gardiner being absent due to ill-health read. He was to be the first port of call in the future on any issues. There were suggestions on how the procurement team countries could structure its emails including where suggested courses of action are illegal and where there was a legal workaround. Where there is a complex issue, this should not be discussed via email and escalating email chains. surgery time option for PCR including planned to answer complex cases. This was suggested as it will reduce the potential for misunderstanding further and it was agreed that there be a team briefing to cover various topics. Mr Gardiner was to discuss matters with his team including talking to suppliers about risk implications for new businesses. Finally, Ms Wilmot's role would be to produce management accounts every three or four weeks and this will allow an opportunity to go through issues about commission collection and highlight risks and this will not also offer to be needed to support individuals or contentious situations.
136. About this latter suggestion is clear to the tribunal that Ms Wilmot has already carried out this having done this in relation to the first email from Mr Walton. Mrs Wilmot in February 2020 and appears a sensible approach for a manager to take.
137. On 10th March at 8:30 am, the claimant replied to the email in the main agreeing with it and she suggested that she develop a template with required information to speed processes. She also said she was happy to carry out frequently asked questions and training although that's already been done. However, she says she does have lingering concerns mindset and conduct of the BDT and made reference to one particular issue involving Mr Gardiner

138. In this email, the claimant does not refer to feeling threatened about constructive dismissal or that any discussions of restructuring were aimed at her. Having reviewed the notes of the follow-up emails the tribunal does not accept the claimant's interpretation of this email of this meeting there was a genuine discussion between senior members of the management team to find a way forward for the two teams to work together. If Mr Gardiner's team was not performing to the best of its ability the respondent's income would drop and that might have consequences for people working. The tribunal did not consider that these were in any way threats to the claimant at all.
139. On 9<sup>th</sup> March 2020, there is a note of the meeting made by the claimant with Ms Harrison who was not shown it at the time to confirm its accuracy. The complaint here is that Ms Harrison made unfounded/unjustified accusations that the claimant was stressed and that her communications with Mr Gardiner were aggressive. the Tribunal concluded that this was an observation from a manager to a member of their team to show empathy towards the team member. The Tribunal cannot see how this would amount to a detriment.
140. Turning to the issue of being aggressive. The Tribunal has had an opportunity to consider many of the emails from the claimant and Mr Gardiner and his team. They are at the least brusque and may be interpreted as aggressive. The Tribunal concluded that it was appropriate for Ms Harrison to raise with the claimant her manner of communication as there was a real possibility of a total breakdown in communication between the teams.
141. On 9 March 2020 1616, Mr Walton sought advice on a procurement issue from Ms Wilmot concerning 'Places for People'. On 10<sup>th</sup> March at 13:51, Mr Gardiner emailed the claimant in relation to the Places for People contract which was due to expire. This is the same contract referred to by Mr Walton the previous day that this is the same to simply Mr Walton had Chris raised the previous day.
142. The following day at 12:47 Mr Gardiner emailed the claimant to ask if there 'was any progress on the issue as Sam needs to get back to the client'. Ms Wilmot replied by asking the claimant to call Mr Gardiner when she gets a chance so he can go back to Sam. On 12 March claimant again contacted Ms Wilmot asking for advice on the tone she should use in her email. The claimant emails Ms Wilmot stating she is going into a meeting, but could she advise her on how to respond given previous concerns about conversations?
143. The claimant at the time was travelling in London, but it appears that information was not known to Mr Gardiner, nor does it seem she had used her automatic reply setting on her email. In light of the lack of a response on the following day, being unaware that the claimant was not at her desk and perhaps understandably, Mr Gardiner sent a further email asking if there had been progress as his team needed to respond to the client This not exerting pressure it is simply asking for a response of some kind.



144. The claimant emails Mrs Wilmot and asks 'Could you advise how I should respond given recent concerns/conversation please'. She goes on to say that this advice has previously been given and there is a template available for response by asking the claimant to call Mr Gardiner to discuss the matter.
145. The Tribunal concluded that this was a facetious or childish email to send. Although Mrs Wilmot did proffer a suggestion to the claimant as already commented upon elsewhere the use of emails to communicate appeared to be causing problems. The Tribunal concluded that the suggestion to call Mr Gardiner was an appropriate response to a rather fatuous question from a professional of the claimant's experience. It was a suggestion that the claimant act in a professional manner calling upon her expertise to resolve the question.
146. On 17th March 2020, the claimant's team was shortlisted for a national procurement award and the claimant made a general announcement within the organisation. Shortly after Mr Gardiner announced that Mr Walton had secured a contract in a post junior claimant. On the same day, Ms Harrison during a daily video update to employees Ms Harrison congratulated Mr Walton for his achievement. The claimant states that no reference to her announcement and whilst Mr Harrison says she cannot be sure but would have thought she would include this in such an update. The tribunal concluded that it is likely that Mrs Harrison did make such a comment, however, if she did not it would be inadvertent and not a deliberate omission.
147. A further meeting was held on 18th March 2020. Present at the meeting were the claimant, Mr Gardiner Ms Surtees and Mr Fairless. The meeting was to discuss the ongoing issues concerning commission. It is noteworthy that in the contemporaneous documentation, the claimant uses the words outstanding commission or similar, whereas in her witness statement and pleadings she refers to meetings to discuss her protected disclosures. The tribunal formed the view that this gives a false view of the nature of the meeting. Although there is discussion concerning matters arising from disclosures by the claimant the meeting was not directly to discuss the disclosures themselves. That is to say, they were not to look at investigating any of the issues arising. They were to look at what actions were being taken as a result.
148. During the meeting, several issues were discussed, some of which were related to specific customers. As a result of the discussions, actions were established, and different people were tasked with action on them. During the meeting, the claimant also had issues of areas of concern, including the issue of informal extensions. This is protected disclosure 5. It was agreed that Mr Gardiner would carry out work with his team members on this.
149. The claimant complains that during the meeting Mr Gardiner lied to her when he claimed to have taken action to resolve earlier disclosures made by her. The tribunal does not accept that at any time Mr Gardner

deliberately lied or misled the claimant in this meeting or any other meeting. As previously noted, the historic issues raised by the claimant relate to some two years previously. It is quite probable that people have misremembered or simply forgotten what they had done about certain matters. The tribunal does not accept the claimant's assertion that she was in any way pressured by Mrs Wilmot to keep quiet about the commission unless any client raised it as an issue.

150. The claimant emailed a summary of the meeting to everyone concerned. In relation to one particular contract, Sure Start the claimant posed the question "Whilst generally I appreciate the commission information relies on trust in what the supplier is providing, as this situation was known and continued should the root cause of this not be investigated further?"
151. An investigation into the concerns of the claimant was not commenced at this time. The tribunal accepts that there were two factors for this, The first Ms Harrison was trying to ensure that it didn't happen again and that commissions were repaid. Secondly, the country was on the verge of a major pandemic and was about to go to its first-ever lockdown situation. Both of these have an impact on many of the events in this case. And whilst Ms Wilmot did not acknowledge the request for investigation, it was a matter for the CEO and the Board to decide if an investigation should take place.
152. As a result of that email, Mr Gardiner felt it necessary to email Ms Wilmot with his concerns about the claimant's behaviour. Specifically, he says "I just feel like Louise is trying to constantly single out and antagonise me." And later on, "I feel for some reason Louise is digging her using and becoming even more obstructive as a backlash what has happened recently." Having reviewed the email referred to above and following our observations of the claimant, the tribunal can understand why Mr Gardiner had such concerns. In her response, Mrs Wilmot is supportive of Mr Gardiner saying that they need to get back on an even keel workwise.
153. Mr Gardiner replied to the claimant indicating that he would struggle to complete the actions attributed to him by the end of the week and he would complete his actions as soon as possible.
154. On the same day, the claimant updated the respondent's Operational Risk Register as follows: 'Informal Extension and No Contracts Commission- noncompliance with procurement regulations. Risk of challenge and NHC reputational damage. She emailed Ms Wilmot to advise her of this update. This is PD 7.
155. Whilst an update is within the claimant's job role, the tribunal is surprised to see that it took her until 18 March 2020 to make such an update. Having discovered the matter in February and raised it with the senior management team and had at least one meeting about it the tribunal asked itself why the claimant decided to update the register at this time. It appears to this tribunal that the claimant was trying to ensure that she was not implicated and bore no culpability for any fraud or other wrongdoing

that may be found. To this end, and whilst we note the respondents accept that this is a protected disclosure, the tribunal queries the claimant's motive behind this action.

156. On 20<sup>th</sup> March 2020, Mr Walton approached the procurement team for further advice. In an email to a member of the team Mr Walton refers to Paul Smith, a member of the BDT had suggested there was a workaround for this issue. The claimant requested further information from Mr Walton. During an exchange of emails, Mr Walton writes, “really appreciate your help with this. Just desperate to get a lift over the line after the North Tyneside debacle. He concludes with a :-) emoji. Whilst the claimant says this, she does not take any action upon it at this time because of the lack of support from managers
157. On 26 March 2020, the country went into lockdown. This is of relevance in this matter for the following reason, the Board and the CEO Ms Harrison, had additional matters to deal with as a result. It may well be, and the Tribunal concluded that as a result, many matters which should have been dealt with more promptly were not.
158. On 30<sup>th</sup> March 2020, the claimant was copied into a series of emails sent by Mr Frame to Tunstall, one of the suppliers the respondent commonly used. There are no complaints about these emails.
159. In relation to the Tunstall contract situation, Mr Gardiner has been allocated actions to undertake at the meeting in March. By mid-April, these actions had not been completed. Mrs Wilmot asked the claimant, during a meeting between them to ‘chase Mr Gardiner for his responses. Whilst this is cited as part of detriment 18 in her witness statement the claimant describes this as she was ‘advised’ by Mrs Wilmot’. In her detriment schedule, she describes Ms Wilmot as making unfounded accusations about her conduct. However, in her witness statement, she does not specify what these allegations are. In such circumstances, the tribunal is forced to the conclusion that no such accusations were made.
160. Between early April and late May 2020, there were a series of emails between the claimant and others regarding a company LHC who was a competitor to the respondent. During these emails, the claimant made her 8<sup>th</sup> Disclosure.
161. On 7<sup>th</sup> April 2020, the claimant received an email from Mr Smith in the BDT, the commencement of the email was very ‘chatty’ as might be expected between colleagues. Mr Smith goes on to seek assistance with assisting LHC with a contract in particular for the claimant and her team’s assistance ‘to get the contract over the line’. The proposal is to assist in running a tendering competition. He specifically refers to the commission level anticipated, and he is hoping to achieve success with the contract which will generate an income for the respondent. It was anticipated that there would be a commission-sharing agreement. There is an email chain in the bundle setting out the views of Mr Gardiner and Ms Wilmot and the claimant’s response to them.

162. It was the intention of the respondent to hold 'roundtable events'. In April Mr Merchant of the BDT requested that LHC, attend one of these events. Again, the issue was discussed across several emails between Ms Wilmot, Mr Gardiner and the claimant.
163. Ms Wilmot produced a risk assessment about both matters which was sent to the claimant and Mr Gardiner. The claimant's response to it was by way of addressing issues on the original email in red mail and this is PD 8. Which is an accepted disclosure.
164. In essence, the claimant was against assisting LHC and inviting them to any roundtable discussions. In particular, she raises concerns about Mr Gardiner's acting beyond his remit, which is one of her ongoing concerns.
165. Ms Wilmot decided that the respondent would assist LHC with the tender and permit them to attend the roundtable meetings.
166. The claimant complains that her role was undermined by this. Ms Wilmot disregarded her concerns of anti-competitive behaviour and instructed the claimant to conceal this from members. Further Ms Wilmot took no action on the claimant's complaint about Mr Smith.
167. Having reviewed the series of emails the Tribunal does not agree that the claimant's role was undermined by Mr Gardiner. This goes back to the issue of the tension between the sales and the regulatory roles the two teams undertake. Whilst Mr Gardiner was assisting Mr Smith it may be concluded that he believed that it was something the respondent could assist with, that does not equate to undermining the claimant or her team. There is no language used which suggests that Mr Gardiner was instructing his team member to ignore the claimant's advice and proceed in any event. The fact that Ms Wilmot ultimately carried out a risk assessment which the claimant was invited to comment upon, is evidence of this.
168. Indeed in her evidence, the claimant stated that she was not asking for the decision of Mr Gardiner to be overruled, she was trying to protect her team. The fact that Ms Wilmot ultimately made the decision means that any responsibility would be shouldered by Ms Wilmot.
169. In relation to the issue of 'instructing' and 'concealing' this is because Ms Wilmot asked that the conversation be taken 'offline'. The reason for this was to avoid misunderstanding between the two employees, which had previously been raised at the meeting in March 2020. There is no instruction about no concealment, this is the claimant's interpretation which the Tribunal concluded was not a reasonable interpretation.
170. The claimant complains that she was unsupported by Mrs Wilmot. Again the Tribunal does not agree. Mrs Wilmot listened to the competing arguments and made a business decision based on risk. Having set out the risks Mrs Wilmot concludes her email, 'Sorry for the long email – hope

it helps, hopefully, should give us a good starting point to make a decision.’ This is how a business should operate. If every employee complained when their suggestions or proposals were overruled a business would not be able to function

