EMPLOYMENT TRIBUNALS

Claimant: Mrs N A Ball

Respondent: Southport & Ormskirk NHS Trust

Heard at: Liverpool **On:** 15, 16, 18, 19, 22, 23, 24, 25 and 26 May 2023

Before: Employment Judge Horne
With members: Ms Plimley
Mr Hussain

REPRESENTATION:

Claimant: Miss L Halsall, Counsel
Respondent: Mr J Boyd, Counsel

JUDGMENT having been sent to the parties on 9 June 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction and acknowledgments

1. We start by acknowledging the delay in sending these reasons to the parties. We informed them at the hearing that the reasons would be likely to take many weeks to prepare. We are sorry for that. As we explained at the time, we gave priority to telling the parties who had won and who had lost and explaining our reasons orally.

2. If anybody is still reading these reasons after page 10, they will know that this was not a straightforward case. The final hearing was originally listed for 10 days. One day was lost, with the agreement of the tribunal, because counsel for one party was unavailable. Our employment judge had to manage the hearing timetable actively to ensure that the tribunal had a day and a half in which to deliberate. Even then, the tribunal was required to adjudicate on three alleged protected disclosures, 28 alleged detriments

(taking into account the separate acts and failures alleged under each heading), a complaint of unfair dismissal and two complaints of discrimination arising from disability. The list of issues on its own ran to 12 pages. The bundle consisted of over 2,500 pages.

3. Despite these challenges, we were able to give the parties an oral judgment on the final day of the allocated hearing time. This would not have been possible without the help of Ms Halsall and Mr Boyd. They cooperated to keep the oral evidence to its timetable and produced focused written and oral submissions.

4. The tight timetable meant that we had to take a proportionate approach to the parties' submissions, to the evidence, and, in particular, to the documents. We concentrated on the documents that had been drawn to our attention, but even then, we could not take into account every page.

5. We did consider whether to reserve our judgment or to adjourn part-heard for further reading time. Our decision was that these steps would not help to achieve the overriding objective. This case has taken its toll on parties and witnesses and, in particular, the claimant. The parties needed to know who had won and who had lost, and why. Reserving our decision, or adjourning part-heard, would probably have resulted in a delay of weeks or months. It would also have risked causing delay to the parties to other cases, whose hearings might have to be postponed in order to make way for a re-listed hearing in this case.

Complaints and issues

6. By a claim form presented on 2 November 2021, the claimant complained that the respondent had:

   6.1. Unfairly dismissed her, contrary to section 94 of the Employment Rights Act 1996 ("ERA") and within the meaning of section 98 of ERA;

   6.2. Automatically unfairly dismissed her for making a protected disclosure, contrary to section 94 of ERA and within the meaning of section 103A of ERA;

   6.3. Subjected her to detriments (often called "whistleblowing detriments") on the ground that she had made a protected disclosure, contrary to section 47B of ERA; and

   6.4. Discriminated against her because of something arising from her disability, in contravention of section 39(2) of the Equality Act 2010 ("EqA") and within the definition in section 15 of EqA.

7. The claim form also raised a complaint of failure to make adjustments, but this complaint was withdrawn and dismissed in a judgment sent to the parties on 12 October 2022.

8. The issues in the case were agreed and recorded in a written list prepared by the parties.

9. We discussed the issues at various stages during the hearing. Some discussions resulted in a welcome narrowing of the issues. Others caused the issues to expand. The more important developments were:

9.1. At the start of the hearing, we informed the parties that we would recast the issues for determination in the complaint of unfair dismissal. This was to align more closely with the statutory language and the correct approach to the burden of proof indicated in *Kuzel v. Roche Products Ltd* [2008] EWCA Civ 380.

9.2. It was agreed that, when considering the reason for dismissal, we should examine the motivation not just of Mrs Morgan and the appeal panel, but also (depending on our findings) the motivation of Mrs Royds. This was to reflect the claimant's case that Mrs Royds had manipulated the investigation with the intention of securing the claimant's dismissal, and had done so for the sole or main reason that the claimant had made protected disclosures.

9.3. The claimant's main contention was that the reason for her dismissal was that she had made a protected disclosure. Her alternative case, advanced through Ms Halsall's written submissions, was that the reason for dismissal was her conduct.

9.4. The respondent contended that, in the event that the dismissal was found to be unfair, the claimant's compensation should be reduced on the ground that, had the respondent acted fairly, the claimant would or might have been dismissed in any event. Both parties made submissions on this point. We agreed to determine it at the same time as deciding whether the dismissal was fair or unfair.

9.5. The respondent dropped its contention that the claimant had contributed to her dismissal through her own conduct.

9.6. The respondent conceded that the tribunal had jurisdiction to consider the whole of the claim, including all the allegations of whistleblowing detriments, and that the tribunal's jurisdiction was not affected by the statutory time limit for any part of the claim.

9.7. The claimant indicated that she was not pursuing three of her whistleblowing detriment complaints. These were identified on the list of issues as D3.1.3.10, D3.1.3.11 and D3.1.3.16. She consented to these three complaints being struck out. We considered whether to treat the complaints as withdrawn and to dismiss them under rule 52 of the Employment Tribunal Rules of Procedure 2013. We opted to strike them out instead, in case a dismissal judgment might unwittingly create a binding adjudication that might interfere with our ability to consider the remaining complaints on their merits. (To Mr Boyd's credit, he disavowed any intention to take technical points such as these, but we decided nevertheless to opt for safety.)

9.8. Mr Boyd also made a sensible concession when it came to the question of what the claimant believed her disclosure of information tended to show. We put this proposition to Mr Boyd: If the claimant reasonably believed that the information tended to show a fraud had been committed, would the tribunal need to make a specific finding about whether she reasonably believed the fraud to be a criminal offence or a breach of a legal obligation? Mr Boyd agreed that it would be pointless to distinguish between the two types of relevant failure. Plainly it would be reasonable for a non-lawyer to believe that a fraud was either a crime or a non-criminal breach of the law, even if they could not with legal certainty say which it was.

9.9. We clarified Detriment 3.1.3.2(a). This was an allegation that Mrs Leadbetter had failed to support the claimant before she went on sick leave. The claimant did not identify any particular supportive step that she claimed Mrs Leadbetter had deliberately failed to take. Her case was that Mrs Leadbetter had not taken any supportive steps at all. It was agreed that, if we found as a fact that any supportive step had been taken, the complaint of Detriment 3.1.3.2(a) would fail.

9.10. Detriments 3.1.3.2(b) and 3.1.3.2(c) appeared to impugn the motivation not just of Mrs Leadbetter, but also Abbie Hoyte, who took over from Mrs Leadbetter as the manager with responsibility for the claimant during her sick leave. During the hearing, the claimant clarified that she was not accusing Ms Hoyte of having deliberately failed to support her or of being motivated by the fact that the claimant had made a protected disclosure.

9.11. During the course of Mrs Royds' cross-examination, we had a closer look at Detriment 3.1.3.3. It was a complaint that Mrs Royds had failed to use a recognised Trust policy to investigate concerns about the claimant. We clarified which recognised Trust policy the claimant was saying Mrs Royds should have used. The claimant's position was that Mrs Royds should have used the Disciplinary Policy.

9.12. Following discussion with the parties, it became clear that Detriment 3.1.3.4 had several facets. The claimant identified Mrs Grice's precise detrimental acts and failures in the conduct of her investigation. We reproduce the alleged acts and failures in the list of issues.

9.13. We split Detriment 3.1.3.5 into parts (a) and (b). Detriment 3.1.3.5(a) was alleged to be, "The FTSU investigation was used to unfairly discredit the claimant." During the hearing, we asked who, on the claimant's case, had taken advantage of the FTSU investigation in that way. Ms Halsall confirmed on the claimant's behalf that it was Mrs Grice.

9.14. Detriment 3.1.3.5(b) concerned the redaction of the Grice Report in response to the claimant's SAR.

9.15. The claimant's written submissions, under the heading of Detriment 3.1.3.5, engaged with the redaction of the SAR response, but did not specifically address the element of unfairly discrediting the claimant (which we have labelled Detriment 3.1.3.5(a). The nearest we found was at paragraph 72 of the written submissions, which alleged that Mrs Grice "took the [word] of Laura Hilton and Amanda Heaton without question". We considered this submission under the heading of Detriment 3.1.3.4(d).

9.16. We asked the claimant to explain what she meant by Detriment 3.1.3.7. It complained of Mrs Royds' refusal to "provide clarity", and we were unsure what exactly it was that the claimant had been asking Mrs Royds to clarify. For the respondent, Mr Boyd suggested that the claimant's requests for clarity had been completely listed by the claimant in her witness statement at paragraph 62. The claimant agreed. When we looked at paragraph 62, what we found were extracts from an exchange of correspondence. The claimant had sent a long e-mail to Mr Royds on 30 October 2020 containing a number of questions. Mrs Royds' reply on 5 November 2020 purported to answer those questions, but the claimant's case was that her answers were

detrimentally opaque. It would have been disproportionate to examine each of Mrs Royds' answers as a separate alleged detriment. To be fair to the parties, they did not ask us to embark on that exercise. Rather, we looked at Mrs Royds' e-mail in the round.

9.17. Detriment 3.1.3.14 appeared to consist of two quite distinct detrimental acts. One was Mrs Royds' unfair conduct of the SOSR procedure. The other was the decision to dismiss the claimant. It was common ground that the dismissal decision had been taken by Mrs Morgan. We asked the claimant whether she was alleging that Mrs Morgan was motivated by the fact that the claimant had made a protected disclosure when she decided to dismiss the claimant, or when failing to take particular factors into consideration. The claimant confirmed that this was not part of her case: Mrs Morgan's motivation was therefore not in issue. The claimant did, however, contend that Mrs Royds had decided that Mrs Morgan should dismiss the claimant because the claimant had made a protected disclosure, and Mrs Royds sought to achieve that outcome by manipulating the investigation.

9.18. The claimant clarified her complaint of discrimination arising from disability. One of the two allegations of unfavourable treatment was the claimant's dismissal. Originally, the list of issues alleged that her dismissal was because of "emotional reponses". We asked the claimant to clarify which emotional responses were said to have motivated the respondent's decision to dismiss her. Helpfully, the claimant clarified that it was the claimant's emotional responses at the SOSR hearing. It was not, for example, part of the claimant's case that she had been dismissed for responding emotionally at any time in her employment prior to the SOSR hearing, or that those emotional responses had arisen in consequence of her disability.

10. The respondent did not make any submissions about its knowledge of the claimant's disability. We did not take the respondent to have conceded the point, but we did not subject it to the same degree of scrutiny as we otherwise would have done.

11. Here, then, is the parties' agreed list of issues, incorporating these changes. The paragraph numbering is somewhat unwieldy, but it was used throughout the hearing, and will make the best sense to the parties, so we leave it intact.

"

Disability

…1.2 When did the respondent have actual or constructive knowledge of the claimant's disability? The respondent does not accept that they had this knowledge at the material time. The claimant asserts that the material time period is 8 July 2020 to 15 November 2021.

Discrimination arising from disability

2.1 At the relevant times, did the respondent know or could it reasonably have been expected to know that the claimant had the disability?

2.2 If so, did the respondent treat the claimant unfavourably in the following ways:

2.2.1 The claimant asserts that her dismissal from the organisation was for reasons relating to her disability [namely her emotional responses at the SOSR

meeting] rather than due to a breakdown in the relationship with the respondent organisation.

2.2.2 The appeal manager upheld the decision to dismiss the claimant from the respondent organisation because she was unable to return to work on the terms on which the alternative role was offered due to reasons relating to her disability-related ill-health.

[2.3 Did the claimant's emotional responses at the SOSR meeting arise in consequence of her disability?

Did her inability to return to work in an alternative role arise in consequence of her disability?]

2.4 Has the claimant proven facts from which the tribunal could conclude that:

[(a) her emotional responses materially influenced the decision to dismiss her; or

(b) her inability to return to the alternative role materially influenced the decision not to allow the appeal?]

[2.5 If so, can the respondent show that:

(a) the decision to dismiss her was not because of her emotional responses and

(b) the appeal decision was not because of her inability to return to work in an alternative role?]

2.6 If not, was the treatment a proportionate means of achieving a legitimate aim? The respondent suggests the legitimate aim is investigating a breakdown in relationships between the claimant and the respondent and taking steps to resolve the breakdown in relationships between the claimant and the respondent...

2.8 The tribunal will decide in particular:

2.8.1 was the treatment an appropriate and reasonably necessary way to achieve those aims

2.8.2 could something less discriminatory have been done instead

2.8.3 how should the needs of the claimant and the respondent to be balanced?

Detriment for raising a protected disclosure

3.1.1 Did the claimant make the following disclosures:

[PID1] The claimant raised a freedom to speak up concern on 13 April 2020 with the FTSU Champion, Amanda Laugharne, that she overheard a conversation on 10 April 2020 between two HRBPs proposing the misuse of Covid 19 funds to create a position that was not needed by the respondent for a specified individual and with the intention of offloading their own workload.

[PID2] on 16 April 2020 by email raising the same concerns [as in PID1]

[PID3] on 19 April 2020 by email raising the same concerns [as in PID1].

3.1.2 Were they qualifying disclosures?

3.1.2.1 The Claimant asserts that she made the disclosure to her employer based on a reasonable belief that the Respondents were in breach or likely to be in breach of a legal obligation to which they were subject (43B(1)(a) ERA 1996).

The Claimant asserts that the disclosure pertained to a proposed misuse of Covid19 funds and given that the Respondent is an NHS Trust it was her reasonable belief that this amounted to a proposed misuse of public funds and would have been a criminal offence.

Did the Claimant reasonably believe that the disclosure was in the public interest?

3.1.3 If protected disclosures are proven, on the ground of any protected disclosures found, [was she] subject to a detriment by the employer, or another worker for whom the employer is vicariously liable[?] Did the Claimant suffer the following detriments?

D3.1.3.1 The Claimant was subjected to bullying and victimisation from 8 July 2020 to 20 July 2020. The behaviours and actions were unwanted and unwarranted and resulted in the Claimant's long term sickness absence due to anxiety from 22 July 2020 to dismissal on 25 May 2021.

The unwanted and unwarranted behaviours and actions were as follows:

[a] On the morning of 8 July 2020 the Claimant received a reprimand e-mail from Anya Leadbetter regarding a Covid-19 communication that the Claimant had sent out based on a clear and documented management instruction from Amanda Heaton. On 8 July 2020 the Claimant e-mailed Anya Leadbetter regarding her confusion and concern about the e-mail, however, did not receive any acknowledgment or response.

[b] On the afternoon of 8 July 2020 (following a positive 121 on 6 July 2020) the Claimant received a 121 summary document from Anya Leadbetter which did not reflect what was discussed at the 121 meeting and which incorrectly noted that the Claimant was unsure about her long term sickness updates. The claimant raised her concerns with [Mrs Leadbetter].

[c] On the afternoon of 13 July 2020 the Claimant and the Matron arrived at a consultation meeting to be informed by the employee that she had been advised by Amanda Heaton that the process was to be put on hold due to concerns. The Claimant and Matron were concerned that they had not been advised of any concerns all that the process was to be put on hold. The claimant raised these concerns with Amanda Heaton via email on the morning of 14 July 2020 and within a short time (on 14 July 2020) received an email from Jacqui Grice ... responding on behalf of Amanda Heaton. [The alleged detrimental acts were: (i) Mrs Heaton escalating the claimant's concern to Mrs Grice and (ii) Mrs Grice deciding to intervene.]

[d] In response to some queries/requests for points of clarity from [Mrs] Grice, the claimant received an email from Mrs Grice on 20 July 2020 stating "I have no intention of getting into a game email ping-pong with you will be another manager with whom you seem to think it is reasonable to be aggressive or unpleasant towards."

D3.1.3.2 The Respondent fails to provide the claimant with the support detailed in the respondent trust supporting attendance policy [from] 8 July 2020 to 25 May 2021.