171. In relation to no action being taken regarding her complaint that Mr Smith was acting outside his remit. The claimant is not specific in the correspondence, she simply comments that it has previously been discussed. She does not state explicitly that she wanted to make a complaint she said In her witness statement she states ‘I commented that Mr Smith's request was outside his remit but did not expect Mrs Wilmot do anything about it at this point’. As there was no explicit complaint and having reviewed the phrase and the claimant's evidence which was used the Tribunal concluded that it was not reasonable to expect Ms Wilmot to interpret the comment as a formal complaint Mrs Wilmot acted appropriately.
172. On 21st April 2020, five members of staff, including the claimant were sent an email with an invite to complete a psychometric evaluation, the Lumina Test; Ms Harrison, Ms Wilmot and Mr Robson were all copied in.
173. The claimant states in her witness statement that whilst completing the questionnaire it brought to her mind an assessment of her husband. This caused her to feel anxious. As a result, she contacted Ms Harrison to inform her that she would not hit the deadline for completing the test and that she was upset because of ‘everything that happened with Dave.’ This is in reference to the process Mr Chase went through to be diagnosed with ADHD. She was advised not to worry about it and to take the weekend to think about it.
174. Having reviewed the claimant's notes about this conversation there is no reference to Dave having a disability, indeed even in a later email, it refers simply to the claimant's past experiences with Dave.
175. The claimant and Ms Harrison spoke again on 27th April 2020. During the call, the claimant raised the issues of the LHC contract. Following this call the claimant followed up with an email to ‘clarify a few points’ In this email the claimant states, ‘I can categorically say that the reason if I were to be feeling any anxiety or stress, it is not due to my home life but due to the number of serious issues not being adequately addressed. Highlighted by postponing the finance meeting tomorrow.’
176. On 28th April 2020, the claimant was invited to a catch up meeting with Ms Wilmot and Ms Harrison to be held on 29<sup>th</sup> May 2020 Ms Harrison advised the claimant it was a catch up and there was no need to prepare anything.
177. In her reply the claimant is of the view this is to be a meeting to support her as a result of the issues with the psychometric testing in her response she refers to the Lumina test and states ‘I asked for understanding and mentioned her concerns at work. She concludes, ‘I hope this helps to clarify as I don't want support to be focused in the wrong area.’

178. The Tribunal has seen and considered the transcript of this meeting made by the claimant. The meeting was intended to ensure that the claimant had recovered from her anxiety following her issues with the Lumina test. However, Ms Harrison does go on to ask about issues at work. During the meeting and despite Ms Harrison's obvious concerns about the claimant's reaction to and the prolonged nature of the reaction to the test, the claimant attempted to minimise it stating, 'she was caught off guard' and that it was a one off incident.'
179. Ms Harrison then moved on to discuss the claimant's concerns at work. The claimant refers to the issues with the BDT and being asked to condone illegal activities and the issue of expired contracts and commission.
180. There is discussion concerning the tension between the teams and this is an attempt by Ms Harrison and Mrs Wilmot to address them with the claimant. It obviously, becomes a fraught meeting; for example, when the claimant asks for the concerns about her behaviour to be put in writing and she will address them Ms Harrison's response is 'I don't have to put it in writing, I'm telling you now. Everything doesn't have to be in writing ... unless you are preparing for a tribunal. We're having a conversation.' Ms Harrison is extremely frustrated by the claimant's attitude and responses.
181. It is proposed that the claimant goes away and reflects and that Ms Harrison and Mrs Wilmot will also speak to Mr Gardiner. Whilst this meeting became a difficult meeting for everyone involved, the Tribunal accept that it was initially set up as an opportunity for the claimant to be offered or seek support about her anxiety the preceding week. The claimant during the meeting minimised any problem and stressed that she was more concerned about work matters which she went on to describe and they were discussed. The issue of this being a disciplinary hearing is nonsense. Whilst discussing the tension between the teams the issue of the claimant's behaviour is raised but this is in the context of trying to resolve the issues between the claimant and Mr Gardiner, not in the context of a disciplinary meeting. The Tribunal rejects any suggestion that Ms Harrison or Mrs Wilmot behaved inappropriately either before or during the meeting. This conclusion is supported by the fact that the claimant felt able to then attend a meeting just with Ms Wilmot to discuss her annual Personal Development Review. The Tribunal concluded if the Senior Managers had acted in the manner the claimant asserts, she would not wish to have her PDR at that time or indeed at any time with Mrs Wilmot. Despite her previous assertions about the behaviour of these managers, the claimant's PDR is a positive reflection of her.
182. Following the meeting, the claimant had her annual Personal Development Review with Ms Wilmot. In the achievements section, there is a reference to the shortlisting of the team for the Award, reference above. In relation to her achievements against the corporate plan, it is noted that 'all corporate plan objectives under Louises area have either been achieved or are ongoing, and that she has secured two bespoke contracts across the year. There is a specific discussion about the issues between the BDT

and the PCR teams, In particular, Ms Wilmot's opinion was that misunderstandings were caused by the use of emails when a verbal conversation may be better. It is noted this is being picked up outside of the PDR setting. The general comments from both Ms Wilmot and Ms Harrison are very good, although there is a comment about her letting her pride in her professional qualifications make her defensive to questioning. Overall, it was a positive appraisal.

183. Later in the day, Ms Harrison emailed the claimant to inform her that Mr Gardiner had also been spoken to and she and Ms Wilmot had suggestions of how to resolve the issue between the teams and that a meeting would be set up for all four to discuss to find a resolution. Part of the solution was for the claimant and Mr Gardiner to both complete the psychometric testing. This was to be used as a tool to develop self-awareness in both the claimant and Mr Gardiner. Ms Harrison concluded the email by saying she would ring the claimant later.
184. Ms Harrison called the claimant at 4:30 pm and the Tribunal had the benefit of seeing her contemporaneous notes of that call. Ms Harrison had asked that any contact with the claimant be recorded by Ms Wiseman. There is nothing sinister in this approach. In many situations, it is good practice to keep a note of contact. In this situation where an employee is making numerous complaints about co-workers and raising PD, it is entirely proper for such a record to be kept. The claimant informs Ms Harrison that she believes her issues were not being addressed. The claimant wishes to discuss the situation with Ms Wiseman. Ms Harrison wishes this to happen quickly so a resolution can be found. The tribunal considered this was a reasonable request; the tension between the teams had now been going on for some time and had the possibility of adversely impacting the business when, due to the pandemic, there were additional matters that the respondent had to deal with.
185. A new Staff Handbook was issued to all staff, and it was available on the respondent's intranet from 30th April 20220. Although the claimant makes no specific complaint about the handbook. In her witness statement, she does make several comments about it. For example, she is no longer able to complain about the CEO to the Board and that the conduct of Ms Harrison was no longer misconduct.
186. Having compared the previous handbooks with the new, the previous handbook stated that a formal grievance should be submitted to any member of the EMT other than the CEO. Grievances against the CEO would go to the Deputy Chief Executive.
187. The new handbook states that grievances should go to the line manager and any appeal to the CEO. There is no specific reference to complaints against the CEO. This is a clear change but does not preclude a grievance against the CEO. The section is wide enough to cover and does cover a grievance about ANY employee at the respondents.

188. The previous handbook included a list of conduct at work and conduct which may amount to gross misconduct, this includes threatening or dangerous behaviour, committing offences against the current discrimination legislation. The new handbook also contains a list, but it is much more generic such as theft, deliberate acts of discrimination, and violent or intimidating behaviour.
189. The claimant is suspicious of these changes and the timing of them. The Tribunal does not see any such issue. The changes are simply reflective of the organisation and in particular, the list of misconduct is such as is seen in many organisations. To the tribunal, this is a good example of the claimant's mistrust and suspicions of the respondent and the whole of the senior management team.
190. In May 2020, James Fairless Head of IT at the respondent organised with his team for a 'phishing' email to be sent to all employees. Mr Fairless intended to ensure that the employees had sufficient training on how to avoid such emails. There were different emails sent to three different groups of staff. The emails were sent on 5<sup>th</sup> May 2020; the email the claimant received was also sent to 10 other employees. This is confirmed by the distribution list contained in the bundle.
191. Although the claimant knew immediately it was a phishing email. She states it made her feel victimised and deceived and it was a targeted attack because it referenced Mr Gardiner and financial data. The Tribunal accepts Mr Fairless's evidence that this was simply an organised exercise and not targeted towards the claimant or anyone else.
192. The claimant suffered her first anxiety attack whilst at home on 5<sup>th</sup> May 2020, although this is the same day as the phishing exercise the claimant attributes it to the events of the previous week and that day in particular. It is unclear which events the claimant refers to here. According to the evidence the Tribunal heard there was nothing untoward in any of the actions on that day.
193. On 6<sup>th</sup> May 2020, the claimant had a telephone consultation with her GP and related that there were lots of issues at work, she had had a panic attack the previous day. The GP described her as 'bright and chatty'. It is agreed that the claimant will trial propanol to reduce the frequency/severity of the attacks.
194. On 6<sup>th</sup> May 2020, there was a remote meeting with the claimant, Mr Gardiner, Ms Harrison, Mrs Wilmot and Ms Wiseman. The purpose of the meeting was to discuss the tensions between the BDT and Procurement Teams and the claimant's disclosures. The meeting was broken down into two specific parts, the first was to look at the tensions between the BDT and the Procurement Team the second was to look at issues surrounding the use of informal contracts and collection of commission.
195. Before the meeting, Mrs Wilmot sent an email to both JG and CW with a proposed agenda. In her witness statement, the claimant complains that



the presentation of her responsibility in this email included her in areas where she was not involved. Whatever the roles may be the Tribunal note that the email states 'We can talk through this in the meeting, but I've jotted the following if this helps. The Tribunal concluded that this document was a starting point for discussion the following day. There was no attempt to intimate the claimant or imply she was culpable for any fraud. It seems to the Tribunal that this is a further example of the claimant overreacting to a simple document perceiving an ulterior motive where none exists. It is correct that Ms Harrison had advised Ms Wiseman to keep a record of contacts with the claimant. This is understandable when one takes into account the number of complaints the claimant was making. The SMT, in particular, Ms Harrison had a genuine concern about the claimant's behaviour.

196. The claimant's schedule of detriments refers to Ms Wiseman deliberately omitting key information. The tribunal does not accept this, if information was omitted it was an oversight and nothing more. This contact flows from the events surrounding the claimant's anxiety during the Lumina test. The claimant sets out in an email on 5<sup>th</sup> May 2020 Having thanked Ms Wiseman for her support she sets out why she has concerns and why they are affecting her. In particular, it has nothing to do with the Lumina assessment. The claimant is clear that her problems, highlighted by the panic attack the previous day, are because of pressure at work. The claimant insisted throughout the case including before the Tribunal that she was not suffering from stress at work but rather anxiety, however, the Tribunal concluded whatever the label placed upon her medical condition her difficulties arose from the circumstances at work.
197. The Tribunal had the benefit of viewing video footage of this meeting, so it was able to assess and gauge how everyone in the meeting was reacting. It is quite clear that it is a cordial meeting, with Ms Harrison setting out what she believes is the tension/pressure coming from the BDT. Her tone is conciliatory. Having said that Ms Harrison, whilst understandably taking the lead sets out her opinion but there is little input from Mr Gardiner and the claimant, initially, which may defeat the purpose of the meeting. However, Ms Harrison does put forward proposals, such as getting herself and Mrs Wilmot to hold meetings with the respective teams to put forward the other team's perspective. Ms Harrison proposes this to lessen conflict between the teams which may occur if the teams were brought together.
198. The Tribunal does not agree that Ms Harrison created any tension between Mr Gardiner and the claimant. Ms Harrison is clear that she has been called in because Mrs Wilmot is struggling to deal with the issue there is no implication of any kind. Mr Gardiner does not appear at any time during the meeting to have an issue with the claimant.
199. At one point the claimant indicates that she does not have a problem with the BDT bringing complex matters to her team, but it is the straightforward cases that are black and white that are the problem. Mr Gardiner suggests that 'we' come up with a list of things that are black and white that should not be raised with procurement and the claimant responds that they are

already present in the FAQ. She appears positive to the suggestion of refresher training to ensure the BDT know where to find information. It is a discussion between colleagues on how to move forward. Indeed, she makes it clear that she needs to speak to her team before going ahead because there is additional work to be done. She also states, 'That's really helpful because that helps us when we do refreshes because we need to know all that information can changes ...I'm happy to do shadowing across the teams as well as individual sessions to understand each other roles....'

200. The tribunal's conclusion on this part of the meeting is that the respondent was attempting, in accordance, with good practice to bring Mr Gardiner and the claimant together to try and move past the tension and agree on a way forward. The claimant appears to agree to a proposal and then back tracks, for example, she does not want to be the bearer of bad news to her team. Ms Wiseman is present to support anyone requiring it but in particular the claimant.
201. The second part of the meeting is a discussion of the commission being collected on informally extended contracts. A dispute arises between the claimant and Ms Harrison when the claimant states that this has been an issue since 2018 and she had raised it with Mr Gardiner and Mrs Wilmot at the time. A dispute also arises between Ms Harrison, Mrs Wilmot and the claimant about an investigation into the disclosures. The claimant is clear that there should be an investigation first to understand the problem and make sure it does not happen in the future.
202. Ms Harrison is becoming frustrated with the claimant because she, the claimant, is labouring the same point. Ms Harrison having acknowledged it is serious and needs to be looked at the claimant cannot move on from there. Ms Harrison concludes with 'You've made your concerns clear we've acknowledged them and confirmed absolutely we will deal with them, but we have to deal with them when we have capacity to.' This latter comment concerns the lockdown situation due to the pandemic and the additional work being created because of it.
203. The claimant believes that an investigation should be carried out to find the root cause. Ms Wilmot believes that it is unlikely to happen again because a new system 'Dynamics' is in place. Ms Wilmot becomes a little defensive when the claimant suggests that having raised the issue a month ago nothing has been done.
204. It is clear almost from the start of the second part of the meeting that the claimant perceives these issues as black and white and she cannot accept Ms Harrison and Ms Wilmot's decision because the claimant believes they are making the wrong decision. Although Ms Harrison and Mrs Wilmot have acknowledged they will investigate the problem, the claimant cannot accept that it is a decision for them to make when the investigation will take place.
205. At the conclusion of the meeting, the claimant acknowledges that Ms Harrison and Ms Wilmot have heard and acknowledged her issues.

However, when Ms Harrison says that there is an absolute commitment to resolving the issues. She goes on to, understandably, cite the pandemic as a reason why no progress has been made at this time. and 'Can we accept that there are also other things going on that have to happen'. The claimant responds, 'I'll think about it'. The claimant in her evidence to the Tribunal said that the respondent needed to identify the problem before they could look at a solution. However, the problem had been identified, although whilst a laborious task to ascertain who was affected and the problem rectified. it could be done. The Tribunal concluded that the claimant wanted blame apportioning and that such blame should not fall on her shoulders.

206. As to the behaviour of Ms Harrison and Mrs Wilmot, at times they are confrontational towards the claimant as outlined above. However, this behaviour is rooted in the claimant's attitude. She is intransigent and at times confrontational. Ms Harrison and Mrs Wilmot are exasperated by her which causes their own standard of behaviour to drop. However, although challenging, the Tribunal did not consider that their behaviour, in the circumstances of this meeting was detrimental to the claimant, as it was a reflection of her own behaviour.
207. It was during this meeting that the claimant PD 10 was made, which is accepted by the respondent as such. This disclosure concerns the contract for 'Sure' and that the respondent knew it was receiving commission when 'Sure' was out of contract.
208. Following the meeting, Ms Harrison contacted the claimant and asked for her assistance in actioning some of the issues which had been raised. The tribunal has seen the claimant's handwritten note and her subsequently typed note of this conversation. It is of significance that the typed note is headed 'Call regarding Personal Investigation Request with Tracy Harrison'. There is no such heading on the handwritten note which at best may be described as a scribble.
209. The Tribunal concluded that this is the claimant's interpretation of the conversation sometime after the events. The Tribunal accepted Ms Harrison's account that this was simply to 'set the ball' rolling. It is also telling that at points the claimant is unable to decipher her notes, yet her witness statement gives a very full account of what was said.
210. Also in her witness statement, the claimant states she was unsure what to do about the request and agreed to help because it was the CEO but remained cautious. This is an incredible comment to make. The claimant's previous actions show she is a person who knows her own mind and how to take appropriate action. The Tribunal concluded that the claimant's account is indicative of the claimant's state of mind that she believed the whole of the management team, and others in the respondent's organisation were colluding against her.
211. Following this discussion there were meetings between the claimant and Ms Harrison about this topic, none of them have any bearing on the

issues the Tribunal must determine. The only significant matter is that when the claimant is told on 26<sup>th</sup> May 2020 that Mrs Wilmot is going to continue the investigation, she, the claimant, accuses Ms Harrison of a delaying tactic in an effort to prevent disclosure by the claimant to the external auditor. The Tribunal does not accept that interpretation, but in any event, it would be open to the claimant to contact the external auditor if she wished.

212. On 27<sup>th</sup> May the claimant contacted Ms Wiseman again to inform her that she had spoken to her GP and that her 'anxieties may be heightened at the moment due to ongoing work issues.' Ms Wiseman responds and offers to support the claimant and in particular suggests that the claimant contacts Benenden Healthcare. Whilst there is reference to the Lumina Sparks test this is in the context that the anxiety on 6<sup>th</sup> May was a direct result of that. Whilst there is no mention of other pressures, the Tribunal did not consider this to be deliberate, Ms Wiseman was focusing on supporting the claimant.
213. Ms Wiseman sent a copy of a stress risk assessment pro forma for the claimant to consider pointing out that it is important to identify and tackle the causes of work related stress and personal factors.
214. The claimant considered it necessary to go back to Ms Wiseman seeking clarification of her account of the conversation, including pointing out that any stress she is feeling has not affected her work and is mainly due to the ongoing financial issues she is raising with the respondent at work.
215. In response, on 29<sup>th</sup> May 2020 Ms Wiseman stated that a stress risk assessment may be useful to identify and tackle any causes of work related stress and personal stress factors.
216. During the emails, the claimant becomes more defensive, perhaps because of her anxiety and is insistent on ensuring that it is the financial issues which are the problem. The Tribunal cannot see any problem with the response from Ms Wiseman. It seems an entirely appropriate course of action to suggest a stress assessment especially as the initial anxiety was caused by something arising at work, i.e. the Psychometric testing and the issues surrounding the financial problems the claimant had raised.
217. The claimant believed that she was being treated differently from others, but she was being treated appropriately under her circumstances. That is she had notified the HR department not that she was anxious because of the matters she had raised but also that she had spoken to her GP and was on medication. If Ms Wiseman had ignored this information she may well have been accused of being uncaring at the least and even negligent at the worst. She acted following good practice.
218. Whilst this correspondence was ongoing Ms Wiseman sought further advice from the respondent's employment advisers, and set a copy of a suggested response to Ms Harrison for her to consider.

219. Ms Harrison's response was 'Perfect'. Ms Wiseman duly sent this email on 3<sup>rd</sup> June 2020. The Tribunal did not interpret this as an instruction, in the accepted sense of the word, nor did it contain false information. The claimant is getting preoccupied with semantics, she refers to work stressors Ms Wiseman to work related stress.
220. On 28<sup>th</sup> May 2020, there were two meetings held by the respondent which are relevant. The first involved Ms Wilmot, Mr Gardiner and Ms Surtees. Following the meeting, Ms Wilmot sent an email to Mr Gardiner and Ms Surtees about the actions that needed to be carried out.
221. A second meeting was held the same day which was a scheduled finance meeting to which the claimant was invited and did attend. Whilst a failure to send the email from the first meeting, referred to above, to the claimant is cited as a detriment she does not refer to it in her witness statement. In her evidence, she conceded that she did not need to be copied into every email. The email did not need to go to her because she was not at the meeting and was not required to carry out any actions. In any event during the finance meeting which the claimant did attend Ms Wilmot gave her a verbal update of the earlier meeting.
222. On 1<sup>st</sup> June Ms Wilmot sent an email to members of the PRT, the claimant was not copied into this email. The email was to request information concerning the financial investigation. The claimant had earlier agreed that her team would support Ms Wilmot in the investigation. There is nothing sinister in the claimant not being included in the email. Indeed, copying the claimant into every email would not be the best practice as she would receive an excess of emails she did not need to read.
223. During a meeting between the Procurement team, including the claimant and Ms Harrison on 3<sup>rd</sup> June 2020 the Tribunal accepted that the claimant was rolling her eyes and pulling faces, which we consider of itself to be unprofessional. Ms Harrison was candid in her witness statement and accepted that she did ask the claimant why she was twisting her face. Whilst the Tribunal can understand why a senior manager may want to nip such behaviour in the bud there were perhaps better ways of dealing with it. However, it is not detrimental to the claimant Ms Harrison was reacting to the claimant's behaviour.
224. On 4<sup>th</sup> June 2020, the claimant and Mr Gardiner were to deliver the refresher training to the BDT and Procurement team. Mr Gardiner was not prepared for the training and had not prepared any slides etc. Following the meeting, the claimant emailed Mrs Wilmot, Ms Harrison and Ms Wiseman to give them feedback. Having raised the issue of Mr Gardiner's failure she concludes the email as follows: 'Please do not misinterpret this otherwise positive feedback as anything other than highlighting a potential issue that could prevent the reduction in team tensions,'. The claimant is specific in this email that she is simply highlighting a 'potential issue.' She had not made a formal complaint

about Mr Gardiner In any event the Tribunal agrees with Ms Harrison that it would be inappropriate for the claimant to be involved in any such action

225. On 8<sup>th</sup> June 2020, there was a finance meeting held remotely between the claimant, Ms Harrison and Mrs Wilmot. The meeting was to give the claimant an update on the progress about commission being collected where it should not have been and secondly where commission has been collected 'without robust contractual arrangements in place'. It is agreed that Ms Harrison will contact the respondent's solicitors to clarify the legal position. It was during this meeting that the claimant raised PD 8, which is accepted as protected disclosure.
226. Ms Harrison recognises that during the meeting it became tense but hopes that the claimant can see there is a genuine commitment to sort out the issues she has raised. The notes of the meeting show that the claimant agrees to this.
227. Whilst it was a tense meeting and Ms Harrison did become frustrated with the claimant and despite Ms Harrison raising the issue of the claimant's knowledge the Tribunal did not consider this to be Ms Harrison apportioning blame upon the claimant. This is apparent when Ms Harrison refers to the business going into liquidation and possible redundancies, she is frustrated by the claimant's lack of insight into that as a possible outcome, but there was no attempt to blame the claimant for this.
228. The meeting concludes on a positive note with the claimant acknowledging she has been listened to. Following the meeting the claimant emails both Ms Harrison and Wilmot thanking them for the update and appreciative of the effort gone into collating the information. Which confirms that at the time the claimant was content with the outcome.
229. Ms Harrison did seek legal advice from the respondent's solicitors by telephone and provided a summary of the advice to the claimant later the same day. The advice was to be confirmed in writing. As this was an action that Ms Harrison had said she would carry out there was no need to involve the claimant. Again, the claimant attributes an ulterior motive to the advice stating she is worried that Ms Harrison has obtained misleading advice to exonerate herself. There is simply no evidence of this. From our observation of the claimant and her conduct throughout these proceedings, this distrust invades much of her thinking.
230. Furthermore, the claimant could at any time have sought legal advice as there was a budget allocated for her to use specifically to take such advice. She was not prevented from or isolated in this regard. Specifically, this was an action that Ms Harrison said she would undertake.
231. On 10<sup>th</sup> June 2020, the claimant rang Ms Harrison to discuss the situation stating it was very difficult for her and what is Ms Harrison's plan to deal

with it. It appears that Ms Harrison was thinking the claimant meant about the disclosures whereas the Tribunal concluded it was in fact about the claimant's own position within the organisation. The account given by Ms Harrison of this conversation makes more sense than the account of the claimant. The Tribunal concluded that the claimant was being deliberately provocative towards Ms Harrison to ensure Ms Harrison brought up the issue of the claimant leaving the organisation first. Ms Harrison concluded that the claimant wanted to leave the organisation under a settlement agreement.

232. Later the same day Ms Harrison rang the claimant and offered to hold a protected conversation with her. The Tribunal accepted that the claimant, at this time knew what a protected conversation was. She agreed but only if the conversation was conducted with Mrs Wilmot. The Tribunal does not accept that the claimant was pressured or intimidated into entering into any such conversation.
233. The claimant emailed Ms Wilmot with a diary time for a protected conversation. In the email, the claimant is clear that the conversation was requested by Ms Harrison. Mrs Wilmot queried this with Ms Harrison. As a result, Mrs Wilmot then emailed the claimant to clarify the nature of the meeting, i.e. was it simply a business meeting or a protected conversation?
234. In her reply, the claimant is clear that she was offered a protected conversation and if that is not the case, she will remove it from the diary. Taking this sequence of events, the Tribunal concluded that the claimant was 'fishing' in her conversation to provoke the response from Ms Harrison about a protected conversation. Once the respondent had said it was her request for some unknown reason the claimant did not want to be involved and withdrew her request.
235. On 11<sup>th</sup> June 2020 the claimant emailed Ms Wilmot concerning her previous disclosure PD 7. This is PD 13. There is no further detail given in the claim form nor is there any additional information in the witness statement. Having reviewed the emails, the Tribunal are unable to find any such email. PD 7 was an email to Ms Wilmot in which she said she would update the risk register.
236. On 12<sup>th</sup> June 2020, a meeting was held online between the claimant, Mr Gardiner Harrison and Mrs Wilmot to review the commission and compliance issues which had been raised by the claimant. The claimant asked for the Meeting to be recorded which was agreed and the Tribunal has viewed the recording. The meeting starts cordially and appears to be on track.
237. A discussion commences, initiated by the claimant as to the historic collection of commission. She is adamant that she knew, and that Ms Wilmot and Mr Gardiner also knew because they had been copied into emails. Her concern is that the issue having been raised commission continues to be collected for another two years.