> [a] The Claimant received no support between 8 and 22 July 2020 (ie in the period leading up to her absence). This support should have been provided by [Mrs] Leadbetter.
>
> [b] the claimant did not receive any of the regular support meetings between 22 July 2020 and [Ms Hoyte becoming her manager]. This support should have been provided by [Mrs] Leadbetter...
>
> [c] The Claimant was not offered a stress risk assessment and was not offered support to return to work between 22 July 2020 and [Ms Hoyte becoming her manager]. This support should have been provided by [Mrs] Leadbetter...

D3.1.3.3 The respondent, namely Jane Royds, failed to deal with the allegations made about the claimant in the FTSU report via a recognised trust policy [, namely the Disciplinary Policy,] from 12 August 2020 until termination on 25 May 2021.

D3.1.3.4 The FTSU investigation, conducted by [Mrs] Grice, failed to properly investigate the protected disclosure in line with the respondent['s] FTSU Policy and Investigation Guide; [in particular:

(a) Mrs Grice should not have taken the responsibility of investigating the claimant's FTSU concern;

(b) Mrs Grice failed to investigate why a PAG form was authorised for the Band 7 HRBP that was the subject of the claimant's FTSU concern;

(c) Mrs Grice investigated separate matters of concern that the claimant had not raised in her FTSU concern; and

(d) Mrs Grice accepted unquestioningly and uncritically the version of events given by Mrs Hilton and Mrs Heaton.]

D3.1.3.5

[a] The FTSU investigation was used to unfairly discredit the claimant. This continued throughout the cultural investigation from 18 August 2020 to 8 January 2021, and the SOSR process which started on 9 March 2021 and concluded with the claimant's dismissal on 25 May 2021.

[b] The claimant received a heavily redacted copy of the FTSU report through her DSAR on 15 September 2020.

D3.1.3.6 The claimant was denied the right to have her dignity at work concerns considered by the respondent trust's Dignity at Work Policy and was forced to raise them as part of the cultural investigation (that was commissioned as a direct result of the FTSU investigation). This instruction was confirmed via email on 15 September 2020 by [Mrs] Royds.

D3.1.3.7 The claimant's requests for an appropriate level of clarity and transparency were refused by [Mrs] Royds between 16 September and 21 November 2020 [and, in particular, in Mrs Royds' e-mail of 5 November 2020].

D3.1.3.8 On 16 October 2020 the claimant provided [Mrs] Royds with the details of her grievance in relation to how the FTSU investigation had been conducted. This grievance was never addressed.

D3.1.3.9 The views of [Mrs] Hilton … and [Mrs] Heaton … with the ones presented in the management [Statement of Case] and Sections 8 and 9 even when these views were contradictory to the views presented by witnesses. [Mrs] Royds was provided with the full report on 8 January 2021. This was identified by the claimant at the SOSR hearing on 18 and 19 May 2021 by Jackie Green's responses and confirmed by the late disclosure sections 5 and 6 during the appeal hearing on 14 October 2021.

D3.1.3.10 [Not pursued].

D3.1.3.11 [Not pursued].

D3.1.3.12 The Claimant was not afforded the right to appeal the "no case to answer outcome" as is detailed in the respondent's Dignity at Work Policy. The report closed down all other avenues for recourse saying that no further investment should be made into the claimant's concerns. This was communicated to the claimant by [Mrs] Royds on 3 February 2021 and 9 March 2021. This remained the case at the time of the claimant's dismissal on 25 May 2021.

D3.1.3.13 The claimant is the only individual to have any action taken against them as a result of the cultural investigation by [Mrs] Royds on 3 February 2021. This remained the case at the time of the claimant's dismissal on 25 May 2021. [The detrimental act alleged here was Mrs Royds' decision to proceed to a "SOSR hearing" to decide the future of the claimant's employment.]

D3.1.3.14

[a] The SOSR process, which started on 9 March 2021 and finished when the claimant was dismissed on 25 May 2021 was conducted without fairness or transparency by [Mrs] Royds as a means of facilitating the claimant's dismissal.

[b] [Mrs Royds caused Chrisella Morgan to decide to] dismiss the claimant on 25 May 2021 without consideration of the lack of evidence or the Trust's failure to follow a fair process.

D3.1.3.15 The use of the cultural investigation to investigate allegations about the Claimant avoided a process and facilitated the use of SOSR as a convenient label for the claimant's dismissal. The decision to use the SOSR route was made by [Mrs] Royds on 9 March 2021. [Mrs Royds persuaded Mrs Morgan that there had been a fair and objective investigation].

D3.1.3.1.16 [Not pursued].

D3.1.3.1.17 The Claimant's dignity at work concerns were inappropriately used against her to support the [Green Report's] findings and recommendations as provided to the claimant on 9 March 2021 by [Mrs] Royds. [Mrs] Royds' decision to commission a SOSR hearing was based on the findings and recommendations of the cultural investigation conducted by Jackie Green with instruction from [Mrs] Royds. This remained the case at the time of the claimant's dismissal on 25 May 2021.

D3.1.3.1.18 The management Statement of Case against the claimant, provided to the claimant on 13 April 2021 and presented at the SOS hearing by [Mrs] Royds on 18 and 19 May 2021 relied wholly on Sections 8 and 9 of the report; all other relevant sections of the report and all of the supporting documentation were withheld by [Mrs] Royds.

D3.1.3.19 [Mrs] Green is noted in the SOSR hearing on 18 and 19 May 2021 stating that the claimant is accountable for the dysfunction of the HR [Operations] Team. This is despite the additional sections of the report (disclosed at the appeal hearing on 14 October 2021) identifying that the difficulties associated with this group predated 2016 and were prevalent by the time the claimant took up her post. The claimant's dismissal on 25 May 2021 was based solely on the two disclosed sections... [Mrs] Green was acting on instructions from [Mrs] Royds.

D3.1.3.20 The Claimant's subject access requests were blocked by HR. [Information Governance] advised the claimant on 3 August 2021 that the decision to withhold the statements and meeting notes was a "HR decision". (IG did not specify an individual). This remained the case at the time of the claimant's dismissal on 25 May 2021. [It is not suggested that the respondent's Information Governance Manager was motivated by the fact that the claimant had made a protected disclosure.]

D3.1.3.21 The Claimant's FOI request for the creation dates of 3 documents created by Trust HR officers was blocked by HR…

3.1.4 Was this because she raised the protected disclosures(s)? If the act of detriment was done by another worker can the Claimant show that the other worker was aware that she had made a protected disclosure and treated her [detrimentally] on the grounds of it?

…

[Unfair dismissal

(1) Can the respondent prove that the sole or principal reason was its belief that working relationships had irretrievably broken down?

(2) If the answer to question (1) is yes,

(a) Was that a substantial reason capable of justifying the dismissal of a Human Resources Advisor?

(b) If so, did the respondent act reasonably or unreasonably in treating that reason as sufficient to dismiss the claimant?

(3) If the answer to question (1) is no,

(a) Did the claimant make a protected disclosure?

(b) Has the claimant put forward some evidence to support an arguable case that the sole or principal reason for her dismissal was that she had made a protected disclosure?

(c) If so, can the respondent prove that this was not the sole or principal reason?]

Remedy for unfair dismissal

6.7 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

6.8 If so, should the claimant's compensation be reduced? By how much?

Evidence

12. We were given an agreed bundle of 2,440 pages. This was supplemented by a further bundle which had grown to 290 pages by the end of the hearing.

13. The claimant gave oral evidence and called John Flannery, Lynne Jones, Nnaemeka Ezechujkwu and Sue Marriner as witnesses.

14. The respondent called Patricia Armstrong-Child, Anya Leadbetter, Chrisella Morgan, Jane Royds and Lesley Neary.

15. All these witnesses confirmed the truth of their written statements and then answered questions.

16. The claimant relied on the written witness statement of Amanda Laugharne, who did not give oral evidence. We took into account that there was no way of testing the reliability of Ms Laugharne's evidence by questioning her. Nevertheless, we were able to place some weight on parts of her statement. In particular, we accepted Ms Laugharne's evidence of what the claimant told her. Ms Laugharne was able to give details of what she had heard. It went with the grain of e-mails and messages sent shortly afterwards. It seemed to us that Ms Laugharne would have had little incentive to lie.

17. The respondent did not call Mrs Grice to give oral evidence or explain why they had not called her. It was clear from the list of issues that we would need to make findings about Mrs Grice's motivation. Where there was some evidence that indicated that Mrs Grice's motivation may have been that the claimant had made a protected disclosure, we regarded the respondent's failure to call her as providing support for the claimant's case that Mrs Grice's decision was indeed influenced by that consideration.

Facts

18. The respondent is responsible for Southport and Ormskirk Hospitals. At the time of the events with which we are concerned, it had about 3,000 employees.

19. The respondent had a Freedom to Speak Up (FTSU) Policy, intended to encourage Trust employees to raise concerns without fear of repercussions. The FTSU Guardian was Martin Abrams, the Hospital Chaplain. The procedure was supported by Amanda Laugharne, Specialist Administrator in Equalities and FTSU.

20. Amongst the rubric of the FTSU Policy were these words:

> "Wherever possible, we will share the full investigation report with you (while respecting the confidentiality of others)."

21. The respondent also had a Dignity at Work Policy. The policy included a formal procedure for raising complaints. If a formal complaint was made, the Policy provided for an investigation followed by a determination by the "commissioning manager" of the outcome. By paragraph 4.9, one of the

possible determinations was, "that there is insufficient evidence to substantiate the allegations".

22. Paragraph 4.10 of the Dignity at Work Policy provided:

> "…The complainant may appeal against the commissioning manager's decision regarding the outcome of the investigation or in relation to the process of the investigation if it is felt that the investigation has not been carried out thoroughly."

23. The claimant was employed by the respondent as a Human Resources Advisor (HRA) from August 2016 until she was dismissed on 25 May 2021.

24. The claimant was one of a group of HRAs within the HR Operations Team.

25. The essential function of the HR Operations Team was to support client departments (known as "Clinical Business Units" or "CBUs") with human resources issues.

26. The HR Operations Team was accountable to Jane Royds, Director of HR and OD. The Head of HR led the HR Operations Team. In 2019 and 2020, the Head of HR was Laura Hilton. Reporting to the Head of HR was a team of about HR Business Partners (HRBPs) who were employed at Band 7. A group of HRAs sat below the HRBPs in the structure. Each HRA reported to an HRBP. The HRAs and HRBPs worked together in an open-plan office.

27. Supporting the work of the HRAs and HRBPs was a small number of HR Assistants, employed at a lower band and located on a different floor of the building.

28. The HR Operations Team underwent an unsettling series of changes during the claimant's employment. In 2017, the Chief Executive was dismissed and the Director of Human Resources left the organisation. The HR Operations Team merged with the St Helens & Knowsley Teaching Hospital NHS Trust on 1 July 2017, only to be de-merged on 1 April 2019 and returned to the employment of the respondent. In April 2019, the team was physically relocated from the corporate offices in Southport to the Ormskirk site.

29. For a time, the HRA role had been matched to Band 6. Prior to 2020, in what must have been a further blow to their morale, HRAs were downgraded to Band 5.

30. During her time at the respondent, the claimant developed a close and friendly working relationship with HRA colleagues including Sue Marriner and Nnaemeka Ezechukwu. They thought of her as professional and supportive.

31. Another of the HRAs was Natalie Joyce. She supported the Facilities and Estates BCU. Relationships between Ms Joyce and the other HRAs (including the claimant) were more difficult.

32. From August 2016 until November 2018, the claimant's line manager was Mrs Debbie Baxter. On 19 September 2017 Mrs Baxter conducted the claimant's appraisal. No criticism was made of the claimant's behaviour at that time.

33. The relationship, however, deteriorated. The claimant liked Mrs Baxter personally, but believed that Mrs Baxter was giving her inadequate support.

34. One issue concerned the claimant's working hours. Her contractual hours were 31 hours per week, but the claimant regularly worked longer hours than that and banked the time. She was offered a full-time contract and refused it.

35. The claimant complained of being overworked. Mrs Baxter would say, "We can only do what we can do". Remarks like these were evidently intended to be reassuring, but the claimant was not reassured. Her previous employment had been in the private sector and she had been used to having enough time to complete tasks to a professional standard that was acceptable to her.

36. A stress risk assessment meeting took place in April 2018. On 23 April 2018 claimant sent an e-mail expressing anxiety over her relationship with Mrs Baxter. She acknowledged that she had contributed to the strain on their relationship "by being emotional" but attributed her emotional state to "excessive and disproportionate workload over a long period, the lack of practical support/resolutions and the lack of fairness and equity."

37. One day in 2018, Mrs Baxter had a catch-up meeting with the claimant to advise her that the desk arrangements were changing, and that the claimant and Mrs Baxter would be sitting together. The claimant became upset and told Mrs Baxter that she would not want to come to work if she had to sit with Mrs Baxter. What the claimant may well have meant was that she was anxious about being isolated from her HRA colleagues, but that was not what she said. The remark upset Mrs Baxter. The claimant apologised. Mrs Hilton learned of the incident and believed that it was symptomatic of the deterioration in the working relationship between the claimant and Mrs Baxter.

38. Mediation was arranged, but it had not taken place by the time Mrs Baxter retired. The claimant later told an investigation that it had been Mrs Baxter's choice to withdraw from the mediation.

39. The claimant spent an entire weekend in November 2018 documenting her concerns to discuss with Mrs Baxter. No effective discussion took place. Mrs Baxter went on sick leave from November 2018 and did not return to work. She took early retirement soon afterwards.

40. Ms Marriner, one of the claimant's HRA colleagues, formed the impression that the relationship between the claimant and Mrs Baxter had broken down and "nobody wanted to tackle it". Ms Morris, who was later to become the claimant's line manager, recalled that Mrs Baxter had repeatedly tried to sit down with the claimant to resolve issues with the claimant's workload, but told the claimant that Mrs Hilton would not let her do so.

41. On 11 March 2019, Mrs Baxter had an exit conversation with Mrs Hilton. She told Mrs Hilton that she had experienced a challenging two years trying to manage the claimant's behaviour, which she described as "inappropriate" and "venom[ous]". As Mr Baxter said it to Mrs Hilton, she "could no longer face managing her because of this". She felt that the claimant had "worn her out" and that this had been a significant factor in her rationale to take early retirement.

42. Mrs Amanda Heaton took over as the claimant's line manager in November 2018 and continued to have that responsibility until June 2019. The stress risk assessment process was not completed, but the claimant initially found Mrs Heaton to be generally supportive.

43. That impression changed on 1 April 2019. The claimant and Mrs Heaton had a conversation that was witnessed by a number of HRAs including Ms Marriner. On any view, the conversation did not go well. The claimant said something about the move to Ormskirk Hospital. Mrs Heaton raised her voice and said, angrily, words to the effect of, "I'm terribly sorry you don't think I'm doing a good job". The claimant did not raise her voice, but was obviously shocked.

44. Mrs Hilton spoke to the claimant about the incident on 3 April 2019. The claimant expressed a preference for resolving the matter informally, rather than engaging the Dignity at Work procedure.

45. On 28 May 2019, the claimant and Mrs Heaton had an informal resolution meeting, facilitated by Ms Marriner. Mr Bob Davies, an Equality and Diversity Advisor also took part. The purpose was to restore harmony between the claimant and Mrs Heaton, but it failed. The claimant made a comment along the lines of, "If you've been bitten once, you don't go back to the same dog". It was understood by Ms Marriner to be some kind of analogy to illustrate a work-related point that the claimant was trying to make. It was not understood by Mrs Heaton in that way. She accused the claimant of calling her a dog and the claimant denied it.

46. It is worth pausing for a moment to reflect on what happened at that meeting. The evidence in the case has focused on Mrs Heaton's allegedly over-literal understanding of the dog analogy, and having jumped (unreasonably in the claimant's view) to the conclusion that the claimant was insulting her. Where there has been less reflection from the parties is on the significance of the claimant's underlying point. The claimant was telling Mrs Heaton, effectively, that she no longer trusted Mrs Heaton because of the way Mrs Heaton had treated her on 1 April 2019. That is not the kind of point that an employee generally makes when they are trying to rebuild a working relationship with their manager.