238. Ms Harrison wishes to draw a line under the issue as she as the CEO is happy that now the matter has been raised it is being corrected. That is to say that all the payments have been scrutinised and where necessary payments will be repaid. The claimant is not happy with this outcome and wants there to be a formal investigation. At one-point Ms Harrison does ask the claimant what she has done about this if she has known since 2018 and in particular since she was a director. The claimant becomes defensive.
239. Whilst Mr Gardiner and Mrs Wilmot deny they knew about the issue in 2018, evidence proving it is requested. The claimant becomes even more defensive. It is telling that one of her responses at this time is that she is now a director with joint responsibility. The Tribunal concluded from this that the claimant is eager to ensure she bears no responsibility for any failings before she bore that burden even though she could have raised it at any time in the intervening period. The meeting then becomes fraught as the claimant descends to calling both Gardiner and Wilmot liars.
240. The claimant does wish for an investigation into what happened since 2018 but Ms Harrison is anxious to put the matter behind them and not have a witch hunt particularly as the way commission is paid has altered and any monies incorrectly paid will be refunded.
241. The meeting then moves on to specific contracts. During this conversation, the claimant directly confronts Ms Harrison when she indicates she wishes to double check the earlier legal advice Ms Harrison and Wilmot had obtained. The Tribunal considered this to be a confrontational act because the claimant is directly challenging the CEO of the organisation, implying that she hasn't given the correct information to the lawyer and therefore any advice is incorrect. She goes so far as to query whether they spoke to the correct lawyer, i.e. one who is an expert in procurement rather than contract law. She wants to check this for herself.
242. As a result of this there is an altercation between Ms Harrison and the claimant, Ms Harrison believes she is now being called a liar. The claimant wishes to approach the lawyer herself, which Ms Harrison does not say she cannot rather she believes is unnecessary.
243. The Tribunal's view of this series of exchanges is that the claimant has implied that Ms Harrison has not carried out her job properly and that the only way the claimant will be satisfied is if she speaks to the lawyer. There is a clear implication that the claimant is calling Ms Harrison a liar.
244. Moving on to Mr Gardiner's involvement he does interject at one point and say 'We don't know if it didn't go Louise'. His reaction could in no way be characterised as he 'snapped' at the claimant. This is yet a further example of the claimant's confrontational attitude being counterproductive. Her co-directors are frustrated by her actions and do not understand why she cannot move on. The meeting was not openly



hostile until the claimant challenged her co-directors and specifically her CEO.

245. It was during this meeting that the claimant reiterated her previous concerns raised as PD, 2, 5, 9. This is PD 14 and is accepted as such by the respondent.
246. Following the meeting, the claimant emailed Ms Harrison and Wilmot with the emails they had requested concerning Mr Gardiners and Ms Wilmot's previous involvement in 2018. This is PD 15 which is accepted by the respondent as such.
247. Ms Harrison had a further conversation with the claimant about having a 'protected conversation' the same day. There is a screenshot to confirm that such a call was received by the claimant and it lasted 4 minutes. The Tribunal does not accept that Ms Harrison was aggressive or abrupt during the call, however, it does accept that Ms Harrison would have informed the claimant that she did not need to seek legal advice before the meeting, however, it would still be open to the claimant to do so.
248. Over the weekend of 13th June 2020, the claimant states she experienced a number of panic attacks and was unable to sleep or concentrate. She states that 'I felt it would be beneficial to remove myself from the situation for a short period in order to reduce my anxiety. I expected this to be no longer than a week.'
249. On 15th June 2020, the claimant informed Ms Wilmot as her line manager that she was not available to work, She used the phrase 'sick to her stomach' Ms Wilmot, quite naturally and in accordance with the policy asked what was wrong, the claimant replied in similar terms. The Tribunal has seen the claimant's notes about this conversation which are very brief there is no reference to Ms Wilmot being reluctant to record the reason.
250. Ms Harrison texted the claimant on Monday 15th June 2020 asking if, in light of the fact she was off sick, did the claimant wish to reschedule the protected conversation. The claimant informs Ms Harrison that she will not be well enough and Mrs Harrison replies stating, 'No problem Get well soon.,'
251. The claimant visited her GP on 17th June and was signed off with 'work related anxiety', The claimant did not return to work following and remained absent until her employment ended on 25th June 2021, She supplied sick notes regularly and was thereafter dealt with in accordance with the respondents to the respondent's sickness absence policy.
252. On Monday 22nd June 2020 following receipt of the first sick note Ms Wilmot contacted the claimant to inform her that the respondent wants to do all we can to support you. She offered to have a chat with the claimant about the reasons for her absence. She is happy if the claimant does not feel up to it and it can be reassessed in a couple of weeks.

253. On 8th July 2020, the claimant again spoke to her GP. She told the GP that the situation at work was getting worse. She denies having depression or anxiety as it is all work related and was now looking after herself, sleeping well, and exercising again.
254. A welfare meeting was held on 14th July 2020. This was a remote meeting with the claimant and Mrs Wilmot in attendance. This is a supportive meeting with Mrs Wilmot trying to understand the reasons behind the absence, i.e. the claimant's complaints about how she is being treated, and establish how can the respondent help the claimant get back to work. It is suggested that if the claimant doesn't want to talk to Mrs Wilmot another person can be made available. Further, if the claimant is unable to return at the end of her current fit note, then a referral to occupational health will be considered.
255. Following this meeting, Ms Wilmot emailed the claimant to ask if she could provide details of the treatment she had been receiving. This email is sent as a genuine attempt to clarify the issues to support the claimant back to work.
256. The claimant seems to want to engage and asks when the information should be provided. Ms Wilmot replied that she would like to deal with the matter before the claimant's sick note expires. She offers that the claimant can provide the info to Ms Wiseman and the date is not a deadline. In response, the claimant asks that the respondent 'alleviate any concerns I have before attempting to complete your request.'
257. From reading the emails and reference to grievance it is clear that the claimant has misunderstood the purpose of the request. The request is to assist the claimant in return to work, how that can be achieved is not possible without knowing what the issue is. In her email, it is the claimant who suggests that a formal grievance may be the most appropriate way forward.
258. As a direct result, the respondent set up a formal grievance hearing to take place remotely on 28th July 2020. In addition, because the claimant has raised the issue of whistleblowing there is an additional meeting arranged to discuss them. Again, it is a remote meeting to be held on 28th July 2020.
259. Whilst, understandably, the respondent would want to understand both issues and resolve them as quickly as possible the Tribunal queries the merit of engaging in without input from the Occupational Health provider.
260. However, there was no pressure on the claimant to engage in the process it was her decision to make. The claimant's only comment was that Ms Wilmot should not be involved because one of the complaints would be against her.
261. The meetings did not proceed because the claimant did not wish to pursue a formal grievance. In an email, Ms Harrison offered that there be

an informal conversation with an external consultation some form of conversation. The email is supportive and wishes the claimant a speedy recovery. Ms Harrison also refers to the whistleblowing, indicating this also needs to be investigated,

262. On 17th July 2020 there was an online award ceremony took place for the award claimant's team had been shortlisted. The claimant was not invited. The reason for this was unclear although the respondent was not involved in organising the ceremony. The Tribunal does not consider there was anything untoward in this.
263. In July 2020 Jiff Duffy, an external Human Resources Consultant was engaged to hear and investigate the claimant's concerns.
264. On 28th July the claimant approached Mr Robson, Executive Director for Policy and Public Affairs at the respondent. She spoke to him about the commission issue and told him that since she had raised them, she had been intimidated. She told Mr Robson she was not raising a grievance. Mr Robson was unsure of what the claimant wanted from him. He speaks of her going around in circles (witness statement paragraph 11). The Tribunal concluded, having heard from Mr Robson and read his notes of the interaction, that the claimant was trying to draw Mr Robson into the argument and was seeking him to support her in her allegations. Mr Robson did not want to do that and considered that a formal investigation under the grievance procedure was the best way forward. The Tribunal is satisfied that the claimant was agitated at the end of the call, probably because Mr Robson was not doing as she asked.
265. On 29th July 2020, the claimant emailed Ms Harrison informing her she would attempt to compile details of her claims and submit a formal grievance. She indicates this is due to the significant pressure and she will try to provide as much detail as possible.
266. In reply, Ms Harrison told the claimant there was no deadline for submission. She also told the claimant that the respondent was appointing Ms Jilly Duffy to investigate. Ms Harrison suggests the claimant may raise her ongoing whistleblowing concerns with Mr G Robinson, a non-executive director and Chair of the Audit and Risk Assessment committee.
267. The claimant's suspicion of Ms Harrison is clear as in her reply she is again defensive as she will determine to whom it should be sent and will send her concerns. In addition, she clearly expresses the view that Ms Harrison is giving a false impression stating she wishes to clarify certain matters.
268. By email of 10th August 2020 the claimant, having been informed of Ms Duffy's involvement confirmed that there was no conflict of interest. The Tribunal took this to mean that she had no issues with the appointment of an external consultant or Ms Duffy herself.

269. The respondent had a 'shutdown' the week of 24th August 2020, to ensure that staff used annual leave.
270. On 10th September 2020 Ms Wiseman wrote to the claimant in a letter headed 'Grievance Update'. The letter is an entirely appropriate letter. It enquires about the claimant's health. It goes on that until the respondent can investigate the issues the claimant believes are resulting the work related stress the respondent will not be able to get a resolution to this.
271. It is clear that whilst Ms Harrison did not give a deadline for the submission of the grievance, that four weeks having passed it was appropriate for the respondent to enquire if there was to be a grievance. Once it is received arrangements can then be made with the consultant. Alternatives were suggested such as completing a risk assessment or simply speaking to Ms Duffy rather than reducing the grievance to writing.
272. The claimant throughout much of this time is at pains to point out to the respondent she is suffering from anxiety and not 'work related stress'. Whilst the Tribunal can see there is a different diagnosis it is clear when looking at the medical notes and the claimant's response to the respondent that her anxiety is as associated with matters arising in the workplace. The first two fit notes the claimant submitted on 17th June and 8th July 2020 both refer to work related anxiety. The fit notes dated 23rd July 2020 5th August 2020 and 20th 2020 August all refer to 'stress at work'. The claimant makes a point of ensuring this is changed by GP and on the next, 16th September 2020, the fit note states anxiety.
273. It is understandable then that the respondent is unclear about the nature of the illness especially when the claimant repeats her assertion that her illness is because of harassment at work. If at any time the respondent uses the incorrect phrase the Tribunal did not consider this was out of malice or for any ulterior motive because it was simply trying to grasp the underlying cause and endeavour to support the claimant back to work.
274. The claimant's distrust also extends immediately to Ms Duffy as she seeks further information about her and wants reassurance that she is independent and there is no conflict of interest.
275. By letter dated the same date, Mr Robson wrote to the claimant in a letter headed 'Without Prejudice and Subject to Contract'. Mr Robson is seeking clarification from the claimant about a protected conversation. The letter is polite and formal. There is no suggestion of pressure being exerted upon the claimant is simply an option open to her.
276. Whilst Mr Robson did seek advice from Ms Wiseman about the contents of the letter and Ms Harrison was cc'd into it there is no evidence that Mr Robson sent the letter at the request of or as instructed by Ms Harrison.
277. In rejecting this offer on 16th September 2020, the claimant's mistrust of Ms Harrison is again apparent as she clarifies her position as she did not believe the account given to Mr Robson was accurate.

278. The claimant contacted Mr Robinson informing him on 15th October 2020

*'I have become aware of possible breaches of financial regulations (involving public money), the public regulations and what appears to be attempts to conceal them'*

279. She specifically indicates that she considers this and her previous disclosures to be qualifying disclosures. Mr Robison was due to leave his post so he spoke with the incoming Chair, Mrs Yvonne Castle, and it was agreed that an independent auditor would be appointed. The claimant was informed of this, and that RSM International was to be appointed. She was also informed that in future she should use Mrs Castle as her point of contact. This is PD 17 and is accepted by the respondent as a protected disclosure.

280. On 15<sup>th</sup> October the claimant was informed that her entitlement to full sick pay was due to expire. Under her contract, the claimant was entitled to full pay for four months and to half pay for a further 4 months. The claimant in her witness statement states, 'I was not concerned by this at the time as I intended to return to work as the end of my fit note.' There is nothing untoward in this letter to the claimant or its timing. It is good practice to inform an employee that their pay is going to be reduced to allow an employee to prepare for it.

281. At this time, Ms Wiseman was to commence an internal project and it was decided that Ms Duffy should take on the day to day management of the claimant's personnel/HR issues.

282. Ms Duffy introduced herself to the claimant by email dated 21st October 2020. She also responds to queries that the claimant had previously raised with Ms Wiseman. The responses are in bold and underlined to differentiate from the questions posed. Whilst this may have the potential to portray a hostile email the Tribunal is satisfied that this was not Ms Duffy's intention. The email itself was cordial and gave the claimant the relevant information about her upcoming assessments.

283. On the same day, Ms Harrison asked Ms Wiseman to request the IT department to 'auto forward all future correspondence from that domain to myself and Jill, omitting you.' It appears this information was not conveyed to the claimant. Ms Harrison candidly told the Tribunal that she had the emails diverted because of the effect they were having on Ms Wiseman, and she was protecting a member of staff. Whilst this may be a laudable sentiment for the staff responsible for receiving the emails the claimant should have been informed of the position.

284. The respondent makes a referral to its occupational health provider. The claimant was not involved in the referral. Three specific questions are posed: 'Do you feel that Louise's current mental health is delaying and/or preventing her from submitting her written grievance and if so for how long do you feel this may continue? Do you feel that there is anything further

that the organisation can do to assist Louise and work toward a resolution of her concerns you believe a return to work will be possible for Louise before the grievance is heard and formally responded to?

285. The referral to Occupational Health also stated that different reasons had been given for the claimant's absences and the report makes a clear reference that the claimant considers phrases such as work related anxiety and stress at work to be inaccurate.
286. The referral also stated that the respondent was aware that the claimant 'has some unresolved work related concerns which were initially raised in February 2020. This is a clear reference to the disclosures the claimant has made. The referral goes on to say that the respondent understands that the anxiety is related to underlying stress and is connected to work related issues. The respondent wishes to understand the actual grievance points and what is causing her to feel this way.
287. Whilst it may be good practice for an employee to be involved in the drafting of a referral, the Tribunal cannot see that any detriment flows from it. She would have the opportunity to discuss her situation in full at the assessment.
288. Sue Clugston an Occupational Physician carried out an assessment of the claimant on 23rd October 2020.
289. Ms Clouston concludes that the claimant has moderate levels of anxiety but no significant symptoms of depression. The claimant disclosed she needs four full weeks with no communication from the respondent to recover. Ms Clugston concluded that the claimant's absence was initially triggered by anxiety that was triggered by concerns she had raised at work and remained unresolved. The claimant considers her recovery has been impeded by the request for the grievance as it has caused her further distress.
290. As to the three questions, Dr Clugston did consider that the claimant's mental health was delaying/preventing the claimant from submitting her grievance. She also considers that the four week no contact period is needed and is reasonable.
291. As to the third If a grievance is still required after the four weeks there may be merit in negotiating a period of time for her to concentrate on writing the grievance before she commences any phased return.
292. Dr Clugston concludes that the claimant requires a clear 4 week period to continue and consolidate her recovery at that time she should start to prepare for her return to work. She also advises that it would be useful if the respondent could revisit whether a formal written grievance is needed to address the underlying work issues. The claimant will benefit from a phased return to work and that home working for at least part of the week would be beneficial. Plus she would benefit from microbreaks away from her desk. Dr Clugston expected the claimant to make a full recovery.

293. The respondent sought clarification on a number of points from Dr Clugston. In November Dr Clugston stated that it was her opinion that a period of no contact can make an employee feel isolated, but as this was requested by the claimant she supported the request. In relation to the grievance Dr Clugston commented that the 'process of writing a grievance is associated with a risk of significant stress in the employee'. Further in relation to the grievance Dr Clugston comments that the claimant will be 'well enough to contribute to the resolution of the grievance process...once her GP has signed her fit for work and she has started her phased return'.
294. It is a sign of the claimant's deep mistrust that she accuses the respondent of interfering with the preparation of the report because of the request for clarification. The Tribunal has not heard directly from Dr Clugston but considers that any such attempt would be rebuffed by a professional medic. In any event, there is no evidence in the correspondence that any pressure was placed upon Dr Clugston to respond in a particular way.
295. It appears that the respondent, on the advice of Ms Duffy, took on board the suggestion for a four week period of no contact, however, this was not imparted to the claimant.
296. As a result of the claimant querying whether Ms Duffy's business email was covered by the respondent's Data Protection Policy an inhouse email address was set up for her.
297. As a result of an email sent by the claimant to Ms Duffy, the claimant received an 'out of office' response from Ms Harrison's email account, presumably because the email was forwarded to her. The claimant raised this as an issue with Ms Duffy. On 20th November 2020, Ms Duffy replied to the claimant asking if she was happy for Ms Duffy to respond to the issue during the 'no contact' period. This is when the claimant became aware that the respondent had made a decision not to contact her. There were a number of emails between the claimant and Ms Duffy on this issue and also concerns from the claimant that there had been a breach of data protection.
298. Although the claimant maintains there was a data protection breach the Tribunal does not agree. Ms Duffy was by this stage working for the respondent and therefore there would be no data breach in information being provided to her, in relation to the correspondence going to the private business email address rather than Ms Duffy's internal email. In any event, it was not a deliberate act by Ms Duffy. The Tribunal cannot see how this may amount to detrimental treatment.
299. The Tribunal can find no evidence in any of the emails referred to by the claimant that Ms Duffy lied about any of these issues.
300. Although the Tribunal can see the merit in the no contact suggestion, it considered that a reasonable employer would have contacted the claimant upon receipt of the report and acknowledged the suggestion. The employer could then inform the employee when the period was to start and

- end. In this way, there would be no confusion about it. It would be an agreed action with a start and finish date.
301. Despite this criticism the Tribunal did not consider that this was detrimental treatment, it was a suggestion put forward by the claimant to Occupational Health which the respondent agreed to follow.
302. On 23rd November 2020, the claimant asked the respondent to reinstate her contractual sick pay. She believed that the OH report had reported that her return to work had been delayed by the respondents. The request was referred to Ms Harrison who refused it. She reasoned that the respondent's contractual sick was already generous, four months full pay, and four months half pay, and that in her opinion the claimant was not taking any positive action to support her return to work. Ms Harrison dealt with the request and was entitled to reject it in accordance with the respondent's policies.
303. During December 2020, there was correspondence between the claimant, the respondent and RSM International regarding an interview with the claimant. The interview was conducted on 3rd December. The claimant states that she was despondent because RSM was not going to deal with her grievance. The Tribunal concluded this was clearly outside the remit of the auditor who was appointed to investigate the claimant's original disclosures. There was follow-up correspondence between the claimant and RSM and on 22nd December 2020 the claimant sent an email to Mr Almond of RSM. It reads, 'As promised, I have secured it in a pdf due to its sensitivity. I hope this helps clarify but please do let me know if you have any other questions.'
304. During this period there was ongoing contact between the claimant and Mrs Castle, On one occasion around 10<sup>th</sup> December 2020, the claimant had indicated she was going to contact ACAS for support. Mrs Castle asked if the claimant would consider alternatives. The claimant agreed and on 15<sup>th</sup> December 2020, Mrs Castle sent the claimant information about Marie Church who offered Cognitive Behavioral Services. It is clear from Mrs Castle's email that she considered this an appropriate course of action as Ms Church deals with breakdowns in workplace relationships. The Tribunal concluded that Mrs Castle, having 'reflected' on the claimant's circumstances thought this was an option to be explored. It was designed to deter or delay the claimant from seeking advice from ACAS or any other organisation.
305. On 18<sup>th</sup> December 2020, Mrs Castle informed the claimant that RS
306. M had found 'no criminal findings' following its investigation and the full report was to follow in January 2021. The claimant was unhappy with this outcome and does not accept it, in fact, she has never accepted that there was no wrongdoing by the respondent despite this and other investigations.
307. The claimant sent an email to Mrs Castle expressing her concerns with the investigation which Mrs Castle indicated she would share with the Audit



committee to be discussed alongside a Briefing Paper from RSM and she would come back to the claimant.

308. On 18th December 2020, the claimant was issued a further sick note to expire on 18th January 2021. When this was emailed to the respondent, she received the response 'Mail Delivery Subsystem'. On the evidence the Tribunal heard it concluded that the respondent deliberately blocked emails from the claimant over the Christmas period. The office was not going to be manned during this period and Ms Harrison told us that due to the number of emails received from the claimant, she did not want people receiving emails during this period.
309. Ms Harrison candidly told the Tribunal, that she had the emails diverted because she didn't want staff to have to answer emails from the claimant over the Christmas break. The Tribunal rejects this. It would be a simple matter for all staff to ensure they had an out of the office automated reply. The Tribunal concluded that Ms Harrison did not want to receive the emails and perhaps have her holiday break disrupted by them.
310. However, the Tribunal does accept that there was any link between the claimant receiving the outcome of her disclosures and this action by Ms Harrison.
311. On 18<sup>th</sup> December 2020, there was an online Christmas Party, the claimant maintains she was not invited. It seems that although the invite was sent, it was sent to the claimant's workplace email address and not her personal email address. Whilst it is clear that the claimant was using her personal email to communicate with the respondent, she had not informed the respondent that she was not accessing her workplace email address. This would explain why she did not receive an invite. The Tribunal did not consider there was an underlying motive for this it was simply an oversight.
312. The claimant was again contacted by RSM on 21<sup>st</sup> December 2020, this contact left her feeling concerned about the investigation.
313. On 24<sup>th</sup> December 2020 Mrs Castle contacted the claimant to report the outcome of the Audit committee meeting. Mrs Castle had informed the claimant that she would get back to her after the Committee meeting to update her. This email was not a question of Mrs Castle deliberately repeating the outcome of the investigation, it is to inform the claimant of the views and actions of the respondent as a result. She told the claimant that although there was some operational learning to be addressed The Committee were happy with the findings. It would work with Ms Harrison in the New Year to formulate an improvement plan. The committee would not release the interim report to the claimant.

314. The claimant replied on 30<sup>th</sup> December 2020 that despite indicating that it was welcome news that no criminal findings were made she still had concerns about the investigation. She could not therefore accept that her whistleblowing had been satisfactorily concluded.
315. Following the Christmas period Mrs Castle responded to the claimant on 4<sup>th</sup> January 2021. Whilst noting the concerns she had raised she reiterated that the committee was happy with the report and as far as it was concerned the claimant's whistleblowing had been satisfactorily concluded. She concluded the email 'I would urge you to have a conversation with Tracy Harrison about your next steps and how you might start your approach to getting back to work.'
316. Mrs Castle has not failed to support the claimant, she has noted her concerns which were to be shared by the committee. The Committee were happy with the outcome of the audit and the whistleblowing was finalised in its eyes. There was no question of support to give or being withheld. Further, she did not pressure the claimant to contact Ms Harrison, she used the word 'urge' and the Tribunal interpreted this as a request.
317. On 7<sup>th</sup> January Ms Duffy contacted the claimant inviting her to a Welfare Meeting on 14<sup>th</sup> January 2021 to discuss the Occupational Health report and her health and prognosis and assistance for her anticipated return to work.
318. By this time the claimant has been absent from work for nearly 7 months and has only had one welfare meeting with the respondent. This is an unusual situation as most employers rigorously follow their Absence Policy and such a delay in holding an effective welfare meeting is remarkable.
319. On 15 January 2021, the respondent Audit and Risk committee met to discuss the findings of the RSM report. Ms Castle emailed the claimant advising her, 'Having digested all of that the Committee has concluded that the whistleblowing put forward by yourself is satisfactorily concluded. As mentioned before there are some learnings and improvements to be put in place. RSM is to make some recommendations which we will expect NHC colleagues to review and put in place.' She went on, 'This concludes our conversation, as Chair of the committee. Any future correspondence should be addressed to Mrs Wilmot. Finally, she concludes: 'Thank you again Louise for your professionalism in the conducting of this investigation'. The claimant replied to confirm receipt.
320. On 7<sup>th</sup> January 2021, Ms Duffy wrote to the claimant to invite her to a welfare meeting. Ms Harrison was to be present as a representative of the company. Ms Duffy confirmed that the claimant could bring a person along to support her. In the email Ms Duffy informed the claimant that the meeting was around 'her current health situation, discussing OH report

and recommendations, current prognosis and the time scale and required assistance for your anticipated return to work.

321. The Tribunal has seen a series of emails between Ms Harrison and Ms Duffy following this request. They show that they had both formed an adverse opinion of the claimant. For example, Duffy to Harrison 'or delaying coming back to us so she misses the date'; Harrison to Duffy, 'Hmmm- interesting...wonder if she is revving up for a conversation'. These comments relate to how the claimant has previously interacted with the respondent and it is the two people reflecting that. Having said that the manner in which the two the two continue to deal with the claimant remains professional.
322. The claimant replied to Ms Duffy on 11th January at 15:25; she raised a number of queries but confirmed she would welcome a second welfare meeting. She requested the following adjustments: only agenda items would be discussed; she would be able to take small breaks if necessary; the meeting would be recorded via Teams; and she would be provided with a copy of the notes after the meeting.
323. On the same day at 16:04, the claimant emailed Ms Harrison and copied to Ms Wiseman, and Ms Wilmot, to inform her of complaints about Ms Duffy's conduct. She requested she be provided with Ms Duffy's CIPD number. She concludes, 'I must make you aware that I am due to attend a welfare meeting on 14th January with Jill and despite never having spoken or met, I can't be sure her conduct will not continue in person. Therefore, I look forward to receiving your response to my requests at your earliest convenience.'
324. The following day Ms Duffy responded to the adjustment requests. She agreed to all of them save the request to record the meeting, indicating that it was not her policy to allow it and that Ms Wiseman would be in attendance to take 'copious' notes. At this time Ms Duffy was unaware that the claimant had raised any issues with her conduct. It is unclear why the claimant considered that recording the meeting would assist her with her anxiety, she never articulates this in her correspondence.
325. On 13th January 2021, the claimant spoke to her GP. It is noted that the claimant is off work long term with anxiety – difficult time recently re work, struggling with harassment. The main issue is noted as 'panic attacks' but she also has poor sleep.' It was agreed to provide a further fit note until 19th February 2021.
326. On the same day, the claimant emailed Ms Wilmot and Ms Castle, 'Following my complaint, I do not believe you are taking reasonable steps to protect my well-being and I am feeling considerable anxiety as a result. There is a clear conflict of interest in having Jill conduct my welfare meeting while I have an active complaint regarding her conduct. Despite

those comments, the claimant emailed her fit note to Ms Duffy on 14th January 2021 stating: 'As I have not been advised otherwise, following my escalation of issues, I am presuming you are still the person I am required to submit this, [the fit note] to.....I have requested Catherine confirm to me whether the welfare meeting is to go ahead today given my concerns.'