47. Stress risk assessment meetings took place between the claimant and Ms Heaton on 17 July 2019 and 23 September 2019. The latter meeting was facilitated by the Head of Health and Wellbeing, Linda Lewis. Two days after this second meeting, Mrs Heaton went on sick leave.

48. It was not just the claimant and Mrs Heaton whose working relationship was strained at this time. There was a mutual perception of "them and us" between the HRAs and the HRBPs. As a group, the HRAs believed that Mrs Heaton had behaved inappropriately on 1 April 2019. For their part, the HRBPs (including Mrs Morris) formed the impression that the HRAs were "entrenched" if asked to do something they did not want to do. Faced with such a request, claimant would respond emotionally and tearfully.

49. The claimant mistrusted Mrs Hilton. Two examples demonstrated her lack of trust:

    49.1. At some point prior to June 2019, the claimant and Mrs Royds (HR Director) had a chance meeting on the way to the Ladies' toilets. The claimant was noticeably upset. Mrs Royds asked the claimant what was the matter. The two witnesses' recollections differ as to what the claimant said in response. On one detail, however, the claimant's version was uncontradicted

and we accept it. The claimant told Mrs Royds that she believed Mrs Hilton was "working against me".

49.2. At the stress risk assessment meeting on 23 September 2019, the claimant believed that Ms Hilton had "briefed Linda Lewis against me".

50. The claimant's line manager from July 2019 to March 2020 was Mrs Andrea Morris. The claimant found Mrs Morris to be supportive, "amazing", even. Her February 2020 appraisal reported her concerns over her "working relationship with my line manager" (which we take to be a reference to Mrs Heaton) and a desire for Mrs Morris to "allow me the freedom to make my own decisions and trust me to do my job without being micromanaged".

51. Mrs Heaton returned to work in December 2019 in a temporary role as HRBP Project Lead, working on a workforce transformation project and a number of electronic working projects. The role was not advertised.

52. These arrangements for Mrs Heaton's return to work left a temporary vacancy in the role of Band 7 HRBP. The role was advertised internally on 9 December 2019 with a closing date of 11 December 2019. The same day, the claimant e-mailed Mrs Hilton, querying two aspects of the recruitment exercise.

53. On 11 December 2019, a member of staff anonymously raised a concern using the FTSU procedure. A further concern was raised on 13 December 2019, this time about the two-day application window for the temporary Band 7 HRBP role. The essence of the concern was that Mrs Heaton's temporary Project Lead role had not been advertised. The concerns were passed, anonymously, to Mrs Royds, who asked Mrs Hilton for her comments. Mrs Hilton replied on 18 December 2019, describing the FTSU concern as "spurious, malicious and unfounded complaints that call into question my personal and professional honesty and integrity". She reaffirmed her commitment to "the FTSU ethos", but made plain her view that the FTSU procedure had been abused.

54. Our finding is that Mrs Hilton believed that the claimant was the person who had raised the FTSU concerns.

55. In March 2020, the respondent's overwhelming priority was the Covid-19 pandemic. Emergency funds were allocated to the Trust from central government, specifically to pay for the Covid-19 response. Trust policies were suspended. A command-and-control structure was put in place. The claimant's new line manager became Mrs Anya Leadbetter.

56. On 24 March 2020, Mrs Heaton e-mailed Mrs Hilton to say that the Facilities and Estates BCU was unhappy with the level of HRBP support they were receiving. Mrs Heaton recommended Natalie Joyce. At that time, Ms Joyce was still a Band 5 HRA. Ms Joyce had been working on a project that required additional IT support. Mrs Hilton and Mrs Heaton discussed the possibility of recruiting a Band 2 or Band 3 data entry clerk to assist her with that piece of work.

57. At around this time, the Silver Command Team experienced some difficulty with data management. This required additional work from Mrs Morris on top of her usual role.

58. On Friday 10 April 2020, Mrs Heaton and Mrs Morris had a conversation about a potential solution. The conversation was overheard by the claimant. Because we will need to refer back to this conversation periodically, we will refer to it as "the Heaton-Morris conversation". Mrs Heaton and Mrs Morris agreed that a temporary "acting-up" position could be created for a Band 7 HRBP. The claimant heard them mention Natalie Joyce in connection with this new role.

59. Later that day, Ms Heaton e-mailed a colleague, known as George, informing him that he would be doing COVID-19 work and reporting to Natalie Joyce.

60. Over the weekend, the claimant "agonised" (in her words) about what to do about the Heaton-Morris conversation. She believed that there was data management work that could legitimately be paid for out of Covid-19 funds, but it could be done by a Band 2 or Band 3 role. A Covid-funded Band 7 HRBP role was not warranted, in her view. She decided that it was a matter of such public interest that she needed to escalate it within the Trust.

61. On Monday 13 April 2020, the claimant spoke to Ms Laugharne, the Specialist FTSU Administrator. She told Ms Laugharne that she had overheard a whispered conversation between Mrs Morris and Mrs Heaton about using Covid-19 funds to create a temporary Band 7 HRBP role for Natalie Joyce. As well as reporting the conversation itself, the claimant expressed her view that the post was not needed, and told Ms Laugharne that it raised issues of "fraud".

62. This conversation is said to be PID1.

63. On 16 April 2020, the claimant e-mailed Ms Laugharne. Her e-mail read, relevantly:

> "Based on the conversation I heard on Friday 10 April I believe that [the 3-month HRBP role] has been specifically created for the individual named during that conversation and raises further concerns with regard to the integrity, openness and transparency of decisions being made within the HR Team.
>
> As discussed I overheard a conversation that was whispered in the office saying, "that would allow us to create a step up opportunity for [Natalie Joyce]." Since overhearing that conversation, [Natalie Joyce] has already been given some line management responsibilities.
>
> …I believe that the decision has already been made and the position will be given to [Natalie Joyce] even though that individual does not have the required qualifications or experience for the role".

64. The Band 7 position was initially authorised. The formal act of authorising the post was the signing of a "PAG" form. On 18 April 2020, Mrs Heaton e-mailed the HRBPs and HRAs to notify them of the acting-up opportunity that the claimant had overheard her discussing. The proposed role was to last 12 weeks. The successful candidate would be chosen through an expressions of interest exercise.

65. On 19 April 2020, the claimant forwarded Mrs Heaton's e-mail to Ms Laugharne, adding:

> "This is obviously the 'acting up opportunity' that has already been earmarked for [Natalie Joyce]…
>
> …
>
> I believe this 'opportunity' and the circumstances that surround it raises concerns in relation to the integrity of some of the HR team and around the fairness and equity of recruitment and opportunities within HR.
>
> Based on the conversation I overheard I also have concerns that The Covid-19 crisis is being used to facilitate people's own agenda.
>
> …
>
> I also have further concerns with regard to the use of NHS money as I do not believe that a further Band 7 position is warranted. There are already two Band 7s allocated specifically to Covid-19 and a further HRBPs within the team.
>
> …
>
> I have so many concerns in relation to this and the culture within the HR department and do feel that this needs raising…"

66. The claimant believed that each of these disclosures of information tended to show that persons in the HR Operations Team were likely to commit a fraud. She believed that the fraud would be a breach of a legal obligation or a criminal offence or both.

67. The FTSU concern was passed to the then Chief Executive, Mrs Patricia Armstrong-Child. She met with the claimant on 7 May 2020. We were unable to make precise findings about all they discussed, but we accept that the claimant said that the wrongdoing she had witnessed was "fraudulent" and that Mrs Armstrong-Child left the meeting with the general impression that the claimant was raising concerns about misuse of COVID money.

68. Shortly after the meeting, the claimant sent a WhatsApp message to Ms Laugharne, expressing her hope that Mrs Armstrong-Child would not "brush over the immediate concern re the acting up opportunity and the integrity/fraud issues it raises".

69. On 22 April 2020, Mrs Heaton e-mailed the HR Operations Team to tell them that there had been a U-turn over the acting up position. The explanation given by Mrs Heaton was that the workload of the department had been reviewed, and the pressures were not as significant as had first been thought.

70. In May 2020, the HR function started to resume some of its operational cases. A number of roles were advertised in the Estates and Facilities CBU, which Mrs Leadbetter supported. One of these was a Band 6 Health and Safety Advisor (HSA) role. It was advertised in mid-May 2020. Following interviews on 26 May 2020, the role was offered and accepted the same day.

71. In the meantime, on 22 May 2020, Mrs Armstrong-Child wrote the terms of reference ("the Grice Terms of Reference") for the investigation into the claimant's FTSU concerns.

72. According to the Grice Terms of Reference, the concern under investigation was:

> "…that a temporary post was advertised as part of the COVID response and a conversation had been overheard to suggest the successful candidate [had] been determined prior to any process taking place.
>
> …the member of staff [who raised the initial concern] reported there were historical issues of recruitment procedures not being followed and favouritism shown towards particular members of staff within HR…"

73. The scope of the investigation, as outlined in the Grice Terms of Reference, included a review of the process followed for identifying the temporary post. It did not specifically include the PAG form. The Grice Terms of Reference also asked the investigator to "make any wider recommendations if required should additional information come to light".

74. Before the investigation began, Mrs Armstrong-Child shared the proposed Grice Terms of Reference with the claimant. The claimant took issue with aspects of the wording. She did not, however, ask for the Grice Terms of Reference to include, specifically, an investigation into why the PAG form was signed.

75. Mrs Armstrong-Child considered who the investigator should be. She chose Mrs Jacqui Grice, the recently-appointed Interim Deputy Director of HR. Part of Mrs Armstrong-Child's rationale for choosing Mrs Grice was that she was new to the Trust, and more likely to be able to investigate with an open mind. Mrs Armstrong-Child did not ask for the respondent's disciplinary procedure to be followed. This was because it had not been suggested to her and, in any case, the respondent's policies had been suspended during the Covid emergency.

76. Mrs Grice agreed to Mrs Armstrong-Child's request. She started interviewing witnesses almost immediately.

77. Amongst the witnesses interviewed by Mrs Grice were the claimant, Mrs Heaton, Mrs Hilton, Mrs Morris, Mrs Leadbetter and Natalie Joyce.

78. Not everyone was interviewed separately. For example, Mrs Grice interviewed Mrs Heaton and Mrs Morris together at the same time. This is surprising, given that the claimant's FTSU concern was about things allegedly said during the Heaton-Morris conversation. Perhaps more surprisingly still, during that interview, Mrs Grice told Mrs Heaton and Mrs Morris that it was the claimant who had gone to the FTSU Guardian.

79. Mrs Hilton provided Mrs Grice with documents relating to previous problems involving the claimant, including her note of her exit conversation with Mrs Baxter.

80. During the early summer of 2020, Mrs Leadbetter spoke to the claimant about the hours she was working. On one occasion the claimant worked nearly a 12-hour day.

81. In mid-June 2020, Mrs Leadbetter was informed that the respondent had received a Freedom of Information (FOI) request concerning the shortlisting of the Band 6 HSA role. The request had been made by the claimant's husband.

He had applied for the role and had not made it through to the interview stage. He wanted to know how the role had been shortlisted.

82. Shortly afterwards, Ms Leadbetter also discovered that the claimant had been in regular contact with the recruitment team for the Band 6 HAS role, to the point where they had raised concerns with their team leader. Ms Leadbetter was informed that the claimant had been asking whether shortlisting had taken place. It was no part of the claimant's role to find out that information.

83. On 6 July 2020, Mrs Leadbetter and the claimant had a one-to-one meeting. They discussed long-term sickness absence cases for which the claimant had responsibility. Information about long-term absence was recorded on a live spreadsheet called the Absence Team Spreadsheet. The claimant made the point that the spreadsheet was not being updated.

84. We accept the claimant's evidence that, by this time, the claimant had gone into "details mode". She gave a lot of information quickly, and it was not always easy to understand the essential point that the claimant was making.

85. Mrs Leadbetter recorded what she regarded as the main points of the one-to-one meeting on a standard template form. On the subject of long-term sickness, Mrs Leadbetter wrote:

> "NB [the claimant] advised she was unsure on LTS [long-term sickness] updates."

86. This comment is said to have been Detriment D3.1.3.1(b).

87. Mrs Leadbetter shared the template one-to-one form with her HRBP colleagues, advising them that this was what she was using with the claimant.

88. On 7 July 2020, Mrs Heaton suggested to HRAs that they should start sharing their Covid risk assessment information as soon as possible with their CBUs. About an hour later, the claimant asked Mrs Heaton for clarification, which Mrs Heaton provided. According to Mrs Heaton's e-mail, the risk assessment e-mail should be sent to all staff. The claimant then signalled her intention to share her risk assessment information with her CBU. Mrs Leadbetter was copied into these e-mails.

89. On 8 July 2020, Mrs Leadbetter took two steps that are relevant to this claim.

90. First, she submitted an additional statement to Mrs Grice. In that statement, she accused the claimant of:

    90.1. Improperly interfering in the recruitment process for her husband

    90.2. Encouraging her husband to take action against the respondent

    90.3. Doing so knowing that Mrs Leadbetter had been involved as an attempt to undermine her and

    90.4. Behaving within the team in a way that made one of the other HRAs (Natalie Joyce) "so upset that she does not want to come into work".

91. Second, Mrs Leadbetter sent the claimant an e-mail, criticising her for having shared her risk assessment the previous day. This e-mail is alleged to have been Detriment 3.1.3.1(a). Her e-mail read, relevantly:

> "…It has come to my attention that you have sent out a comms to Specialist Services to advise them of this but this was not the intention of the original email… In the e-mail it only suggests for us that we complete our own risk assessments for now. This has prompted Joanna [Stark] to contact Jacqui [Grice] expressing some concern about the email you sent out. I am unsure as to why you didn't check this with me in the first instance instead of just firing off that email which has not happened in the other CBUs."

92. Mrs Leadbetter, of course had had an opportunity to prevent the claimant from "firing off" that e-mail. Had she read the e-mail exchange between the claimant and Mrs Heaton, she would have known that the claimant was planning to share her risk assessment with her CBU. Mrs Leadbetter did not try to stop the claimant from doing so. Her 8 July 2020 e-mail did not acknowledge that she had missed that opportunity. The claimant took Mrs Leadbetter's e-mail to be unsupportive.

93. Mrs Leadbetter's response on 8 July 2020 was motivated by her belief that the claimant had sent an inappropriate e-mail, combined with pressure from Mrs Grice, in the knowledge that Ms Stark (Assistant Operations Director) had expressed concern about the claimant's e-mail. Mrs Leadbetter's motivation may be further explained by a lack of awareness (or a reluctance to acknowledge) on her part that she could have prevented the claimant from sending the e-mail if she had read and understood the exchange between the claimant and Mrs Heaton. We are satisfied that these reasons fully explain Mrs Leadbetter's decision to send the e-mail. Her decision was not in any way influenced by the fact that the claimant had raised concerns about Covid funds using the FTSU procedure.

94. We now return to Detriment 3.1.3.1(b) and the comment on the claimant's one-to-one form. By 10 July 2020, the claimant had received Mrs Leadbetter's completed form. She sent Mrs Leadbetter an e-mail querying the one-to-one record that Mrs Leadbetter had written. The printed copy of the claimant's e-mail ran to two dense A4 pages. One of the points the claimant made was that she had always been sure about long-term sickness updates. She had not, she said, ever told Mrs Leadbetter that she was unsure about those updates, and the contrary comment in the one-to-one form, said the claimant, was wrong.

95. Mrs Leadbetter replied the same day. At least superficially, the e-mail addressed the points that the claimant was making, including long-term sickness updates. The essence of Mrs Leadbetter's reply was that, going forward, there was an expectation that updates would be provided in "more robust detail". She explained that there was an opportunity to examine sickness absences in more detail given the Covid pause on other activities, and the forthcoming launch of a new Supporting Attendance Policy.

96. Stepping back from the detail of the e-mail conversation, we can now make a finding about Mrs Leadbetter's motivation in writing the allegedly-detrimental comment in the one-to-one form. It was not in any way because the claimant had raised concerns using the FTSU procedure. It was because Mrs Leadbetter believed the claimant had not properly understood what was expected of her when producing long-term sickness updates. Mrs

Leadbetter's view may well have been incorrect; it is possible that the claimant demonstrated that she knew exactly what to do, and that point may have been lost on Mrs Leadbetter amid the mass of detail that they discussed. What the claimant found upsetting about the one-to-one form was the insinuation that the claimant was unsure of the *progress* of her own long-term sickness caseload. But that is not what Mrs Leadbetter meant to say.