327. The welfare meeting was cancelled and Ms Duffy had no further involvement with the claimant. The respondent concluded that the best way to manage any welfare meeting with the claimant was to conduct it in writing and to that end Ms Wilmot wrote to the claimant.
328. Ms Harrison as a result of not having anything but written contact with the claimant was concerned about her welfare. This was for two reasons; in a previous conversation with the claimant and her home life, Ms Harrison was concerned that there were red flags regarding Mr Chase's behaviour. This had to do with the claimant dealing with Mr Chase's condition and idiosyncrasies. Having reflected upon that she had concerns for the claimant's welfare because of a lack of contact other than through emails to meet with anyone from the respondent company. Ms Harrison sought advice and then contacted the police who agreed to conduct a welfare check on the claimant. The police attended on 17th January 2021 and confirmed that the claimant was okay and that 'it was a work dispute'. The claimant was unhappy with this visit especially the suggestion that she was at risk from her husband. It may well be that the claimant was embarrassed by this visit, however, it was well intentioned by Ms Harrison. It is clear to the Tribunal that an in person visit from someone from the respondents would be unwelcome, even if such a visit could be sanctioned under the lockdown rules in force.
329. On 20th January 2021, the claimant was invited to attend a grievance meeting concerning her complaint about Ms Duffy. Mrs Wilmot was to Chair the meeting, and Ms Wiseman was to be present in a supporting role. The claimant was offered the opportunity to have the grievance conducted in writing if she wished.
330. In her reply on 25th January 2021, the claimant declined the invitation because she stated she did not wish to raise a grievance. The Tribunal was puzzled by such a statement. The claimant is clear she wished to complain which is what led to this email but in this email, she states she had complained. A reasonable employer could not ignore a complaint and would have to deal with it. For the claimant to then state she didn't want to raise a grievance leaves the claimant the respondent and Ms Duffy in limbo.
331. The claimant also considered that the hearing was arranged to coincide with the deadline for answering welfare questions and so was an attempt to apply pressure. The Tribunal considered such a suggestion absurd. Having filed a complaint, the respondent needed to deal with it as soon as possible.

332. Because of the previously failed attempt at a welfare meeting, the respondent decided to conduct the meeting in writing. This is a perfectly acceptable alternative where an employee does not wish to meet their employer. The respondent sent the claimant a list of twenty questions about her health.
333. Having reviewed the questions they are such questions that the Tribunal would expect to be asked and would be asked at a welfare meeting by an employer. The first series of questions concerns the claimant's health, diagnosis treatment and prognosis. It also addresses the question of the claimant's concerns with the respondent and seeks to establish what, if anything is outstanding, and needs to be addressed to assist the claimant in returning to work. This one question specifically asks if the claimant still intends to continue with her grievance and if so when would she be fit to that? Finally, the respondent suggests a further Occupational health review and asks for permission to see the claimant's medical records.
334. All the questions relate to the claimant's health and how the respondent can assist her in getting back to work. This necessity includes the question of the grievance. The questions are posed in a polite manner and there is nothing within any of them which may be considered threatening or exerting pressure on the claimant.
335. The claimant responded to the questions, having reviewed the response the claimant is defensive and is anxious to restate her position and challenge the respondent's perception. From the answers she gives about her grievance/concerns she shows her distrust of the respondent saying she will need support and assistance from an external source.
336. On 29th January 2021, the claimant emailed both Ms Wilmot and Ms Harrison
337. In this email, she makes specific requests about her disclosures including feedback, and detailed information on how they will be addressed. Feedback on her outstanding concerns with the external audit. How her role will be affected? Finally, she concludes 'I have faced significant levels of victimisation that must be addressed and with the internal options having been exhausted will need external assistance to do so.'
338. The tribunal noted that the external audit, whilst finding some learning points, did not find evidence of fraud. However, it is indicative of the claimant's mindset that she challenges the RSM audit findings. As the findings are contrary to the claimant's opinion and therefore challenge her understanding she cannot accept them. She has trust issues even with an external professional body and calls into question their conclusions.
339. The claimant asks the respondent for its thoughts on these matters and suggestions regarding how we may bring them to a conclusion so that

everyone can move forward in a positive manner. It is surprising that having declined to be involved in a grievances process or engage with the respondent about her concerns the claimant is fit enough to address issues about her disclosure which have already been dealt with to a conclusion by an external agency.

340. It is surprising that having declined to be involved in a grievances process or engage with the respondent about her concerns the claimant is fit enough to address issues about her disclosure which have been dealt with to a conclusion by an external agency.
341. This is contrary to her comments in her welfare questionnaire that she does not feel able to deal with the matters and needs time to focus on her recovery. This inconsistent behaviour from the claimant makes it difficult for the respondent to know how to proceed.
342. Ms Wilmot responded to a number of emails from the claimant on 2nd February 2021. The email deals with the issues raised by the claimant. She concludes that there has been little progress in dealing with the claimant's health on an informal basis. She therefore informs the claimant that there will be no contact with the claimant until after 18th February 2021, which is the date her fit note expires, to allow the claimant time to focus on her own recovery. Arrangements will be made for an OH assessment after 18th February 2021. Ms Wilmot also informs the claimant that the office will be closed from 28th March 2021 and the claimant is asked to confirm if she would like to empty her locker herself or for the contents to be put in a box and stored safely. This is a perfectly reasonable email. The claimant has now been absent for nearly eight months and no progress has been made in resolving her issues or assisting her with her return to work.
343. On 19th February the claimant wrote to Ms Wilmot with her proposals for moving forward. She criticises the respondents and Ms Wilmot's behaviour. The Tribunal does not accept that Ms Wilmot has acted inappropriately in her welfare questions or that her behaviour in the preceding few weeks can be criticised. The claimant advises that she will contact ACAS to begin Early Conciliation regarding her victimisation. She points out that she cannot accept the RSM audit unless she receives detailed feedback. It is apparent from this email that the claimant firmly believes that colleagues have withheld information from the audit and the only conclusion the Tribunal can draw from this is that she still believes her coworkers are trying to hide their fraudulent behaviour.
344. On 25th February 2021, the claimant went into the respondents' offices to collect her belongings as requested. This is the first time since her absence she has been in. She complains in her witness statement about the behaviour of Ms Harrison's assistant, Ms Readshaw. The Tribunal did not hear from Ms Readshaw but concluded that this would be a difficult undertaking for the claimant in light of her previous claims about how she

was treated, the Tribunal concluded, that was a result of her own anxiety going to the office and her own distrust of the workers in the office.

345. On 26th February Ms Wilmot responds to the claimant's email of 19th February 2021 She is defensive of her own and the respondent's position, perhaps understandably. She invites the claimant, again, to provide details of the victimisation and detrimental treatment so they may be thoroughly investigated within the grievance process. Ms Wilmot is happy to accept the claimant's conditions for obtaining an OH report including, sending a draft of the referral to the claims for comments. The claimant is informed that if she does not wish to engage in the grievance process concerning her complaints about Ms Duffy then the company will conclude that there is no complaint and Ms Duffy will continue to be involved in HR matters with the claimant.
346. This is a reasonable approach to take. Having engaged an external consultant, if the claimant does not want to pursue a grievance about her behaviour the respondent is entitled to ask her to remain involved.
347. Over the next few days, the claimant's mental health deteriorates. She spoke to her GP on 3rd March 2021, who notes that the claimant is 'more flat than usual'.
348. On 5th March 2021, Mr Chase contacted the respondent to update it on the current situation. It is a confrontational email, for example, 'This will stop now. I will not allow Louise's health to suffer any further.' Whilst it is perhaps understandable that Mr Chase would wish to support and protect his wife the tone of his letter was belligerent and may have been counterproductive.
349. Ms Wilmot replied to the claimant on 9th March 2021. She explains that the respondent cannot communicate with Mr Chase without the claimant's permission. She is therefore asked to confirm that she is happy to correspond with her husband. The respondent acted entirely appropriately in sending this email. It is polite and empathic towards the claimant's health. The claimant gave her consent the same day.
350. On 11th March a letter was sent by post to the claimant, it was sent in an envelope addressed to Mr Chase. The letter was a formal invite to a sickness absence meeting on 18th March 2021 via Teams to discuss her health. The claimant was advised she could be accompanied by a colleague, a TU representative or by a member of the Sunderland Psychological team. The claimant was also advised that one outcome of the meeting was that your employment may be ended. The approach adopted by Ms Wilmot was entirely reasonable. The envelope was addressed to Mr Chase to ensure the claimant herself did not open it. The letter inside was addressed directly to the claimant. Whilst the claimant did not want direct communication this was a letter that she had to know about.

If she did not read it or informed her of its contents the consequences could be serious. The respondent rightly offered support both just from colleagues and TU reps but also from her medical team. This was an adjustment that the Tribunal considered appropriate in the circumstances. Finally, the respondent informed the claimant of a possible outcome of the meeting. This is a standard phrase which ought to be included in such a letter. It is not a threat nor designed to harass but rather to inform an employee. The phrase is the kind of phrase that a reasonable employer would include.

351. Mr Chase, on behalf of the claimant, responded to Ms Wilmot Harrison and Wiseman on 16th March 2021. His tone is again belligerent. He does not open the email with a greeting but simply states 'I see how things are'. He goes on to request certain information about the process. His penultimate paragraph uses phrases such as 'coercing' and threats to dismiss' and a 'less hostile' approach. The Tribunal does not consider that any of these phrases are accurate in the respondents dealing with the claimant. Indeed, Mr Chase's email is possibly the most confrontational email in the case.
352. Ms Wilmot replied to Mr Chase on 18th March 2021. Her letter addresses the issues raised by Mr Chase and suggests that the claimant takes more time to consider if she would like to attend the meeting and provide written submissions. She offers an alternative meeting date of 26th March 2021 again by Teams. This letter is again polite and makes a sensible suggestion that the meeting be rearranged.
353. Having received the email from Ms Wilmot and informed the claimant of its contents, Mr Chase raised with the claimant the issue of resigning from her position. The claimant agrees with her husband and submitted her resignation by letter on 24th March 2021. She gives a clear indication that she considers herself automatically unfairly dismissed following 'the organisation's repeated and repudiatory breaches of contract forcing my resignation' The letter sets out the reasons for her resignation including, 'the mishandling of the protected disclosures and multiple failures to protect me from detrimental treatment.
354. Remarkably, the resignation is with notice, so the claimant does not leave the respondent's employment for an additional three months. There is no benefit to the claimant for staying as she will receive no pay having exhausted her entitlement to sick pay. Her reason in evidence, that she thought the respondent would sue her for breach of contract again shows her distrust, but to the Tribunal, if the situation was so serious that she needed to resign to focus on her health and recovery the claimant would have resigned without notice. To stay means she has to continue to submit fit notes and have contact with the respondent for another twelve weeks. This does not make sense.
355. Ms Wilmot responded by letter to Mr Chase on 26th March 2021. She sets out the company's position and wishes the claimant a speedy recovery.



She offers the claimant the opportunity to leave immediately and points out that if she remains for three months she will be required to submit fit notes. She also indicates that if at any time the claimant feels fit enough to return to work the respondent would welcome the opportunity to understand her concerns and for them to be investigated.

356. The respondent announced the claimant's resignation internally on 29th March 2021. It is a brief announcement simply setting out the basic facts. Whilst it is brief and may be considered abrupt, i.e. it doesn't wish her well This is a proper announcement to make and the Tribunal can understand why it is so, The respondent is right not to mention any issues about the claimant's ill health or her allegations of victimisation or detrimental treatment. These are between her and the management team and are not the proper topic for such an announcement.
357. On 24th May 2021, the respondent updated its website and removed the claimant's profile from it. Whilst it may be considered premature, it is clear that the claimant was not going to return and she was not actively working during her notice period
358. On 7th June 2021, the claimant resigned from her position as a /Non-Executive Director of Every Day Homes. This is an organisation providing housing for those with dementia which has links to Age UK. Ms Harrison is a Trustee with Age UK. In part, the claimant cites wanting to limit contact with Ms Harrison. There is no evidence of how much contact they did have, but this was a decision made by the claimant and was not a result of any actions by the respondent.
359. On 15th June 2021, one year after the claimant started her sick leave, the respondent held a webinar entitled 'Leading from the Front'. The claimant states this was a deliberate attempt to antagonise her. This is a further occasion which shows the claimant's mistrust of the respondent. There is no evidence, save a coincidental link with the date that the respondent held the webinar because of the claimant.
360. On 22nd June 2021 the claimant read an article written by Ms Wilmot titled 'Looking after staffs mental wellbeing'. The claimant once again attributes an ulterior motive to the respondent for the article, stating that it was an exercise in managing the respondent's image and that the content was inappropriate. Again the Tribunal can find no evidence of an ulterior motive in particular to cause upset or distress to the claimant.
361. The claimant attended the respondent's offices on 25th June 2021, which was the last day of her notice period to return property belonging to the respondent. The Tribunal asked itself why, if she was so determined to leave the claimant retained the property until the last day rather than cutting ties at an earlier stage.