97. Late in the evening of 10 July 2020, the claimant e-mailed Mrs Grice. Her e-mail was copied to Mrs Armstrong-Child. The claimant began her e-mail by stating that she felt unable to approach Mrs Hilton as she was a "major part of the problem". She informed Mrs Grice that her "stress and anxiety levels have been particularly high". She went on to provide her point of view on her recent 1:1 with Mrs Leadbetter, the way she had been criticised for sending the risk assessment information to her CBU, and the issue over her husband's FOI request. Each of these topics were addressed in a paragraph of fairly dense detail.

98. Mrs Grice replied to the claimant's e-mail on 14 July 2020. Her e-mail engaged with each of the claimant's main points by adding comments in red. The comments were carefully worded, but made clear where Mrs Grice disagreed with the claimant's perspective. Dealing with the claimant's husband's FOI request, Mrs Grice related that a complaint had been made to Mrs Hilton about the claimant interfering the recruitment process. The main thrust of Mrs Grice's e-mail was to address the claimant's difficulties with Mrs Leadbetter. Mrs Grice offered to arrange a facilitated meeting between the claimant and Mrs Leadbetter to improve the relationship.

99. The claimant replied within two hours. Most of her e-mail was devoted to rebutting the complaint about interference in her husband's job application. She added that she thought that this issue had caused Mrs Leadbetter to change her behaviour towards her.

100. In the meantime, the previous day, 13 July 2020, the claimant had attended with the Matron for Maternity Services and the Clinical Lead for the Maternity Ward, together with a trade union representative. The purpose was to discuss a Midwifery reorganisation and the end of a job-share. At the meeting, the Matron was informed by the Clinical Lead that the process had been put on hold. The instruction to pause the process had been given by Mrs Heaton. The claimant was unaware that this instruction had been given. She was disappointed that the news had been broken to the Matron in that way. On 14 July 2020 the claimant e-mailed Mrs Heaton to complain. Her e-mail was politely worded, but unmistakeably a complaint. It concluded, "If the concern relates to the process, can we perhaps take this as a learning and agree a change to terms and conditions process for use in situation[s] such as this?" Copied into the e-mail was the Matron, who was not, of course, part of the HR Operations Team.

101. Mrs Heaton escalated the e-mail to Mrs Grice, who replied with an explanation of why Mrs Heaton had put the job-share reorganisation process on hold. She added,

> "Can I ask in future if you have concerns as per your e-mail that you speak to Amanda and Laura rather than send an e-mail and cc

> someone outside the directorate. I want to foster a better team working, supportive environment".

102. Our analysis of Detriment 3.1.3.1(c) involves making a finding about Mrs Heaton's motivation for escalating the claimant's complaint to Mrs Grice. We have not heard from Mrs Heaton about why she did it. That evidence is unnecessary. The reasons are obvious. It is common ground that the working relationship between the claimant and Mrs Heaton had broken down in 2019 and had not recovered. The last thing the claimant should have been doing was e-mailing Mrs Heaton with a complaint, and the last thing that Mrs Heaton would have wanted to do was to have to defend herself to the claimant in an exchange of e-mails. Moreover, the claimant was proposing a policy change. That would require an HR decision at a senior level. It was these reasons, and nothing at all to do with the claimant's FTSU concern, that Mrs Heaton escalated the matter to Mrs Grice.

103. We are also required to find why Mrs Grice agreed to get involved. The explanation is the same. It was not motivated in any way by the claimant's FTSU concern. Nor was the content of the e-mail. Although we have not heard from Mrs Grice, her reason for requesting better communication is plain from the wording of the e-mail itself.

104. Mrs Grice, of course, was also responsible for the FTSU investigation. By 6 July 2020 she had finished interviewing witnesses and drafted her report. The final version must have been dated some time after 8 June 2020, because it incorporated material from Mrs Leadbetter's additional statement. This has come to be known as the "Grice Report".

105. A substantial amount of the Grice Report was taken with setting out the process by which the Band 7 HRBP opportunity had come about. In short, summary, Mrs Grice's conclusion was,

> "The process for identifying the need for cover and gaining authorisation was carried [out] in accordance with Trust policies and the Covid-19 processes. There is no evidence of any untoward practice. In hindsight, it is possible a Band 6 opportunity to work with [Mrs Morris] could have been considered rather than a Band 7 role."

106. The report devoted considerable detail to exposing perceived difficulties in working relationships within the HR Operations Team. These focused heavily upon the claimant. Some findings were necessary: part of the claimant's FTSU concern was about the conversation she had allegedly overheard. The versions of events presented to Mrs Grice about that conversation conflicted, and Mrs Grice could reasonably have been expected to decide which version was the more likely. Examples can be found here:

> "4.6 The investigator remains unconvinced that [the FTSU concern] was raised in good faith and the impact of using the [FTSU Guardian] in this manner has led to considerable unrest in the HR team which may lead to the Trust losing good and competent staff as they no longer feel able to carry out their job without every move being unfairly scrutinised or 'twisted' due to junior staff who they believe are not team players. At least one of the complainants made the investigator aware that she had gone to the [FTSU Guardian], yet that same person had to

> be spoken to about her conduct in the course of a recruitment to a role her spouse had applied for….For someone who complained that there was little integrity in the team, she demonstrated a lack of it herself…"
>
> …
>
> 5.4.10… On the balance of probabilities and based on the background and consistent stories of bullying towards [Natalie Joyce], the Investigator cannot find evidence to support the claim that the conversation took place as [the claimant] reported to the CEO."

107. The Grice Report did not stop there. Other aspects of working relationships appeared to have a less obvious connection to the FTSU matters within the Grice Terms of Reference.

108. Amongst the conclusions expressed in Mrs Grice's report were:

> "
>
> 4.7 During the course of the interviews it became apparent that some of the upset felt by HRAs linked to a recent incident when [the claimant] had told [Natalie Joyce] that Joanna Stark…had allegedly said that [she] would never get a HRBP [job] in her CBU as they were so poor at interview…
>
> …
>
> 6.2.9 The Head of Service [Mrs Hilton] is a competent manager but clearly feels undermined by the complaints made at Christmas (and the way in which the [FTSU Guardian] role was utilised) when she was enacting Trust policies and senior management approval [for Mrs Heaton's temporary role]… She finds herself again undermined in a way that begins to look malicious…
>
> …
>
> 7.1 The issue of potential malicious allegations need careful consideration and potential action as the situation is now such that the team have a group of HRBPs who feel unable to work with or manage [the claimant]. Professional advice needs to be sought to deal with the root issues or accept a move of personnel may be necessary. [The claimant] does struggle with criticism and has been seen crying after a 1:1…It is now bordering on SOSR, a redeployment to utilise the skills that [the claimant] has … an [in-depth] referral and assessment via [Health and Wellbeing] or, subject to a decision over the motivation for raising complaints and persistence of low level bullying behaviour, disciplinary investigation."

109. The Grice Report did not make any specific finding about why the PAG authorisation form was completed. Her omission to make such a finding is said to be Detriment 3.1.3.4(b). It was not motivated in any way by the fact that the claimant had raised a FTSU concern. The omission is entirely explained by the fact that the Grice Terms of Reference did not specifically ask her to investigate that element of the process.

110. Paragraph 4.6 of the Grice Report referred to the claimant's intervention into her husband's job application, based on the additional statement Mrs Leadbetter had provided. It is clear from the report itself why Mrs Grice thought it necessary to refer to the claimant's conduct. Mrs Grice relied on it

as a matter that, in her view, affected the claimant's integrity and made it less likely that the claimant's version of the Heaton-Morris conversation was reliable. Mrs Grice's decision to include a reference to it in the report was not in any way motivated by the fact that the claimant had raised the FTSU report in the first place.

111. We must also consider why Mrs Grice injected her report with references to other issues affecting the working relationships. In our view the explanation is that the Grice Terms of Reference had instructed her to investigate matters such as these. Difficulties in working relationships were part of the information that had "come to light" that, in Mrs Grice's view, would merit "wider recommendations". Again, contrary to the case advanced by the claimant under Detriment 3.1.3.4(c), Mrs Grice's references to these matters were not influenced by the fact that the claimant had raised a FTSU concern.

112. The Grice Report did not show any sign of Mrs Heaton's and Mrs Hilton's accounts having been subjected to any scrutiny or critical analysis in the way that the claimant's version had been. Detriment 3.1.3.4(d) requires us to ask why Mrs Grice took their version without question. Our finding here is that Mrs Grice's view was significantly shaped by her belief that the claimant had used the FTSU procedure to raise a concern about recruitment. We reached this conclusion because:

112.1. Mrs Grice had spoken to some of the HRBPs together during her investigation, including the two HRBPs whose conversation the claimant had overheard.

112.2. Mrs Grice had revealed to a HRBP that it was the claimant who had raised the FTSU concern.

112.3. The views of the "HR team", as related in paragraph 4.6 of the Grice Report, were obviously those of the people within the HR Operations Team whose recruitment practices had been challenged. They happened to be Mrs Heaton and Mrs Hilton.

112.4. Mrs Grice made no attempt to distance herself from those views.

112.5. At paragraph 6.2.9, by using the phrase, "begins to look malicious", Mrs Grice was indicating that she shared those views.

112.6. The views being expressed there were that the claimant had used the FTSU procedure twice to make malicious accusations about recruitment practice.

113. On 14 July 2020, Lynn Jones, one of the HRAs, e-mailed Mrs Morris to say that she was "very concerned about [the claimant's] wellbeing". At around this time, Mr Ezechukwu (one of the HRAs) spoke to one of the HRBPs and requested that the claimant be referred to Occupational Health. When asked to clarify in what capacity he was making that request, Mr Ezechukwu said he was a "concerned friend". He was asked to "stay out of it". No referral was in fact made until the claimant went on sick leave. The claimant never asked for one. Mrs Leadbetter did not offer to update the claimant's stress risk assessment.

114. On 16 July 2020, the claimant met with Mrs Armstrong-Child to discuss the outcome of the FTSU investigation. She was not given a copy of the report

itself, but she was informed of its main conclusions. These included Mrs Grice's finding that there had been no wrongdoing in the planned recruitment of the Band 7 HRBP, and her further finding that there had been a breakdown in working relationships. Mrs Armstrong-Child informed the claimant that there would be a cultural review to investigate these breakdowns. Shortly afterwards, Mrs Armstrong-Child met with Mrs Royds in her office. Together they agreed that there should be an external investigation.

115. The broad conclusions of the Grice Report were circulated amongst the HR Operations Team on 17 July 2020.

116. Also on 17 July 2020 Mrs Grice continued the e-mail conversation that the claimant had started on 10 July 2020. As will be recalled, by 14 July 2020, it had reached the point of the claimant countering the suggestion of interference in her husband's recruitment, and seeking to link the issue to Mrs Leadbetter's treatment of her in other respects, such as her one-to-one. Mrs Grice's response on 17 July 2020 took up nearly a page of dense type. Essentially, her point was that an investigation was underway into issues concerning her husband's job application, but that the working relationship between Mrs Leadbetter and the claimant should be completely separate. According to Mrs Grice's e-mail, "[Mrs Leadbetter] has not changed her behaviour toward you because of a request from your husband"; and "[Mrs Leadbetter], like every other HRBP, has been asked to gain a tight understanding on performance against key areas of work in relations to questions posed by more senior management. That has necessitated a change in some ways of working."

117. The claimant replied later that day. She asked 5 pointed questions about Mrs Leadbetter's complaint to Mrs Hilton in relation to the claimant's conduct concerning her husband's recruitment. She questioned how Mrs Grice could have reached a conclusion about what had motivated Mrs Leadbetter to treat her as she had. The e-mail took up another page.

118. Finally, on 20 July 2020, Mrs Grice lost her patience. Mrs Grice e-mailed the claimant, saying:

> "I have no intention of getting into a game of e-mail ping pong with you or being another manager who you seem to think it reasonable to be aggressive and unpleasant toward."

119. This e-mail is the subject of Detriment 3.1.3.1(d). The alleged detrimental treatment here is not the reference to "e-mail ping pong" (which was actually quite an apt phrase to describe their e-mail conversation up to that point), but the accusation that the claimant had a habit of behaving aggressively and unpleasantly towards managers.

120. We must examine Mrs Grice's motivation for making that accusation. One factor operating on her mind must have been her exasperation at the tone and tenacity of the claimant's e-mails. But we find that Mrs Grice had another reason. Her thinking was also informed by a belief that the claimant had acted unpleasantly and aggressively towards other managers in the past, including Mrs Heaton and Mrs Hilton. The Grice Report tells us how Mrs Grice had arrived at that view. She had rejected the claimant's FTSU disclosure (PID1) about what the claimant overheard Mrs Heaton and Mrs

Morris discussing. Mrs Grice had formed the belief that the claimant's account in PID1 was certainly incorrect and possibly malicious. Mrs Grice was also influenced by a belief that HRBPs resented the claimant for using the FTSU procedure.

121. In our view, these influences on Mrs Grice's thinking were more than minor or trivial.

122. The claimant sent several e-mails on 20 July 2020, including to Mrs Armstrong-Child and to her trade union representative, Mr John Flannery. She expressed the view that her FTSU concern (PID1) should have been investigated under the respondent's disciplinary procedure. She also e-mailed Mrs Royds to confirm that she had raised the FTSU concern.

123. On 22 July 2020, the claimant went on sick leave. She never returned to work.

124. Detriment 3.1.3.2(a) requires us to make a finding about whether Mrs Leadbetter took any supportive step at all to help the claimant's health and wellbeing between 8 and 22 July 2020. We reminded ourselves of our discussion near the beginning of the hearing. All the respondent had to do was show that Mrs Leadbetter took one supportive step and this allegation would fall away altogether. The respondent did not cross even this low threshold. There was no evidence of anything that Mrs Leadbetter did to protect the claimant's health and wellbeing during this two-week period.

125. We must therefore ask ourselves whether this failure was deliberate and, if so, what motivated it.

126. The failure was, in our view, deliberate. During the period 8 to 22 July 2020, Mrs Leadbetter personally believed that the claimant was unwell. The HRBPs were sharing information about the claimant: for example, Mrs Leadbetter letting her colleagues know what one-to-one form she was using with the claimant. It is likely that Mrs Morris fed back to Mrs Leadbetter that Lyndsey Jones had raised the concern about the claimant's health, and that the HRBP approached by Mr Ezechukwu had likewise shared that information. Having that information, and knowing that options such as Occupational Health and stress risk assessments were available, she must have made a choice not to intervene.

127. We have looked at Mrs Leadbetter's motivation for not taking any supportive step at that time. Mrs Leadbetter knew that the claimant had raised a FTSU concern. She also believed that the claimant had misused the FTSU procedure by doing so. We find that this belief had a chilling effect on Mrs Leadbetter's wish to involve herself in procedures involving the claimant if they could be avoided. The fact that the claimant had raised a FTSU concern in April (PID1) materially influenced her decision not to get involved. It was not Mrs Leadbetter's only reason. She also believed (correctly, as it happened) that the claimant had lost trust in her over the issue concerning her husband's job application. Another reason was her knowledge of previous difficulties in working relationships between the claimant and HRBPs who had line-managed her. But the fact that the claimant had raised her April FTSU concern was more than a trivial influence on Mrs Leadbetter's decision.

128. The claimant reported her absence. She initially texted Mrs Leadbetter to say that she had had migraines. Mrs Leadbetter replied supportively. The claimant offered to telephone Mrs Leadbetter, who suggested that the claimant use her mobile number. They spoke on the telephone. The claimant told Mrs Leadbetter that she would prefer to communicate by text message.

129. The claimant then provided a GP fit note stating the cause as "work-related stress".

130. During the initial weeks of the claimant's sick leave, Mrs Leadbetter retained responsibility for managing the claimant during her absence. At some point prior to April 2021, Mrs Leadbetter left the organisation, at which point, the claimant's absence was managed by Ms Abbie Hoyte.

131. Mrs Leadbetter made a referral to Occupational Health on 24 July 2020. Her referral form explained, from Mrs Leadbetter's point of view, some of the factors that had led to the claimant going on sick leave. The claimant saw the referral form and took issue with Mrs Leadbetter's explanation. In an e-mail dated 28 July 2020, the claimant gave her own explanation for her recent deterioration in her health:

> "For me things became increasingly worse week commencing 6th July.…my stress and anxiety levels were then extremely heightened due to unprofessional and unpleasant behaviours which were directed at me and appeared to be with an agenda. Many of my concerns can be substantiated."

132. The claimant had in mind Mrs Leadbetter as one of the perpetrators of the "unprofessional and unpleasant behaviours". That is how Mrs Leadbetter understood the e-mail, too.

133. The claimant spoke to an occupational health physician over the telephone on 19 August 2020. The physician was Dr Shah. Following the conversation, Dr Shah reported to Mrs Leadbetter in writing. The report stated:

> "[The claimant] does not feel able to return to any form of work at present. In my opinion she is unlikely to be able to return to work until the perceived issues at work are resolved… A stress risk assessment should be performed."

134. Meanwhile, on 30 July 2020, Mrs Armstrong-Child replied to the claimant's e-mail. Mrs Armstrong-Child indicated to the claimant that there would be an investigation into working relationships with the HR Operations Team in the light of the problems uncovered in the Grice Report. She held firm to her view that it was the FTSU procedure, and not the disciplinary procedure, that was the appropriate way to investigate the claimant's concerns. She explained her reasons.

135. Mrs Royds agreed with Mrs Armstrong-Child that the issue of working relationships should be investigated externally. It did not occur to Mrs Royds to begin a disciplinary investigation against the claimant, whether for raising a malicious FTSU concern or for anything else. What stood out from the Grice Report to Mrs Royds were the difficulties that Mrs Hilton and successive HRBPs appeared to be having in managing the HRAs and, in particular, the claimant.

136. Mrs Royds chose Mrs Jackie Green to be the investigator. Mrs Green had previously worked at an acute trust on Merseyside. In 2009 she had moved to a trust in Yorkshire where she had held the role of Human Resources Director. Her investigation was to be undertaken through her own consultancy business. We are satisfied that she was independent of the respondent's organisation.

137. Mrs Royds informed the claimant by letter dated 31 July 2020 that the review was to take place. In the same letter, Mrs Royds informed the claimant that there would be no disciplinary action arising from the claimant's involvement in her husband's job application, although "there could be some learning points".

138. The claimant requested a copy of the Grice Report, but Mrs Armstrong-Child refused to provide her with a copy.

139. On 3 August 2020, the claimant e-mailed Mrs Armstrong-Child. In her e-mail, she described her poor state of health, including "migraines, panic attacks, stomach problems, insomnia and anxiety." She acknowledged,

> "I take on board that it may not have been appropriate for the initial investigation to be completed under the Trust's Disciplinary Policy."

140. She also raised a concern about the forthcoming external investigation into working relationships:

> "I would like some assurance that only evidence based general findings will be shared with the external body completing the review to avoid any prejudgements being made based on biased/subjective findings."

141. In other words, the claimant was asking for the full Grice Report to be withheld from Mrs Green's cultural review investigation.

142. The claimant took up her concerns about the external review with Mrs Royds. On 5 August 2020, the claimant e-mailed Mrs Royds, Her e-mail reiterated her belief that Mrs Hilton had "encouraged and supported some of the negativity and behaviours towards me". The claimant made a renewed request for the Grice Report to be excluded from the material available to the external investigator, as, if it was shared, "prejudgments could be made". Mrs Royds initially resisted the claimant's request in her reply of 12 August 2020. This prompted the claimant to warn Mrs Royds on 14 August 2020 that, if she did not back down over sharing the Grice Report with the investigator, the claimant would escalate it into a formal grievance. Mrs Royds then agreed not to share the Grice Report with the investigator.

143. In the meantime, on 12 August 2020, the claimant made a data subject access request (SAR) for the Grice Report. She received a heavily-redacted version on 16 September 2020. The redactions were made by Mr Stephen Brooks, the respondent's Information Governance Manager. Mrs Royds did not make any decision about what should be redacted.

144. On 14 August 2020, Mrs Royds distributed the terms of reference ("the Green Terms of Reference") for the external investigation. The Green Terms of Reference began with a synopsis of the FTSU investigation and Grice Report. It continued by saying that Mrs Royds had:

> "decided to commission a report to examine the apparent breakdown in team working, relationships between individuals and working practices within HR."

145. The Green Terms of Reference asked Mrs Green to investigate:

> "1 The apparent breakdown in the functioning of the HR team and specifically professional working relationships within the team and/or with the Trust's management.
>
> 2 Whether there is any evidence to suggest that any member of the HR team has not acted in line with Trust policies, their professional obligations or usual [standard operating procedures] and if so whether any further action is necessary."

146. "The approach," said the Green Terms of Reference, "should be solution focused identifying and addressing the causes of this breakdown with the aim of building a healthy working environment that going forward supports everybody to give their best. If this cannot be achieved in any aspect…the investigator is asked to make recommendations of any other ways in which these underlying issues could be resolved."

147. Part of the investigation brief in the Green Terms of Reference was to establish the facts by "Interviewing all members of the Operational HR team…"

148. Pausing there, the Green Terms of Reference gave every appearance of neutrality. To the reader, they looked to be instructing Mrs Green to investigate all aspects of working relationships, without concentrating on any particular individual, and to follow that investigation where the evidence led her.

149. Mrs Royds decided on the order in which witnesses should be made available to speak to Mrs Green. She thought it would be a good idea to be the first witness. That way, thought Mrs Royds, Mrs Green could quickly gain an understanding of the overall problem, the better to focus her investigation.

150. The interview between Mrs Royds and Mrs Green took place on 18 August 2020. It started with Mrs Green asking Mrs Royds for her "overview of the situation". Mrs Royds' first reply is captured in Mrs Green's notes of the interview ("the Royds Interview Notes"):

> "[Mrs Royds] said she had become aware of specific problems with the team last year, concerning [the claimant] and issues associated with Debbie Baxter's early retirement."

151. It was plain, therefore, from the Royds Interview Notes, that Mrs Royds overview had begun with the claimant's difficult working relationship with her then line manager. This was the overview that was bound to be influential in setting the direction for Mrs Green's investigation.

152. In the Royds Interview Notes, Mrs Royds could then be seen to take a more general view of the difficulties faced by the "senior members of the team" (in other words, HRBPs) in managing the team as a whole, and the support that Mrs Hilton had tried to provide to those senior members.

153. As the Royds Interview Notes relate, Mrs Royds then continued:

> "[The claimant] is at the centre of many of these issues, successive line managers have not been successful in their attempts to address the problems with this individual despite their best efforts. [Mrs Baxter], [Mrs Heaton] and most recently [Mrs Leadbetter] have all experienced significant problems in their management relationship with [the claimant]."

154. One of the allegations that the claimant now makes against Mrs Royds is that she manipulated Mrs Green's investigation in order to secure the termination of the claimant's employment. This is at the heart of Detriment 3.1.3.14(b) and the complaint of unfair dismissal. Our finding is that Mrs Royds acted deliberately to focus Mrs Green's attention particularly on the claimant as the main source of disharmony in the HR Operations Team. She was not candid about the way she had sought to influence Mrs Green when she later presented the management statement of case at the SOSR hearing. Mrs Royds' objective was, we find, to try to find a way of having a HR Operations Team without the claimant in it. Her purpose was not necessarily to engineer a complete termination of her employment. We find that Mrs Royds' motivation here was not in any way that the claimant had made any disclosure using the FTSU process. It was that Mrs Royds believed that the claimant had a history of falling out with her line managers.

155. Having interviewed Mrs Royds, Mrs Green then set about interviewing a large number of witnesses. She assured each witness that their interview was confidential and that they would not be named in her report.

156. Later that day, Mrs Green interviewed Mr Joe Hill, one of the HRBPs. He was noted as having said:

> "Those working with [the claimant] experienced difficulty. This was not just about Mrs Heaton but also previous managers including [Mrs Baxter] who had left in part because of the difficulties she had experienced with [the claimant]…Whoever manages [the claimant] directly has a bad time" and "this is at the core of the wider relationship problems".

157. According to Mrs Green's interview notes, Mr Hill also said that the claimant had "a loyalty to the CBU she serviced rather than to the HR team". The notes revealed Mr Hill's view that there was "a theme of negativity and broken relationships, a number of colleagues have experienced a breakdown of relationships with [the claimant]".

158. On 20 August 2020, Mrs Green separately interviewed Mrs Heaton, Mrs Morris and Mrs Leadbetter. Mrs Green followed up the interviews with telephone calls at later dates, but it is convenient to summarise what each witness had to say in one place.

159. The interviews each began with an open question about the state of the team. The notes then took the form of paragraphs, summarising what evidently had been a longer discussion.

160. Mrs Heaton's interview notes recorded a long history of Mrs Heaton's difficulties in managing the claimant, as Mrs Heaton saw them. The interview notes revealed that one thing, in particular, that had damaged Mrs Heaton's trust in the claimant was the claimant listening into her conversation with Mrs

Morris; the same conversation that had prompted the claimant to raise her FTSU concern.

161. Also on 20 August 2020, Mrs Green interviewed Mrs Morris. It will be remembered that Mrs Morris was rated highly by the claimant, and the one line manager with whom the claimant was later to say she experienced no significant working relationship issues. Mrs Morris acknowledged the difficulties that HRAs had experienced with their downgrading, and with the transfer of the HR Operations Team out of (and back into) Southport. According to the notes of her interview, however, she also gave examples of particular problems involving the claimant. These examples included:

161.1. An away day 2-3 years before, during which "there was lots of sniping" from the HRAs, "very much 'us and them' demarcation…[the claimant] is often in tears in these situations which makes matters worse".

161.2. If HRAs "agree with what is being proposed there is a keenness to really get going; if not the response is to take an entrenched position against whatever is being proposed. The behaviour has been to react in an emotional way and often with tears from some. [The claimant] has a tendency to respond in this way."

161.3. Mrs Baxter had "tried repeatedly to sit down with [the claimant] to resolve issues, but eventually retired; [Mrs Heaton] also had mediated conversations with [the claimant].

161.4. Mrs Morris "feels like her professionalism and that of HRBP colleagues has been called into question with unfounded accusations that individuals have been treated unfairly and differently. This has challenged the professional integrity of HRBPs, especially in terms of the responses from [the claimant]." There was, Mrs Morris was noted as saying, a "lack of psychological safety in the team".

162. Mrs Leadbetter told Mrs Green that, since her relatively recent arrival at the Trust, she had noticed that HRBPs and HRAs had a "confrontational and adversarial" relationship. In part, Mrs Leadbetter recognised the unsettling impact of the recent organisational changes within the Trust, but singled out the claimant and another HRA as being "at the core" of the dysfunctional relationships. In particular, she said that the claimant's "behaviour and actions are about distracting attention from any scrutiny about performance in the role". By way of example, Mrs Leadbetter cited the difficulties she had experienced following the 1:1 meeting in July. Another specific example given by Mrs Leadbetter was the claimant's "misuse of the FTSU Policy". This, we find, was a reference to what has now come to be known as PID1.

163. By 21 August 2020, Mrs Grice had left the respondent's organisation.

164. Mrs Green interviewed the claimant on 25 August 2020. The claimant was accompanied by Mr Flannery. During her interview:

164.1. The claimant told Mrs Green about her previous difficulties with Mrs Baxter, Mrs Heaton and Mrs Hilton. Her account, as recorded in the notes of the interview, was largely consistent with the findings that we have recorded above.

164.2. The claimant gave details of ways in which she believed she had been inappropriately treated, and asked Mrs Green to investigate them. Mrs Green informed the claimant that, if she wished to have them investigated, she would need to raise them separately under the Dignity at Work procedure.

164.3. In general, the claimant identified a "gang" of HRBPs, with the support of Mrs Hilton, who were working against her. According to the claimant, Mrs Morris and Mr Hill were not part of that gang but had been "influenced" by them.

165. One of the witnesses approached by Mrs Green was Mr Davies, the Equality and Diversity Advisor. His input was potentially of value, because his role did not sit within either the HRBP or HRA camps. He told Mrs Green that he had been at the facilitated meeting in May 2019 between the claimant and Mrs Heaton, where the claimant had used the dog-bite analogy. He said that the claimant's comment "didn't help", but "was not made in a personal way". Generally, he described the relationship within the HR Operations Team as "fractured". He was noted as having praised Mrs Hilton as "a good manager". He did, however, have difficulties with Mrs Heaton and gave an example of where she was "lacking in empathy, care [and] compassion". He was careful to emphasise that none of the protagonists in this dysfunctional team were "bad people".

166. On 8 September 2020, Mrs Green interviewed Mr George Sourbutts, a HR Administrator. His desk was not located on the same floor as the HRAs and HRBPs. His general impression was that the underlying cause of the rift in the HR Operations Team had been Mrs Heaton.

167. Mrs Green interviewed Mrs Hilton on 18 September 2020. At this point, Mrs Hilton was about to leave the Trust and work elsewhere. Mrs Hilton gave a long account of the difficulties experienced by Mrs Heaton and Mrs Baxter in managing the claimant.

168. On 24 September 2020, Mrs Green interviewed Ms Marriner. The notes relate Ms Marriner telling Mrs Green about the April 2019 incident, the failed mediation meeting and Ms Marriner's own experiences of a difficult relationship with Mrs Heaton. Ms Marriner also recalled the claimant's experiences whilst being managed by Mrs Baxter. According to Ms Marriner's interview note, "the relationship between [Mrs Baxter] and [the claimant] had broken down and nobody wanted to tackle it, it was brushed under the carpet."

169. As Mrs Green was getting on with her investigation, Mrs Leadbetter continued to receive information from occupational health about the claimant's absence from work. The claimant spoke to Dr Shah again on the telephone on 24 September 2020. Dr Shah reported in writing the same day. In the report, Dr Shah stated:

> "She does not feel able to return to any form of work currently. In my opinion, she is unlikely to be able to return to work until the perceived issues at work are resolved. This matter will require a management decision. In my opinion, with regards to the disability legislation under

> the Equality Act 2010, her impairment is likely to be considered long term and which has a substantial adverse effect…"

170. On 28 September 2020, the claimant submitted a new GP fit note, together with a letter from her GP. The letter asked the respondent to refrain from contacting the claimant for two weeks.

171. Shortly afterwards, Mrs Leadbetter exchanged messages with Mrs Royds. One of them sent a message saying, "I'm reluctant to e-mail you given the current circumstances". The message reveals to us that Mrs Royds and Mrs Leadbetter were looking for a way to communicate with each other in secret. They were worried that, if they e-mailed each other, the e-mails might ultimately be seen by the claimant and used against them. Text messages, on the other hand, were believed by them to be a safe space. That helps us make findings about what Mrs Leadbetter and Mrs Royds were really thinking.

172. Whilst on sick leave, the claimant was entitled to 3 months' full pay, following which her sick pay would reduce by half. In October 2020, Mrs Leadbetter sent a message to Mrs Royds, reminding her that the claimant was about to drop to half pay, and asking for an update. When Mrs Royds queried what she meant, Mrs Leadbetter texted,

> "…we have not been issuing warnings but would need to consider next steps now…her position remains that until her workplace issues are resolved she will not be coming back…"

173. As Mrs Green's investigation was nearing completion, Mrs Leadbetter had a further conversation with the claimant. We are unsure whether the conversation was oral or by exchange of messages. During this conversation, the claimant told Mrs Leadbetter that, once the outcome of the cultural investigation was known, she would be able to "consider ways of moving forward". Mrs Leadbetter understood this to mean that the claimant would not be returning to work until this had happened. She expressed this view to Mrs Royds in a further text message update, adding,

> "Given this, I won't refer her again to [occupational health] until [the cultural review report has] been communicated to her."