362. Despite the claimant's assertion that she needed time to recover it is clear that even after her resignation the claimant could not let go of the original issue leading to her first PD. She was advised to find evidence to challenge her beliefs by her counsellor. The Tribunal were given no evidence as to what this may mean. The claimant does this by reviewing documents about the disclosures. She discovers a document in which she believes that Ms Harrison had lied. As a result of this, the claimant contacted the Serious Fraud Office on 21st May 2021. Between June 2021 and October 2021, the claimant assisted in the SFO investigation including a four hour interview. The SFO did not take any action and informed the claimant on 12th October 2021. It is remarkable that the claimant was able to be part of this investigation yet felt unable to follow through on a grievance aimed at trying to return her to work.
363. Despite this outcome, the claimant on 21st October 2021 contacted the respondent board to advise it she still had concerns. The disclosure by the claimant has now been investigated by an external auditor RSM and the SFO and no wrongdoing, cover up or fraud has been found, yet the claimant persists in pursuing her claims. She is so fixated she cannot conceive she could be wrong.
364. On 21st October 2021, the claimant posted on LinkedIn about her experiences with the respondent. This led to Ward Hadaway, solicitors acting on behalf of the respondent writing to the claimant. The letter requests that any posts or communications with the respondent cease immediately as they are defamatory and intended to damage the respondent's reputation.
365. On 8th November 2021, the claimant received an email from the same solicitors about an attempt to contact Yvonne Surtees. The claimant was informed that she should not attempt to contact Ms Surtees and if she did so it would be considered harassment.
366. The Tribunal does not consider that either communication from the solicitors was inappropriate. They were acting within the law and attempting to protect their clients. It had nothing to do with the claimant's PD.
367. Even following this the claimant continues in her attempt to find evidence against the respondent and makes a Freedom of Information request to some Local Authorities including Durham County Council, Halton Borough Council and Kirklees Council around January 2022. This was concerning Tunstall Healthcare's contract to supply products since 2011. It appears that these were obtained to support the claimant's case at this Tribunal as no reference has been made to any further disclosures.

**The Medical Evidence**

368. The respondent admits that Mr Chase is disabled for the purpose of section 6 Equality Act 2010.
369. The claimant asserts in her impact statement she has a Panic Anxiety Disorder and Depression Severe). The dates of diagnosis of these conditions are as follows: Panic Attack/Anxiety 6th May 2020; anxiety disorder 17th June 2020. Severe Depression 3rd March 2021.
370. In relation to the medical evidence, the Tribunal has not set out here all the consultations but those which are significant.
371. The claimant had presented to her GP in August 2018 with a low mood because of family issues over the past year which have settled. Although not referred to at that appointment it is clear at some point the claimant was prescribed the antidepressant 'sertraline'. In October 2018 she wants to try and wean herself off the drug.
372. On 6th May 2020, the claimant presented, in a remote consultation with her GP, Beckett, with a history of stress at work, lots of stress, and had a panic attack yesterday. She has had poor sleep and has been feeling anxious for a few months. At this time the claimant feels that antidepressants are not required. The GP prescribes propranolol, a beta blocker to help reduce the severity and frequency of the panic attack symptoms. This is to be reviewed in one month's time. No specific diagnosis is given at this time. The problem is noted as stress at work.
373. On 17th June the claimant speaks to a different GP. It is noted that she is doing well on propranolol and there are no acute issues, but she wishes to speak to Beckett for continuity. A fit note is issued for the period 17th June -10th July 2020
374. On 8th July the claimant reported that feels much better after having some time off work although she is anxious about returning to work. It is noted that she denies low mood and anxiety. A further fit note for two weeks is issued.
375. At a welfare review meeting on 14th July, the claimant says she is feeling terrible but is getting there. When asked about getting back to work the claimant wasn't sure but thought 'maybe soon'
376. On 23rd July 2020, the claimant reported to her GP that the situation at work is getting worse but still denies depression/anxiety. She is looking after herself in other ways, she is sleeping well, and exercising. She declined counselling or medication other than propranolol.

377. By 5th August the claimant will inform the GP that she is hopeful to return to work in two weeks. It appears that the claimant was sent the usual Depression Questionnaire at some point following this. Having completed this the scores are noted as mild depression and severe anxiety.
378. By 20th August the GP notes that the claimant is feeling a little brighter, she is starting CBI and the work situation is progressing. She is keen to get back to work as soon as possible. The diagnosis recorded is 'stress at work'.
379. At the next appointment on 16th September 2020, the claimant reports she is making progress although very anxious still. The GP records it as a 'supportive chat'. The GP records two problems stress at work and anxiety disorder. This is the first mention of anxiety as a formal diagnosis.
380. In an email to Ms Wiseman on 16th September 2020 the claimant states that she is feeling a little better. She points out that the reason for her absence from work is anxiety and not stress.
381. By 14th October the claimant's GAD score for anxiety was still severe and her PHQ score still showed mild depression.
382. The claimant was referred for an Occupational Health Assessment. The report dated 26th October sets out the questions asked. These include: 'an opinion about the reason for Louise's absence, if work is a contributory factor and if Louise is fit for her normal duties now. An opinion is also requested about when Louise may be well enough to return to work, what adjustments could be made to facilitate her return to work, maintain her well being and attendance' no significant signs of depression.
383. In relation to the first question, the author reports that Louise's absence was triggered initially by severe intrusive symptoms of anxiety. These were triggered by concerns she raised at work which remain unresolved. The claimant is not yet well enough to return to work and she needs a clear four week period to continue and consolidate her recovery. There are recommendations made about helping the claimant back to work. These include a four week period of no communication with the claimant; the grievance is put on hold at least until after the four weeks have passed. A phased return to work; home working. Micro breaks.
384. The author's opinion is that the claimant will make a full recovery and consequently the Equality Act 2010 will not apply.
385. The claimant maintains her contact with her GP and on 13th January 2021 the notes show that the claimant had poor sleep and this feels like the main issue awake with panic attacks at night which impacts on her mood the following day.

386. In response to questions asked of the claimant for a welfare meeting in January 2021. The claimant states she has no other health issues unrelated to her anxiety. She reports periods of feeling tired. She has panic attacks which leave her exhausted. Difficulty focusing on home life and leisure activities. She is unable to maintain a consistent sleep routine during periods of high pressure from individuals.
387. In response to the question, what are you able to do despite your anxiety disorder? The claimant indicated 'I would theoretically be able to do anything I usually would if these incidents stopped and I was allowed to rest and recover.
388. By 3rd March the claimant indicated to her GP that she is using the propanolol; infrequently but accepts she may need more support from medication. The GP prescribes venlafaxine. The GP notes the claimant is more flat than usual but has no acute concerns about mood. The diagnosis is mixed anxiety and depressive disorder.
389. Following the claimant's resignation, she visited her GP On 24th March 2021 It is noted that the claimant thinks she will renew the fit note when due as she won't be able to return after previous events. Her GP continues to assess her and supply Fit notes for the duration of the notice period.
390. By 1st April the claimant states her mood has improved although she still has occasional wobbles. The PHQ score on 8th April shows the claimant has severe depression.
391. On 3rd June the GP commented that the claimant 'is struggling to come to terms with handing in her notice at work, sense of loss not sure what she is going to do as work was an enormous part of her life.'
392. The last entry is 8th July 2021 where the diagnosis is mixed anxiety and depressive disorder. The claimant is feeling better since last time although she has ongoing panic attacks.
393. There are further PHQ scores recorded in the medical notes that reveal the claimant still has severe depression in January 2022.

#### The impact on the claimant

394. In her impact statement, the claimant states she experienced significant symptoms of anxiety from 7th February 2020. Her ability to carry out normal day to day activities was affected from 12th June 2020 although she does not state what these were. In terms of what was affected the claimant stated she withdrew from social interaction. She would stumble over her words so conversations were affected. She became overwhelmed

by changes in routine and tasks. She was uncomfortable leaving the house and sometimes to answer the door or phone. Hobbies she had previously enjoyed were no longer enjoyed.

### **Submissions**

395. Both Mrs Chase and Mr Bronze presented the Tribunal with written submissions which were comprehensive. They are not rehearsed here.

### **Discussions and Conclusions**

#### **Disability**

396. In determining this issue, the Tribunal noted that the impairments relied upon are panic/anxiety and depression. We have taken into account the impact statement of the claimant, the GP records, the Occupational Health report and the claimant's response to questions at welfare meetings.
397. The Tribunal first looked at the impact of the impairments upon the claimant. From the impact statement, it is clear that the claimant was fit and healthy before these events. She enjoyed running, pilates and yoga and ate a healthy diet. It appears her first panic attack was in anticipation of a meeting with the respondent on 5th May 2020. As a result of this, she saw her GP and was prescribed propranolol. However, it was not until 12th June 2020 that she described the events at work as significantly affecting her and she was declared unfit to work from 17th June 2020. It was not until March 2021 that there was a diagnosis of depression. The Tribunal accepts that a mental health condition does not necessarily appear overnight.
398. The claimant was asked to give details of examples of day to day activities which were adversely affected by her impairment between February 2020 until 28th March 2021. Unfortunately, she has not been specific as to dates or activities but has given a very generalised description. Some of the examples are very specifically been said to occur after interaction with the respondent or in anticipation of such interaction. For example, the police welfare visits and meetings in the workplace.
399. Having said that the Tribunal accepts, having considered the GP notes and the GAD and PHQ scores that the claimant's health did deteriorate after her first panic attack and the Tribunal accepts her account of the impact contained with her impact statement.
400. This includes withdrawing from social interaction with others. In conversation, she would stumble over her words or would speak faster than usual. When she was particularly anxious, she was unable to listen or articulate herself properly. She was uncomfortable leaving the house

and would avoid it so, her husband had to accompany her if she was visiting a new or unfamiliar place. The claimant found it difficult to answer the door or the phone and felt unsafe and unable to relax in her own home. In relation to the household chores, she found it difficult to plan and she was forgetful. Her interest and enjoyment of hobbies was diminished.

401. Further, the Tribunal accepts that such matters as she describes would have a substantial adverse impact on the claimant's ability to carry out day to day activities.
402. The question is therefore whether the impairments were long term at the relevant dates of 14th January 2021, 10th March and 18th March 2021.
403. The tribunal concluded that as of 18th March the claimant had not been adversely affected by the impairments for a period of 12 months therefore, she would not fulfil the definition of disability for any period before that.
404. The claimant has therefore to satisfy the Tribunal that as of each date, the impairment was likely to continue to have that effect. The tribunal must consider this issue at the time, not what subsequently happened.
405. As of 26th October 2020, and the report from the Occupational Health provider, it appears that the claimant was anticipated to make a full recovery. Her illness was a reaction to events at work and once they were resolved she would make a full recovery. In addition, her GP noted she was doing yoga and her home life was good. Whilst Her GAD score (anxiety) was severe her PHQ score was mild depression. On 13th January she reported to her GP problems with sleeping especially if she had a panic attack the tribunal noted that in response to questions from the respondent, the claimant replied, 'I would theoretically be able to do anything I usually would if these incidents stopped and I was allowed to rest and recover'.
406. Even taking account of the claimant perhaps being anxious to ensure she gave the impression of being fit the Tribunal concluded that at this time the impairments were not likely to continue to have a substantial impact upon the claimant.
407. Turning to March 2021, the PHQ and GAD scores show that the claimant had symptoms of severe depression by 8th April 2021. This was a distinct change as her GAD score was now moderate. The tribunal noted that at the GP appointment closest in time before to relevant date, the claimant was described as generally low in mood and tearful sounds more flat than usual the claimant had stopped her propranolol and was now taking antidepressants. By 1st April 2020, she is seeking an increase in her antidepressant medication.
408. The Tribunal concluded therefore that at some point between January and March, the claimant's impairment deteriorated and changed in that it

was initially likely to be a reaction to work or life events and was now a depressive disorder.

409. Taking account of the history to this date and the changing nature of the impairment the Tribunal concluded that it was likely to last at least 12 months as of 10th March 2021. Therefore, the claimant would fulfil the criteria of disability for the relevant period.

#### The respondent's knowledge of the disabilities

##### Mr Chase

410. The claimant's case is that the respondent was aware of Mr Chase's disability because of a conversation she had with Ms Harrison on 21<sup>st</sup> April 2021. Ms Harrison accepts there was a conversation but not that she was told Mr Chase had a disability. Having reviewed the evidence of the conversation the Tribunal is satisfied that although Mr Chase's condition was discussed. It was in the context of how long it took for the diagnosis to be made and the impact this had had upon their home life.
411. Further, the claimant relies on an email on 28th April 2020 when reference was made to Mr Chase's diagnosis of ADHD and treatment and on an email on 10th July 2020 where reference was made to Mr Chase's 'mental health issues.'
412. The claimant relies on the fact that the respondent knew that Mr Chase had ADHD and therefore she states they knew he was disabled. ADHD is not one of the impairments in the Equality Act 2010 which is a deemed disability. The additional criteria about the impact must also be fulfilled. There is no evidence that the claimant ever gave any detail of the impact of the impairment to the respondent. The respondent must know not only of the impairment but also that it is a disability. The respondent had no information upon which to base any such knowledge.