174. Mrs Royds replied,

> "Thanks Anya. Don't do anything at this point."

175. We now step out of the timeline once again. We can now record a finding relevant to Detriments 3.1.3.2(b) and 3.1.3.2(c). Mrs Leadbetter and Mrs Royds decided not to take any further action in managing the claimant's sickness absence. In particular, Mrs Leadbetter did not carry out a stress risk assessment (Detriment 3.1.3.2(c)). Mrs Leadbetter's decision not to carry out such an assessment was quite deliberate. She made that decision because it was her belief that a stress risk assessment would normally be carried out once an individual was in a position to return to work. Dr Shah, whilst recommending a stress risk assessment, was also very clear that there was no prospect of a return to work whilst the work-related issues were resolved. Since Mrs Royds had taken the decision to address the work-related issues through Mrs Green's investigation, it made sense, from Mrs Leadbetter's point of view, to wait until Mrs Green had concluded her investigation before

embarking on a stress risk assessment process. Mrs Leadbetter's decision not to have regular support meetings (Detriment 3.1.3.2(b)) was because the claimant had expressed a preference for contact by text and because all attendance management had been put on hold. Neither of Mrs Leadbetter's decisions had anything to do with the fact that the claimant had raised her FTSU concern.

176. On 16 October 2020, the claimant e-mailed Mrs Royds, attaching a lengthy document with the title, "Summary of Concerns". She asked Mrs Royds for these concerns to be investigated formally. Some of the claimant's concerns were about Mrs Grice's investigation and the conclusions Mrs Grice had reached.

177. This presented Mrs Royds with something of a dilemma. On the one hand, Mrs Royds' strong preference was for all the claimant's concerns about colleagues' behaviour to be examined as part of Mrs Green's wide-ranging investigation. On the other hand, many of the claimant's concerns were about Mrs Grice's FTSU investigation, which Mrs Green could not realistically look into without seeing the Grice Report, which the claimant did not want Mrs Green to see. Mrs Royds attempted to resolve that dilemma by redacting the Summary of Concerns before passing it to Mrs Green. On 29 October 2020, Mrs Royds sent Mrs Green her redacted Summary of Concerns. All the criticisms of Mrs Grice's investigation were edited out.

178. At half past midnight on 30 October 2020, the claimant sent a long e-mail to Mrs Royds. The structure of the e-mail was a series of questions about the procedure that Mrs Royds intended to follow. It is unfortunately necessary for us to reproduce a substantial part of the e-mail word-for-word, the better to analyse Mrs Royds' motivation for replying in the way that she did.

178.1. Question 1 – "It appears that you have completely redacted … aspects of my concerns that have links to the FTSU investigation… Jacqui Grice's behaviour and her support and encouragement of the behaviour of others are fundamental to my bullying and harassment concerns. Jacqui Grice was an employee of the Trust whilst subjecting me to bullying and harassment and it is not appropriate for this to be left unaddressed…

…

I would therefore ask that the following are considered as part of my bullying and harassment concerns:"

The claimant then proceeded to list 7 references to her in the Grice Report which were either "malicious and untrue allegations" or "untruthful claims made about me with the intention of discrediting me". She cross-referred to a further list of "defamatory things said about me with the intention of discrediting me…"

The claimant asked for her full Summary of Concerns document to be passed to Mrs Grice with the exception of two lines.

"Can you please confirm that all of these matters will be considered as part of this investigation?

Can you please confirm that the motives for raising these allegations/accusations/assertions will be considered as part of this investigation?

178.2. Question 2 – "I am raising the following separate concerns: - that the [FTSU] investigation was conducted with the intention of covering up wrongdoing rather than objectively investigating the facts. - That the investigation was conducted with the intention of discrediting me. Can you please confirm if/how these concerns will be addressed?"

178.3. Question 3 – "It is clear that in [Mrs Grice's] investigation people were allowed to say anything irrespective of whether it was untrue or malicious with the protection of complete confidentiality… Can you confirm if an appropriate level of transparency to ensure fairness will be provided as part of this current investigation and what this will look like in practice?"

178.4. Question 4 – "Whilst I have raised my concerns with the CEO [Mrs Armstrong-Child], the Trust's FTSU Guardian and yourself, these concerns have never been appropriately acknowledged and have never been addressed and/or a conclusion provided. Can you please confirm what actions have been taken in relation to my concerns and what conclusions you believe have been communicated to me?"

178.5. Question 5 – "[Your previous e-mail] seems to indicate that it may be appropriate for a concern to be raised [about the FTSU process] once this investigation is concluded. Can you confirm if this is what you were intending to convey and if so what the appropriate route would be for these concerns to be raised once the current investigation is concluded?"

178.6. Question 6 "You have stated in your e-mail that if there are any relevant findings in relation to anyone's actions or behaviours you will consider further action under the relevant Trust policies. Can you therefore confirm if the current investigation is a scoping investigation with a view to recommending more detailed investigations as appropriate?"

178.7. Question 7 – "Can you confirm if Jackie Green will be dealing with my grievance in relation to the HRA [job description] review as well as considering this as part of the HR culture?

179. Mrs Royds replied on 5 November 2020 as follows:

179.1. Questions 1 and 2 – "Whilst I have considered your comments…I do not agree with your rationale or request. I do not intend to share these redacted parts of your summary with [Mrs] Green or ask her to address them as part of her current investigation. The contents of [the Grice Report] have not been relied upon to take further action or shared beyond the FTSU process; it has led to [Mrs] Green's wider independent investigation. At your request it was agreed that [the Grice Report] itself would not be shared with [Mrs] Green…"

179.2. Question 3 – "…along with the rest of the team, you will have had an opportunity to share your concerns and own views with [Mrs Green] and provide a statement. Until the findings of [Mrs Green's] report are provided I am unable to confirm what, if any action, may be taken and what information will be shared with anyone in the team."

179.3. Question 4 – "…to the extent that you intend to raise further or separate concerns about the FTSU process itself, the motivation and the way it was carried out, it would not be appropriate to do this under any other Trust procedure while the findings of [Mrs] Green's investigation are outstanding."

179.4. Questions 5 and 6 - "Whilst the investigation's findings are outstanding, it is not conducive to speculate on what processes may or may not be required in the future."

179.5. Question 7 – "The comments in your summary about the HRA job description review have been shared with [Mrs] Green for her to consider and report on; this has not been carried out under the grievance procedure as it can be addressed as part of the investigation."

180. Now we can make findings relevant to Detriment 3.1.3.7.

181. Looking at Mrs Royds' reply as a whole, as the parties asked us to do, we cannot find a refusal to provide clarity. Mrs Royds' responses were, for the most part, clear. In paragraph 62 of her witness statement, the claimant asserts that Mrs Royds did not provide any reason for responding in the terms that she did. We disagree. Mrs Royds' response to Question 1 is a case in point. Here was Mrs Royds telling the claimant that Mrs Green was not going to consider the claimant's complaints about Mrs Grice's investigation, because the claimant had asked that Mrs Green should not see the Grice Report. It should have been obvious to the claimant that, without the Grice Report, Mrs Green could not begin to investigate the complaints about Mrs Grice's investigation fairly.

182. In response to some questions, Mrs Royds refused to provide some *information* that the claimant was seeking. In general terms, the claimant wanted to know what would happen after Mrs Green's investigation had concluded and Mrs Royds was not prepared to be drawn into speculation. Mrs Royds' reason for taking that stance was because she wanted any decisions on further action to await the outcome of Mrs Green's investigation. It was nothing to do with the fact that the claimant had made any protected disclosures or had used the FTSU procedure.

183. Of course, Mrs Royds' solution meant that the claimant's concerns about colleagues' behaviour – so far as they concerned Mrs Grice - would not be investigated at all until after Mrs Green's cultural review was complete. That investigatory gap could have been filled by a parallel Dignity at Work investigation by an independent person with access to the Grice Report. This brings us to Detriment 3.1.3.6. Why did Mrs Royds not order a parallel investigation? The answer to that question, we find, is that Mrs Royds wanted a single comprehensive review of colleagues' behaviour towards each other within the HR Operations Team. She thought that side-by-side investigations would be a distraction. It was this consideration that motivated her decision, which was nothing to do with the fact that the claimant had made disclosures under the FTSU procedure.

184. Shortly before the conclusion of Mrs Green's investigation, the claimant wrote to Mrs Royds expressing a desire to return to work. She enquired about the possibility of a secondment.

185. Mrs Green submitted her report ("the Green Report") on 7 January 2021. The Green Report ran to 107 pages, divided into 9 sections. Section 1 was an Introduction and Executive Summary. Sections 2 and 3 were respectively headed, "Background and Organisational Context" and "Overview". Sections 4, 5 and 6 rehearsed, in some detail, the evidence that colleagues had given about relationships between different layers of the team, individual issues and, "Events and Interactions Underpinning [the claimant's] position." Sections 7 and 8 contained Mrs Green's "analysis and conclusions" and her recommendations were at Section 9.

186. It is important to be clear about what was in each section of the Green Report. This is because, as will become apparent, some sections of the report were withheld from the claimant and to the person (Mrs Morgan) who had to consider the future of the claimant's employment.

187. Amongst Mrs Green's conclusions summarised in Section 1 were:

> "1.2…(ii).. when interviews for this investigation began, the department was characterised, and to a great extent, defined by the dysfunctional relationship … between the HRA and [HRBP] groupings…
>
> …
>
> (iii) It is against this background that norms have shifted and conduct and behaviours within the HRA grouping, which would not be considered appropriate or accommodated within a "functioning" NHS HR team, have been tolerated so as to 'avoid conflict'. The individual issues associated with [the claimant] (involving several [HRBPs] and more senior Trust officers) are of a different order and are the subject matter of [the claimant's allegations]. The negativity tension and discontent generated by these issues leaked into the wider team and undoubtedly worsened the situation. This is particularly the case since April 2019….
>
> …
>
> (vi) It is in this environment that relationships between [the claimant], successive departmental managers [Mrs Baxter, Mrs Heaton and Mrs Leadbetter], more senior manager [Mrs Grice and Mrs Hilton] have broken down and this has had a seriously detrimental effect on the HR department as a whole. … I have concluded that there is now an irretrievable breakdown of relationships between [the claimant] and trust officers.
>
> (vii) In her submissions to this investigation, [the claimant] has expressed significant concerns and made serious allegations against Trust officers. [The claimant] refers to those [HRBPs] whose role it has been to line manage her as (excluding [Mrs Baxter]…) a "gang" and alleges that they are involved in a conspiracy against her, led by [Mrs Hilton]…
>
> (viii) …there is a legitimate need to manage [the claimant] and the HR function. [The claimant's] conduct and behaviours have prevented that from happening, this is not a sustainable position for the Trust."

> In summary, this report has concluded in relation to [the claimant], her many and serious allegations the Trust and its officers are not evidenced and do not stand up to scrutiny when events and interactions over the last … 4 ½ years are subject to objective and impartial examination. Rather, my conclusion from the evidence is that [the claimant's] wholly negative view of the actions, judgements and decision making of Trust officers is symptomatic of [her] acute mistrust and suspicion…and the situation has now reached a point where it can only be described as an irretrievable breakdown in relationships between [the claimant] and Trust officers…

188. Sections 4, 5 and 6, between them, took up 59 pages. They quoted extensively from the people that Mrs Green had interviewed. Some quotes were attributed to individual witnesses, others were not. The evidence was organised into topics and themes, rather than set out in the order in which the witnesses had been interviewed. This made for a more structured analysis, but would not have enabled the reader to guess that Mrs Royds had been the first person to be interviewed, or that she had immediately focused Mrs Green's investigation on her difficulties with the claimant.

189. At section 4, Mrs Green quoted from HRAs who believed that Mrs Heaton had been to blame for the breakdown in working relationships between her and the claimant.

190. Section 5 addressed, essentially, the additional concerns that the claimant had raised, which Mrs Royds had asked Mrs Green to investigate on 29 October 2020.

191. Section 6 included extracts from the interview with Mr Davies. It related his account of the failed facilitated meeting in May 2019 between the claimant and Mrs Heaton.

192. Section 7 recorded, amongst other things:

> "The recourse to the Freedom to Speak Up process to deal with departmental complaints that may more typically be expected to fall within the remit of other procedures (eg Grievance, Dignity at Work) has been seen by some Trust officers as being an inappropriate usage of the process and undermining to their efforts to resolve the problems that they see themselves as facing in their management task."

193. Section 8 contained Mrs Green's detailed analysis of the claimant's "concerns and allegations". That section alone was 26 pages long. In it, Mrs Green tested the various concerns that the claimant had raised against various strands of evidence. These included the accounts given to her by Mrs Heaton and Mrs Hilton, but that was by no means all. The rationale underpinning many of Mrs Green's conclusions was based on what the claimant herself had said, and the mindset that Mrs Green believed that those comments revealed. Mrs Green compared the claimant's own account of her actions against Trust policies. She took account of measurable data to provide context. For example, when addressing issues about the claimant's workload, Mrs Green looked at changes in staff numbers. When investigating the claimant's complaint about Mrs Grice's "ping pong" e-mail, Mrs Green read, and drew upon, the long exchange of e-mails that had gone before. Similarly, the

contemporaneous e-mails from July 2020 informed Mrs Green's views about the investigation into the claimant's involvement in her husband's job application.

194. In Section 8, Mrs Green quoted from Mr Hill and Mr Morris as support for her view that relationships had failed. She also quoted the claimant's views that Mr Hill and Mr Morris had been influenced by "the gang".

195. There was nothing in Section 8 that expressly referenced witness accounts of the 1 April 2019 confrontation between Mrs Heaton and the claimant, or Mr Davies' balanced account of the failed mediation meeting.

196. Mrs Green's conclusion in Section 8 was that each of the claimant's many allegations and concerns was unfounded. This finding in turn underpinned Mrs Green's central conclusion (summarised in Section 1) that the claimant's "many and serious allegations" were "not evidenced" and symptomatic of her "mistrust and suspicion" which had led to an irretrievable breakdown of relationships.

197. As part of her claim to the tribunal, the claimant says that this amounted to Mrs Green holding her dignity at work concerns against her. This is Detriment 3.1.3.17. It is for the respondent to prove the reason why Mrs Green expressed the conclusion that she did. In particular, the respondent must prove why Mrs Green stated that the claimant's allegations were unevidenced and symptomatic of the claimant's mistrust and suspicion. They have the challenge of trying to discharge that burden without having called Mrs Green to give oral evidence. We find that the respondent has succeeded. Mrs Green believed her conclusions to be true. She was independent. She set out her reasoning in great detail. We have no particular reason to doubt that this is what she genuinely thought. Her conclusions about the claimant's allegations were not influenced by the fact that the claimant had made a disclosure through the FTSU process.

198. In Section 9, Mrs Green made recommendations for the rebuilding of relationships in the HR Operations Team. These included the establishment of a project group, with external input. So far as the claimant was concerned, Mrs Green recommended at paragraph 9.2:

> "I cannot see how [the claimant] can remain as a member of a functioning HR team that has its own challenges going forward, whether [the claimant] could remain employed by the Trust in another department or be granted an external secondment …for a defined period is for the Trust to decide."

199. Mr Davies' evidence did not appear in sections 7, 8 or 9.

200. On 11 January 2021 Mrs Green spoke to Mrs Grice, who confirmed that she had told one of the HRBPs that it had been the claimant who had overheard the Heaton-Morris conversation and gone to the FTSU Guardian about it. Mrs Green raised this fact in her addendum to her report dated 12 January 2021.

201. By letter dated 3 February 2021, Mrs Royds provided the claimant with a summary of the main conclusions of the Green Report. These included Mrs Green's opinion that the claimant had "made numerous and serious allegations against the Trust and its officers which are not evidenced and do

not stand up to scrutiny…" She did not at that stage disclose the Green Report itself.

202. The letter was headed, "Without Prejudice", and contained a dispute resolution offer, but the parties have agreed that we should know about it. In short:

202.1. Mrs Royds referred back to the claimant's expression of interest in a secondment;

202.2. She offered to support the claimant in finding a secondment, but only "on the basis that at the end of any secondment your employment with [the respondent] would terminate";

202.3. She left open the possibility of the claimant applying for a secondment even if she rejected the offer, but made clear that if she took that course, there could be a "formal process" to address the matters raised in the Green Report, and that this process could result in the claimant's employment with the respondent being terminated.

203. On receipt of Mrs Royds' offer, the claimant withdrew her expression of interest in being seconded.

204. Mrs Morgan was informed that the claimant had declined the offer of secondment. The evidence is contradictory as to whether or not, at the time of making her decision, Mrs Morgan knew the full circumstances of that negotiation. The minutes of the appeal meeting suggest that Mrs Morgan knew that the offer depended on the claimant's employment with the respondent coming to an end; Ms Neary's statement suggests that Mrs Morgan did not know. We did not, in the end, find it necessary to resolve that clash. This is because Morgan did not, in the end, accord that fact any significant weight.

205. On 9 March 2021, Mrs Royds sent the claimant the same summary of the Green Report as she had previously done in her 3 February 2021 letter. This time, however, Mr Royds' letter was open, and free of any "without prejudice" content. Her letter invited the claimant to a meeting to discuss possible termination of her employment. The parties have called this meeting "the SOSR hearing", and we adopt that label.

206. Neither the 3 February letter nor the 9 March letter offered the claimant any right of appeal against the conclusions of the Green Report.

207. This brings us to Detriment 3.1.3.12. To understand the allegation, reference has to be made back to the Dignity at Work Policy, summarised at the beginning of our account of the facts. The claimant's case is that:

207.1. She had made a formal Dignity at Work complaint;

207.2. Mrs Royds was the commissioning manager for that complaint;

207.3. Mrs Green was the investigator for those parts of the Dignity at Work complaint that Mrs Royds had not redacted;

207.4. The Green Report found that there was insufficient evidence to substantiate the claimant's allegations;

207.5. By including that finding in her summary of the Green Report, Mrs Royds was effectively determining that there was insufficient evidence to substantiate those allegations;

207.6. Paragraph 4.10 of the Dignity at Work Policy provided for a right of appeal against such a determination;

207.7. By not offering the claimant the opportunity to appeal, Mrs Royds was depriving her of that right; and

207.8. Mrs Royds deprived the claimant of that right because she had made a protected disclosure.

208. We must therefore consider what motivated Mrs Royds not to give the claimant any right of appeal. Our finding is that the thought just did not occur to her. She did not think that she was making any kind of determination under the Dignity at Work Policy. Indeed, Mrs Royds did not think that Mrs Green's investigation was following any written Trust policy at all, let alone one that provided for a right of appeal against unfavourable decisions. The omission to mention any right of appeal was nothing to do with the fact that the claimant had used the FTSU procedure to raise concerns.

209. Mrs Royds sent the claimant some extracts from the Green Report. The disclosed extracts were Sections 1, 2, 3, 7, 8 and 9. Sections 4, 5 and 6 were left out. The notes of Mrs Green's interviews with witnesses were not provided.

210. Responsibility for chairing the SOSR hearing was given to Mrs Chrisella Morgan, Deputy Chief Operating Officer. Her employment with the respondent started in December 2020. She had no previous connection to the respondent. It is not clear exactly when Mrs Morgan was asked to chair the SOSR hearing, but we are satisfied that it was after the Green Report was finalised. Mrs Morgan received support from Ms Malise Szpakowska, the Assistant Director of HR at another Trust.

211. Mr Flannery wrote to Mrs Royds on 10 March 2021. On the claimant's behalf, Mr Flannery's e-mail raised concerns about the SOSR hearing. These included:

211.1. The respondent did not appear to be following any written policy;

211.2. 72 pages were missing from the Green Report and

211.3. No appendices (such as interview notes) had been provided.

212. In advance of the SOSR hearing, Mrs Royds and the claimant exchanged written statements of case.

213. The management statement of case drew on Sections 8 and 9 of the Green Report. It gave a short history of the problems in the HR Operations Team and outlined the Green Terms of Reference. It then summarised the main findings in Section 8. It did not acknowledge Mrs Royds' role in focusing Mrs Green's investigation on the claimant from the start. Nor did the management statement of case bring out the evidence from Sections 5 and 6 (which, it will be remembered, Mrs Royds had not disclosed).

214. The claimant now criticises Mrs Royds' management statement of case, and its alleged reliance on the evidence of Mrs Hilton and Mrs Heaton, leaving out

evidence from other witnesses that contradicted it. This is Detriment 3.1.3.9. In our view, that is an unfair characterisation of the document that Mrs Royds produced. Mrs Royds did not base the management statement of case wholly, or even mainly, on what Mrs Hilton and Mrs Heaton had said. As we have already found, Section 8 of the Green Report was the product of Mrs Green's analysis of a wide variety of sources, a substantial one being the claimant herself. To the extent that the management statement of case left out the accounts of some other witnesses (such as Mr Davies), we are satisfied that the omission was nothing to do with the fact that the claimant had made any disclosures under the FTSU process.

215. The claimant's statement of case was 37 pages long and accompanied by numerous character references. Amongst the points that the claimant made in her statement of case were:

215.1. The claimant was suffering from anxiety.

215.2. Mrs Green had been vague and unspecific when accusing the claimant of making unfounded allegations. There was not enough detail in the Green Report for her to know what allegations she was supposed to have made.

215.3. Mrs Green had not interviewed "a balanced and proportionate selection of people".

215.4. She had only been provided with Sections 7, 8 and 9 of the Green Report.

215.5. She had not been supplied with "supporting evidence from the investigation".

215.6. The Green Report had focused unduly on the claimant's "conduct and behaviours" without investigating the "conduct and behaviours" of the HRBPs, individually or as a team.

215.7. The Green Report had mischaracterised the claimant's relationship with Mrs Baxter, when, according to the claimant, the reality had been that there were "more positives than negatives".

216. This is as convenient a point as any to take stock of Detriments 3.1.3.8, 3.1.3.13 and 3.1.3.15. They require us to make findings about Mrs Royds' motivation in deciding that there should be a SOSR hearing. Linked to that decision was her prioritisation of the SOSR hearing above any other formal procedure she could have invoked at that time. She could, for example, have put off any decision-making on the future of the claimant's employment until there had been an investigation into the claimant's grievance about Mrs Grice's FTSU investigation. She could have chosen to refer Mrs Green's findings about the claimant's "conduct and behaviours" to a disciplinary hearing. But Mrs Royds pressed ahead with the SOSR hearing instead. In making these decisions, was Mrs Royds significantly influenced by the fact that the claimant had made PID1 by raising her FTSU concern? We are satisfied that she was not motivated by that consideration at all. Mrs Royds put termination of the claimant's employment on the table because she believed that the claimant's working relationships with a succession of line managers had irretrievably broken down. That was Mrs Royds' priority. The claimant's concerns about Mrs Grice's investigation and the Grice Report

were largely historic; resolving those concerns to the claimant's satisfaction would not restore the functioning of the HR Operations Team if the claimant could not have a working relationship with her managers.

217. We are sure that Mrs Royds did not enjoy reading the Green Report. That is not to say that its conclusions came to Mrs Royds as any surprise. Despite the apparent neutrality of the Green Terms of Reference, Mrs Royds had primed Mrs Green at the outset of the investigation to look specifically at the claimant and her managers' difficulties in managing her. Mrs Royds' perception of those difficulties was, we find, based overwhelmingly on her belief that there had been a succession of breakdowns with multiple line managers. The difficulties had started long before April 2020.

218. We must also pause the clock for another purpose. Detriments 3.1.3.14(a) and 3.1.3.18 are attacks on Mrs Royds' decision to withhold sections 5 and 6 of the Green Report from Mrs Morgan and from the claimant. Detriment 3.1.3.18 criticises, additionally, Mrs Royds' withholding of Mrs Green's interview notes. We must ask ourselves whether Mrs Royds' selective sharing of the Green Report, and non-disclosure of the interview notes, was motivated in any way by the fact that the claimant had made PID1 by raising her FTSU concern. It was not. Mrs Royds was not, for example, trying to hide from the claimant references in the Green Report to managers feeling undermined by the claimant's use of the FTSU procedure. She alerted the claimant to that evidence by disclosing Section 7, which she did not need to do. The reason why Mrs Royds held material back from the claimant was because she was trying to strike a balance. She wanted to provide sufficient evidence to persuade Mrs Morgan that the claimant needed to be removed from the HR Operations Team, but did not want to reveal to the claimant any more than necessary what particular colleagues had said. Attributing precise quotes to individuals, thought Mrs Royds, would intrude into their confidentiality.

219. Ms Royds did not at any time ask any of the witnesses if they would consent to their confidential statements being made available for the purpose of the SOSR hearing.

220. As for the Royds Interview Notes, it was of course up to Mrs Royds to decide whether or not to waive her own confidentiality. She did not. We have therefore considered separately Mrs Royds' motivation for deciding not to disclose the Royds Interview Notes. The most likely explanation, in our view, is that Mrs Royds had taken an "all or nothing" approach to whether Mrs Green's interview notes should be disclosed. As soon as she disclosed one set of interview notes, it would weaken the case for withholding the remainder. A further motivating factor, we find, is that Mrs Royds did not want the claimant to know that she had singled out the claimant's relationship difficulties at the outset of Mrs Green's investigation. But Mrs Royds' lack of candour in this regard was nothing to do with the fact that the claimant had made a disclosure using the FTSU process.

221. The SOSR hearing began on 27 April 2021. The claimant attended with Mr Flannery. At the outset of the SOSR hearing, Mrs Morgan informed the claimant that she would consider three potential outcomes: (a) the claimant remaining in the HR Operations Team; (b) the claimant being redeployed to a

different team; and (c) the claimant's employment being terminated. Mrs Morgan then informed the parties that the hearing would be adjourned because Mrs Green was not available for part of the day, leaving insufficient time for Mr Flannery to ask questions of her. The claimant and Mr Flannery were disappointed by the adjournment. The claimant was concerned that Mrs Green would have the opportunity to read the claimant's statement of case during the intervening period before the SOSR hearing could be reconvened. This, said the claimant, would give Mrs Green the opportunity to submit evidence to discredit what the claimant was saying. In response, Mrs Morgan directed that neither management nor staff-side representatives should submit any further evidence.

222. On 18 May 2021 the SOSR hearing reconvened. It lasted two days.

223. Mrs Royds read the management statement of case.

224. The claimant began asking Mrs Royds questions. She prefaced her questions with a statement that she had always respected Mrs Royds' integrity.

225. Before long, the claimant interrupted Mrs Royds and became upset. She said that the process had been "cruel" on her. Following an interjection from Mrs Morgan, the claimant apologised. In a later question, the claimant put to Mrs Royds that the Green Report contained "a lot of lies". She asked to see the full Green Report so she could verify if Mrs Green had really had the conversations with the witnesses whom she had quoted, because she was "very cynical [that] the conversations may not have happened." The claimant was asked again to stop interrupting Mrs Royds, at which point the claimant raised her voice and asked Mrs Morgan how she would feel if a similar investigation report had been written about her. Mr Flannery suggested a break, following which he took over the questioning. Ms Szpakowska observed the claimant rolling her eyes. When Mrs Royds described the mediation attempts between the claimant and Mrs Baxter, and between the claimant and Mrs Hilton, the claimant exclaimed that this was "a lie" and "completely not true".

226. Mr Flannery asked Mrs Royds why she had not included supporting evidence with the management statement of case. That question would reasonably have been understood as a request for the notes of investigations with witnesses or at least quotations from those notes. Mrs Royds replied that she had included the evidence she thought appropriate.

227. Mrs Green also fielded questions at the SOSR hearing. Mr Flannery asked her why she had not interviewed witnesses from the CBUs. Mrs Green said she understood that the difficult relationships were within the HR Operations Team. One the second day, Mr Flannery put to Mrs Green that she had no first-hand evidence from Mrs Baxter about the supposed breakdown in working relationships with her. When Mrs Green mentioned that she had relied on Mrs Hilton's file note, the claimant interrupted to say that the file note was "not credible" and that she had asked for the creation properties of the document. When Mrs Green answered another question, the claimant left the room, saying that she could not and would not listen to any more lies. She stated that she felt the hearing was a "kangaroo court".

228. During the SOSR hearing, Mrs Green expressed her opinion that the claimant was accountable for the dysfunction in the HR Operations Team. This comment is the subject of Detriment 3.1.3.19, to which we will return.

229. There was a further break. Shortly after the SOSR hearing restarted, the claimant read out her statement of case.

230. When following the statement of case, Mrs Morgan was struck, in particular, by the claimant's assertion that Mrs Green's investigation "was then commissioned as an outcome of the FTSU investigation and continued with the agenda of discrediting me..."

231. Mrs Royds asked the claimant questions. In answer to one of them, the claimant stated that she believed that Mrs Heaton was a liar and that she had been advised that Mrs Heaton was out for revenge.

232. Shortly before the SOSR hearing ended, Mrs Morgan informed the claimant that she would request that the missing pages of the investigation report (Sections 4, 5 and 6) should be shared. The claimant objected. She said it was not fair for Mrs Morgan to look at those sections of the report and, if they were shared, she did not know whether she would even be able to read it. The claimant and Mr Flannery observed that the SOSR hearing would have been fair if the Green Report had been disclosed in full at the start, but made clear that the claimant did not now want to read the missing sections.

233. Having adjourned the meeting, Mrs Morgan set about reaching a decision. She still did not have sections 5 and 6 of the Green Report or the supporting documents. She did not know what Mrs Royds had told Mrs Green at the outset of the investigation and therefore did not know how Mrs Green had come to concentrate her investigation on the claimant.

234. Here, in outline, is how Mrs Morgan reasoned:

234.1. Mrs Morgan was satisfied that Mrs Green was independent.

234.2. Mrs Morgan found that there had been an irretrievable breakdown in working relationships between the claimant and key members of the HR Operations Team.

234.3. It was significant in Mrs Green's view that the claimant had had four line managers in three years (Mrs Baxter, Mrs Heaton, Mrs Morris and Mrs Leadbetter).

234.4. Her understanding of the claimant's position was that the claimant believed she had been bullied, harassed and unfairly treated by each of those successive managers.

234.5. In Mrs Morgan's view, the claimant's perception of unfair treatment was unsubstantiated. In coming to that conclusion, Mrs Morgan relied on Mrs Green's findings. Mrs Morgan did not subject Mrs Green's analysis to close scrutiny; rather, she trusted Mrs Green's professionalism and impartiality.

234.6. Mrs Morgan identified three "stand-out incidents" where service delivery to CBUs had been adversely affected by dysfunctional relationships between the claimant and others in the HR Operations Team. These were:

(a) the risk assessment exchange on 7-8 July 2020 (Detriment 3.1.3.1(a))

(b) the maternity consultation complaint on 13-14 July 2020 (Detriment 3.1.3.1(c)) and

(c) the claimant's use of the FTSU procedure in April 2020 (PID1) to raise a complaint that should have been addressed through the line management structure.

234.7. It was clear in Mrs Morgan's mind that the claimant should not be dismissed for raising a FTSU concern. The way Mrs Morgan saw it was that the claimant's recourse to this procedure was a symptom of a breakdown in relationships that had already occurred. Members of a well-functioning team would not, in Mrs Morgan's opinion, use a whistleblowing procedure to escalate concerns of this kind without first talking to a manager about them.

234.8. Mrs Morgan was aware that Mrs Heaton, Mrs Baxter, Mrs Leadbetter and Mrs Grice had left the Trust. Nevertheless, Mrs Morgan had no confidence that the claimant's working relationships with her managers would be better if the claimant returned to work. In coming to this view, Mrs Morgan found it significant that the claimant had exhibited a high degree of mistrust in Mrs Royds. Proof of that, thought Mrs Mogan, was the claimant's accusation in her statement of case that Mrs Royds had commissioned and continued the Green investigation with the "agenda of discrediting" the claimant.