#### The claimant's disability

413. The claimant relied upon the fact that at the time of the discrimination against her, she had been suffering from an anxiety condition for 12 months. This is not correct. The first time there is cogent and reliable evidence of a panic attack is the GP notes on 6th May 2020.
414. The claimant also states in her submissions that the substantial impact had been present for 12 months. This again is incorrect. In her impact statement she refers to the impact from June 2020, there is no evidence that before this time the impact was substantial.
415. It is for these reasons the claimant appears to assert that the respondent was aware of her disability. The Tribunal does not agree. The occupational report obtained in October 2020 specifically states that the claimant will make a full recovery and is unlikely to fulfil the criteria of disability. In addition, the claimant's response to the welfare questions in



January 2021 gives the distinct impression that the claimant is able to return to work once her issues are resolved. The Tribunal concluded that the answers were not such as to put the respondent on notice that the claimant was disabled.

416. The respondent did not know nor should it have been aware that the claimant was disabled on the relevant dates.

#### Direct Discrimination

417. The claimant relies on two separate acts for direct discrimination. First the letter of 10th March 2021 from Mrs Wilmot. This is a letter inviting the claimant to discuss 'your situation'. The letter contains the phrase 'I am obliged to advise you that one possible outcome of this meeting is that, unfortunately, your employment may be ended if we are not able to make an appropriate arrangement for your return'.
418. In her ET1 The claimant's criticism is it was a deliberate use of a loophole in the agreement to communicate with Mr Chase. The Tribunal understood this to mean that although the envelope was addressed to the claimant its content letter was addressed to her. In her witness statement, the claimant expands upon this and states this was a deliberate attempt to undermine the claimant's support by having her husband deliver bad news and it was opportunistic.
419. In her closing submissions, the claimant goes further stating that Ms Harrison and Mrs Wilmot had deliberately sent the letter despite knowing she was now suffering from depression. It contained a threat of dismissal.
420. It appears from the evidence that the claimant's criticism is that she had not had any such letter previously.
421. The respondent was obliged at some point to commence actions under its Absence Policy. It was obliged to inform the claimant that it was doing so and to invite her to a meeting to discuss the same. The Tribunal considered whether addressing the envelope to Mr Chase but the letter itself to Mrs Chase, was exploiting a 'loophole'. The Tribunal concluded it did not. The respondent could not hold a meeting without notifying the claimant and it is clear from the evidence and the claimant's demeanour that if the letter itself had been addressed to Mr Chase the claimant would have complained about that.
422. The Tribunal concluded that the reason for the sending of the letter was to commence a formal absence process as a result of the claimant's continued absence since June 2020. It is this tribunal experience that such a letter would be sent as part of such an absence review whether the employee was disabled or not.
423. The Tribunal then considered the contents of the letter. It is a standard letter in which as we would anticipate the employer has informed the employee, as it is required to do, of the possible outcome of any hearing.

In so far as it is asserted by the claimant we do not find that there was any ulterior motive on behalf of Ms Harrison or Mrs Wilmot in the sending of this letter.

424. Finally, as already indicated but for the avoidance of doubt this letter was not 'less favourable treatment that is to say such a letter would have been sent to a non-disabled employee in the same way.
425. In her submissions, the claimant invites the Tribunal to consider that she was treated differently to Mrs Benson who was given a phased return on full pay. The Tribunal concluded that this option was open to the claimant if she attended/participated in the welfare meeting. It had never been excluded.
426. The claimant goes further and attempts to add a reasonable adjustment claim in her submissions stating that the respondent failed to implement the reasonable adjustment she requested in her response to the questionnaire. This is the first time such a claim has been raised. And therefore, cannot be considered.

#### The Email of 18th March 2021

427. This is in reply to the claimant's response to the first letter. The email invites the claimant to a further meeting on 26th March. It offers the possibility of the claimant providing written submissions. It also offers that the claimant may bring a member of the psychological Team who is supporting her.
428. In her particulars of claim, the claimant states that this letter was a further demonstration of Mrs Wilmot concealing the fact that other processes were being followed. At the Case Management hearing with EJ Sweeney, she said that the letter was to pressure her into attending a meeting and Ms Harrison and Mrs Wilmot were motivated by her disability. In her witness statement, she states that it was unnecessary and relentless pressure. In her submission she repeats the same matters relied upon for the first letter. The Tribunal did not consider this letter to be less favourable treatment, it was simply an employer following good practice. It was not sent because of the claimant's disability. This letter was not an act of discrimination.

### **Public Interest Disclosures**

#### The Disclosures

#### **General points**

429. The Tribunal has observed that there are a multitude of disclosures made by the claimant. The Tribunal considered the first PD to be the most important, This is not only the most important disclosure, as it alerted senior managers to a possible serious issue which may have been a breach of the regulations and possibly fraud; but it is also as a result of this

that the claimant appears to believe that the respondents in particular Ms Harrison and Mrs Wilmot conducted a campaign of bullying and harassment against her. The Tribunal rejects this assertion. It is clear to the Tribunal that the CEO Ms Harrison was attempting to deal with the issue primarily by ensuring that any overpaid commission was repaid and secondly by setting up systems to ensure it did not happen again. She was not ignoring the issue.

430. As already noted the claimant was not satisfied with this approach and appeared to believe following the disclosure many people in the organisation but Ms Harrison and Mrs Wilmot in particular were treating her less favourably. This led to her making multiple disclosures about other people's behaviour. Although this Tribunal has thoroughly examined every aspect of the case, the claimant may have been better advised to limit her PDs and detriments. It's because of the wealth of information the Tribunal has had to consider that the decision has been so long in being promulgated.
431. The respondent admits that the majority of the disclosures qualify for protection under the Employment Rights Act. Mr Bronze makes the point that many of the PDs are repetitions but does not challenge them. The tribunal understands the respondent specifically does not accept PD 13 because it has not been particularised as set out in the document 'Respondent's response to the claimant's protected disclosures. It rejects PD 19 because it was not made to an appropriate person.

### **PD 13**

432. The claimant in her claim form at para 17 states that on 11th June 2021 she raised PD 7 with Ms Wilmot in an email. There is no further detail given in the claim form nor is there any additional information in the witness statement. Having reviewed the emails, the Tribunal are unable to find any such email. PD 7 was an email to Ms Wilmot in which she said she would update the risk register as discussed in EMT in the update she wrote 'Informal Extensions and No Contracts commission – noncompliance with procurement regulations. Risk of challenge, NHC reputational damage.'
433. Although the claimant asserts it was a repetition of PD 7 the Tribunal is unable to confirm this. The claimant has produced numerous emails and the fact that one is missing is significant. The burden of proof is on the claimant to establish there was a disclosure which qualified for protection, the Tribunal have no option to reject this as a PD.

### **PD19**

434. This is an email to RSM UK, the auditors conducting the internal investigation. The disclosure is made in an attachment. The respondent rejects this as a qualifying disclosure because it is not made to an appropriate person in accordance with Section 43C Employment Rights Act 1996.

435. The disclosure was not made to the claimant's employer. The disclosure does not relate to a failure by a person other than her employer. Nor is the disclosure made to a person who has legal responsibility for the failure. Mr Almond was appointed as an auditor he does not have any responsibility within the respondent. The Tribunal rejected this as a PD.

## **The Detriments**

### Overview

436. The claimant in alleging 93 separate occasions where there has been a detriment the claimant has perhaps not assisted herself. Some of the detriments relate to how another person addressed her or that a person was lying. This latter is when any person's recollection or account of an event is at odds with the claimant. The fact that someone does not recollect does not mean they are lying.
437. As noted above, the claimant became unduly sensitive in her ongoing relationship with her colleagues, it is against this background that each detriment must be assessed.
438. In discussing the detriments, the Tribunal first was required to make findings of fact about events, such as meetings. The Tribunal did this taking into account all the matters raised in the claimant's witness statement and her evidence set out above. Many of the detriments however are a question of interpretation of a document. The Tribunal then went on to consider if, on the facts, there was a detriment to the claimant. Each detriment is looked at from an objective standpoint. That is to say, what would a reasonable employee take the view that the actions of the employer were in all the circumstances to his detriment?
439. The Tribunal, having made its findings of fact, did not accept the claimant's account or interpretation on most of the occasions as outlined above. There are two occasions when the Tribunal accepted that the behaviour of the respondent may amount to a detriment. These are the four weeks non-contact period on the recommendation of Dr Clugston. The claimant's emails being blocked over Christmas by the instruction of Ms Harrison.

### Non-contact period

440. As noted above the non-contact period was suggested by the claimant and adhered to by the respondent. Where the respondent failed was its neglect to discuss and inform the claimant during this period.
441. The result of this would be that both parties but the claimant in particular would be unaware that this was agreed upon and further when it was commenced and ended. This could cause distress for an employee.

### Blocking Emails

442. The Tribunal was perturbed that an employer would block an employee's emails for any reason. Especially in the circumstances of this case where the claimant was about to submit a further sick note. To block her email would inevitably cause distress and raise suspicion. The Tribunal considered that a reasonable employer would have invited staff to ensure their out of office email was activated. This would mean staff did not have to respond to emails but would also notify the claimant that the email had been received.
443. These two actions by the respondent, although low level may be to a reasonable employee, be a detriment, that is they were putting the claimant at a disadvantage.

### **Causation**

444. In any event, the Tribunal does not accept that the actions outlined above were because of the PDS. Save for the alleged treatment happening in close proximity to some of the PDS there is no evidence of causation. In particular some of the alleged detriments occur sometime after the PDS. Many of the actions of the Management team are because of frustration with the claimant. She makes allegations and then does not wish to follow through. She at one point implied that Ms Harrison had lied to her, about the legal advice.
445. The Tribunal is satisfied that none of the employees acting in the manner described was materially influenced by the PD made by the claimant.

### **Constructive Dismissal**

446. The claimant relies on the breach of the implied term of mutual trust and confidence in her claim. Having reviewed each occasion when the claimant alleges that the respondent has breached the implied term of the employment. The Tribunal does not consider that any of the actions breached the term.
447. As can be seen from the facts and discussion on the detriments, most of the matters that the claimant refers to are not accepted as detrimental treatment. The Tribunal asked itself 'Do they breach the implied term?' There are two occasions when the Tribunal considered the respondent's behaviour was not that of a reasonable employer. That does not mean that there was a breach of the implied term.
448. Although the Tribunal has noted on occasion that the respondent, for example, the 'twisting face' comment did not act in accordance with best practice none of the incidents themselves are sufficient to breach the implied term of trust and confidence.

449. In relation to the non-contact period. This issue here was the failure to inform the claimant and seek her agreement, of itself it is not a breach of any term of the employment contract.
450. Even taken together the Tribunal did not consider there was a breach because of the passage of time between each incident. Even if they had been on consecutive days the Tribunal concluded they would not be sufficient to amount to a breach of the implied term of trust and confidence.
451. In particular, the Tribunal considered the reason for the respondent's behaviour and concluded that on each occasion the respondent had a reasonable cause for acting in the way it did. As can be seen from the facts above, the Tribunal is satisfied that throughout the period February 2020 to June 2021, the respondent was attempting to deal with the issues raised by the claimant in an appropriate manner. Although on the occasions identified the behaviour of some of its officers fell below the standard the Tribunal would expect from a reasonable employer, overall Ms Harrison and Ms Wilmot were dealing with a challenging employee. This has to be considered against the background of the fast-paced changes occurring because of the COVID-19 pandemic.
452. The respondent did not act without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between itself and the claimant.

### The resignation

453. In assessing the resignation, the Tribunal did consider the timing and the reason behind the resignation. The resignation was prompted by the series of emails about the sickness meeting which included a reference to dismissal. These emails and letters were not a breach of the contract of employment. They are the type of standard pro forma letter the Tribunal would expect to see when someone is absent through ill health.
454. The Tribunal asked itself did the claimant resign because these were the 'last straw?' The evidence of this is unclear. The claimant asserts her husband raised it first. The Tribunal asked itself was it the claimant genuinely wanted to leave. She had by this time sought advice from ACAS, although the Tribunal does not know what this is. However, she resigned on notice. The reason given for this, that the respondent might sue, is irrational, especially as the respondent offered to terminate the contract early.
455. Whilst the claimant may have considered that she should resign the Tribunal concluded that none of the actions of the respondent were such as entitled her to resign and claim constructive dismissal.

### Time Limits

Dismissal

456. The time limit for each of these types of claims is three months. The claims for unfair dismissal, and automatically unfair dismissal were presented within the relevant time.

Detriments

457. On the claimant's case, the last detriment was the sending of the correspondence from the respondent's solicitors. If the Tribunal concluded these amounted to detriments the time limit issue would not arise.
458. However, the last detriment the Tribunal found was on 18<sup>th</sup> December 2020, the blocking of the email. Even taking into account that it continued until the New Year the detriment claim was presented substantially after the three-month time limit expired.

Discrimination

459. The last act of discrimination cited by the claimant was 21<sup>st</sup> March 2021. Even if the Tribunal had found a proven discrimination it was presented after the three month time limit expired.

Conclusion

460. The claimant was disabled for the purpose of the Equality Act 2010 by the relevant date of 10<sup>th</sup> March 2021.
461. The respondents did not discriminate against the claimant by sending letters to her on the 10<sup>th</sup> and 18<sup>th</sup> of March 2021.
462. The respondent did not fail to make reasonable adjustments.
463. The claimant was NOT subjected to less favourable treatment because she had made PDS.
464. The respondent did not act in such a way that the implied term of trust and confidence was irrevocably broken entitling the claimant to resign.
465. The claimant was not automatically dismissed because of her PD.

Employment Judge AE Pitt

31<sup>st</sup> October 2023