234.9. Mrs Morgan derived additional support for her conclusion from the claimant's presentation at the SOSR hearing. In Mrs Morgan's view, the claimant had demonstrated through her behaviour at the SOSR hearing that she had lost the ability to sustain a working relationship with managers. In coming to that view, Mrs Morgan had in mind the parts of the SOSR hearing when the claimant had interrupted and overtalked, accused colleagues of "lies" and questioned Mrs Morgan's own integrity by describing the SOSR hearing as a "kangaroo court". For convenience, we describe this behaviour as "the claimant's emotional responses".

234.10. The solution to the breakdown, in Mrs Morgan's opinion, was to terminate the claimant's employment.

234.11. The possibility of redeployment was considered by Mrs Morgan as an alternative to dismissal, but Mrs Morgan rejected the idea. Even if a role could be found for the claimant outside the HR Operations Team, the claimant's "entrenched views, lack of insight and pattern of relationship breakdown would recur; further, her distrust for those responsible for managing her and Trust officers would inevitably re-emerge."

234.12. Mrs Morgan had another reason for thinking that redeployment was not a viable solution. She thought that the claimant would not accept redeployment, even if it was offered to her. This conclusion was based on her understanding of the negotiations between the claimant and Mrs Royds. Mrs Morgan thought that the claimant had already rejected an offer of secondment. She may have been aware that the offer of secondment was conditional on the claimant's employment with the respondent terminating, but if she did, but did not think that detail was important.

234.13. Mrs Morgan was concerned that Mrs Grice had broken the confidentiality of the FTSU investigation by revealing to Mrs Heaton and Mrs Morris that the claimant was the whistleblower. She requested a separate

investigation to find out what had happened. She did not, however, think that this "lapse" in confidentiality should affect the outcome of the SOSR hearing.

235. The SOSR hearing reconvened again on 25 May 2021 for Mrs Morgan to inform the claimant of her decision. She did so and explained the reasons for it. Those reasons were confirmed in a letter from Mrs Morgan dated 28 May 2021.

236. Before moving on to the claimant's appeal, we return to Mrs Green's remark at the SOSR hearing, which is the subject of Detriment 3.1.3.19. To recap: Mrs Green said that the claimant was accountable for the dysfunction in the HR Operations Team. We find, without needing to hear from Mrs Green, that she made the comment because she believed it to be true. The basis for her belief was what the witnesses had told her. Attributing responsibility for breakdowns in the team to individuals was squarely part of her remit. She set out her reasons for her conclusion in considerable detail in the Green Report. That is not to say that her reasons were necessarily *correct.* There was evidence that suggested that responsibility for the problems in the team should at least be shared. But we are satisfied that Mrs Green was not motivated in any way by the fact that the claimant had made PID1. She had no reason to be. She was an external independent investigator.

237. We also consider a further complaint (Detriment 3.1.3.15) arising out of the SOSR hearing. This was Mrs Royds' submission, accepted by Mrs Morgan, that Mrs Green's investigation had been fair and balanced. In fact, the fairness of the investigation was compromised because Mrs Royds had set its direction in a way that neither the claimant nor Mrs Morgan knew. Why, then, did Mrs Royds seek to persuade Mrs Morgan that the investigation had been fair and balanced? Our finding is that Mrs Royds believed that, overall, the investigation had been fair. In presenting the management case to Mrs Morgan, Mrs Royds was no more influenced by the fact that the claimant was a whistleblower than she had been at any earlier stage of the process.

238. The claimant appealed against her dismissal. Her grounds of appeal were set out in a letter dated 29 July 2021, written on her behalf by Mr Flannery. One of these was, "The unfairness of procedure". Another was, "The retrievability of the relationship".

239. Mrs Armstrong-Child asked Ms Lesley Anne Neary to chair the appeal panel. Ms Neary was the respondent's newly-appointed Chief Operating Officer, having started in her role on 1 June 2021. The other members of the panel was Mr Graham Pollard, a non-executive director and Ms Clare Almond, Associate Director of Workforce at another trust. Internal HR support was provided by Ms Pat Birkett, a senior HRBP who was new in post at the respondent.

240. Before the appeal meeting took place, the claimant made a FOI request for the creation dates of various documents that had been provided to Mrs Grice and informed both the Grice Report and the Green Report. In particular, the claimant requested the date and time of creation of the file note of Mrs Hilton's exit conversation with Mrs Baxter on 11 March 2019.

241. The FOI request was considered by Mr Brooks. He responded on 21 July 2021 by stating that the dates for each document had already been provided. As for the creation time of the 11 March 2019 file note, Mr Brooks replied:

> "The Trust does not hold this information".

242. This response is evidence, says the claimant, that somebody within the HR function subjected her to Detriment 3.1.3.21 by supplying Mr Brooks with false information. It is the claimant's case that Mrs Hilton must have retained the creation properties on her computer, which was kept by the respondent, and that whoever briefed Mr Brooks must have known that. From those alleged facts, the claimant asks us to conclude that someone within HR must have lied to Mr Brooks, and was motivated to do so by the fact that the claimant had made PID1. We are satisfied that this was not the case. The respondent has not put forward any witness who supplied the information to Mr Brooks, but that is unnecessary. The claimant's case is based on an inference which is not open to us. It is worth remembering that the file note, whose creation properties the claimant was seeking, was unrelated to the claimant's FTSU concern. We do not know from whom Mr Brooks got his information about the creation time or what enquiries his informant made. We do not know what data were still on Mrs Hilton's computer. The claimant is really just inviting us to indulge in guesswork.

243. The claimant also made a further SAR. This time her SAR was for Sections 5 and 6 of the Green Report and the interview notes on which those sections were based. Mr Brooks refused her request on the ground that she had no legal entitlement to the information, but referred it to HR for consideration of whether it should be disclosed to her under their processes.

244. The correspondence was referred to Ms Neary. With Ms Neary's approval, Ms Birkett wrote to the claimant to explain the appeal panel's approach to the requested documents. In summary:

244.1. Ms Neary renewed the offer that Mrs Morgan had made at the SOSR hearing: Sections 5 and 6 of the Green Report were available to be viewed by the appeal panel and disclosed to the claimant if that was what she wanted.

244.2. Ms Neary refused the request for Mrs Green's interview notes. Her rationale was twofold. First, Ms Neary believed that the interview notes would not affect the decision on appeal because Mrs Morgan had not taken them into account. Second, witnesses had been assured that their interviews would be confidential.

245. Mr Flannery replied on the claimant's behalf in an e-mail to Ms Birkett dated 23 September 2021. His response was couched in the language of data protection. The thrust of it was that the claimant objected to the appeal panel seeing Sections 5 and 6 of the report.

246. The appeal meeting took place on 14 October 2021. By the time the meeting started, Ms Neary had formed the view that it was important for the panel to see Sections 5 and 6. She adjourned the meeting for that purpose. Copies of Sections 5 and 6 were provided to the claimant. It was agreed that Mr Flannery would read those sections and make representations about them on the claimant's behalf.

246.1. Mrs Morgan presented the management case. She was questioned by the appeal panel about why she had not offered redeployment. In answer, Mrs Morgan stated that the claimant had rejected the secondment offer. It was at this point that it became clear to Ms Neary that there had been a gap in Mrs Morgan's thinking. What the claimant had been offered was not actually a secondment at all, in the sense that most people would understand it. Most secondment agreements do not include provisions for termination of employment at the end of the secondment period. What the claimant had been offered was a mutual termination of employment with notice, with a secondment to take place during the notice period.

247. Later in the appeal meeting, Mr Flannery made some observations about what he had read in Sections 5 and 6 of the Green Report. He argued that they "changed the whole ethos of the report". Evidence captured in Sections 5 and 6, he said, was inconsistent with the conclusions that Mrs Green had expressed in Sections 7, 8 and 9. He gave an example. Section 6 included Mr Davies' account of the mediation meeting between the claimant and Mrs Heaton. Mr Flannery observed that that account of the meeting had not been properly reflected in Mrs Green's conclusions.

248. Further comments about the impact of Sections 5 and 6 of the Green Report were sent by the claimant to Ms Birkett on 25 October 2021. Her e-mail indicated that the claimant had personally read those newly-disclosed sections.

249. The appeal meeting ended at nearly 9pm.

250. Ms Neary and the rest of the panel then set about reaching their conclusions. They engaged with each of the claimant's points on appeal. We concentrate on those of particular significance to the claim. These were:

250.1. *Sections 5 & 6* - The panel "upheld" the ground of appeal that the respondent had failed to provide Sections 5 and 6 of the Green Report. That flaw in procedure was, however, cured in their view by the panel having read the missing sections and having given the claimant an opportunity to make representations about them.

250.2. *Supporting evidence* – It was not appropriate, in the view of the panel, for the claimant to be provided with Mrs Green's notes of her interviews with witnesses. This was, again, for reasons of confidentiality.

250.3. *FTSU concern* – Having asked searching questions of Mrs Morgan, the panel were satisfied that the claimant had not been dismissed for raising her FTSU concern (PID1). Like Mrs Morgan, the panel found the relevance of the FTSU concern to be that it was one symptom of a dysfunctional team that had already broken down.

250.4. *Irretrievable breakdown* – The appeal panel was satisfied, just as Mrs Morgan had been, that there had been an irretrievable breakdown in working relationships within the HR Operations Team and that the claimant had contributed to that breakdown. Where the appeal panel parted company with Mrs Morgan, however, was on the question of who *else* was responsible. Having seen the evidence in Sections 5 and 6, the appeal panel believed that Mrs Heaton and Mrs Hilton had also contributed to the breakdown by failing to manage the working relationships adequately.

251. In the light of their conclusions, in particular, on shared responsibility for the breakdown in relationships, and lack of proper attention to redeployment, the panel believed that the original dismissal decision could not stand. They shared Mrs Morgan's view that the claimant would have to leave the HR Operations Team before the work of rebuilding relationships could begin. But that did not necessarily mean that she should have been dismissed. Before dismissal could be confirmed, in their view, the claimant should be offered the opportunity of redeployment as an alternative to dismissal.

252. The appeal meeting reconvened on 1 November 2021. The claimant was informed of the panel's decision by reading from an outcome letter which was later e-mailed to her. There is some dispute about precisely what Ms Neary said and wrote. We did not see the initial outcome letter. In the end, however, we did not find it necessary to resolve the dispute. The following findings are sufficient:

252.1. Ms Neary told the claimant that the panel had decided that there had been a breakdown in relationships within the HR Operations Team and that she could not return to it.

252.2. Ms Neary offered the claimant a Band 5 role as a Business Support Manager in Specialist Services CBU. The role sat within the CBU line management structure, breaking the link between the claimant and the line management chain in the HR Operations Team.

252.3. The claimant said, "The reason for my dismissal was loss of confidence as an employee. I believe I clearly evidenced that I had done nothing wrong and lots of lies were told. I think the key priority is clearing my professional reputation.

252.4. The claimant said that she would "love to do the Band 5 Business Support Manager role", but she was too unwell to come back "at this point". In reply, Ms Neary agreed to "put the decision in abeyance" for approximately 3 months, so that the claimant could respond to the offer when she was "feeling better".

252.5. Mr Flannery said, "I envisage it will be [the claimant] accepts the offer or, I guess, the panel uphold's Mrs Morgan's decision?" Ms Neary's response was non-committal.

252.6. Mr Flannery asked for "more meat on the bone" about Ms Neary's proposal. In particular, he wanted to know if the claimant's name would be cleared.

252.7. The claimant observed that, if she accepted Ms Neary's offer, she "would still have contact with Mrs Royds". These words were intended by the claimant to shine a light on a logical flaw in Ms Neary's reasoning, and possibly to expose Ms Neary's offer as insincere. "Why," thought the claimant rhetorically, "if the panel seriously believed I could no longer work in the HR Operations Team because of a breakdown in relationships, would they then offer to put me in a role where I would still have contact with one of the people with whom my relationship has supposedly broken down?" That is not, however, what she said, and was not how the claimant's actual remark was understood by Ms Neary. What Ms Neary took the claimant to mean

was that the claimant was reluctant to accept any role that would involve contact with Mrs Royds.

252.8. Ms Neary did not tell the claimant she had been reinstated.

253. The claimant responded to the outcome letter by e-mail on 5 November 2021. Her e-mail reiterated,

> "My first priority is to restore my professional reputation".

254. It also stated, "I am unable to move on from this ordeal… until I have an outcome from my appeal." The claimant must therefore have known, at the time of writing her e-mail, that the final decision had not yet been communicated to her, but was on hold pending the claimant's decision about whether to accept the redeployment offer or not.

255. The claimant's e-mail did not accept or reject Ms Neary's offer. It did not engage with the offer at all.

256. On 8 November 2021, Ms Neary informed the claimant that, since she was not willing to accept the terms of her redeployment offer, the panel would discuss the situation again and provide her with the final outcome to the appeal.

257. The claimant replied the next day. She clarified that she was not rejecting the redeployment offer, but was not presently in a position to be able to make a decision about whether to accept the offer or reject it. She outlined her current symptoms, which included migraines, brain fog, panic attacks and insomnia. According to her e-mail, it was "likely to be some time before I am well enough to consider a return".

258. Pausing there, we find as a fact that, at the time of writing her e-mail on 8 November 2021, the claimant genuinely found it difficult to make a decision about whether to accept the redeployment offer or not. This was partly as a result of her mental health at that time and the symptoms that she was describing. Her main reason for not accepting the offer, though, was not her health. It was that it was more important to her to clear her name than it was to get her job back in a redeployed role. She thought that accepting a role outside the HR Operations Team would be seen as an admission that she was responsible for the failed relationships within that team. Seen through her eyes, that responsibility lay with the "gang" of HRBPs and Mrs Hilton.

259. Despite the claimant's insistence that she was not rejecting the redeployment offer, Ms Neary considered that that was what in substance the claimant had done. She remained of the view that it was not appropriate for the claimant to re-join the HR Operations Team. Now that redeployment did not appear to be an option either, she believed that she was left with no option but to uphold the original decision to dismiss the claimant.

260. An outcome letter was then drafted in Ms Neary's name. It stated:

> "The appeal panel do not agree with the sanction of dismissal determined by the original panel and decided to take action short of dismissal. The action short of dismissal offer for yourself was an alternative band 5 role within the organisation…

> However, as the action short of dismissal proposal was not accepted by yourself, the appeal panel therefore have no other option but to support your dismissal."

261. On 12 November 2021, the claimant received the devastating news that her daughter had died. Needless to say, the claimant was in no position to be thinking about her appeal. Between them, Ms Neary and Mr Flannery agreed that Ms Neary should send the appeal outcome to Mr Flannery, who would pass it on to the claimant when she was ready.

262. Acting on that agreement, Ms Neary sent Mr Flannery a letter dated 15 November 2021 setting out the panel's decision. Her letter stated, relevantly:

> "I advised you that the appeal panel is satisfied that, as matters stand, your relationship with the Trust's HR [Operations] Team has irretrievably broken down. Consequently, the appeal panel is also satisfied that it would not be appropriate… for you to return to the HR team.
>
> I advised, however, that the appeal panel was prepared, with your agreement, to place our final decision on hold and explore whether an offer of alternative employment within the Trust might enable you to return to work for the Trust in another capacity.
>
> …
>
> I agreed to delay the commencement of the trial period [for] up to 3 months. I also explained that upon receipt of Occupational Health clearance to return, you would then be reinstated and the current appeal process would be placed in abeyance for a period of up to 3 months to allow you to undertake a trial period in the new role…
>
> I asked that you confirm whether or not you were in agreement to this suggested way forward by Monday, 8 November 2021. I advised that if you did not accept my offer that I would write to you with a final decision from the panel by 15 November 2021.
>
> I received a letter from yourself on 5 November 2021 advising that you were not in a position to accept my offer.
>
> …
>
> The appeal panel was not satisfied that the original panel had fully explored the possibility of you working … in another role within the Trust
>
> As you have not accepted the offer of an alternative role, the appeal panel therefore has no other option but to uphold the original decision to dismiss you."

263. This version of the letter was different from the earlier draft, in that the final version omitted the initially-drafted words, "decided to take action short of dismissal". The claimant contends that this change shows that the panel must, at some stage, have decided to reinstate her (regardless of whether she accepted redeployment or not) and subsequently sought to cover their tracks by pretending that they had only put their decision on hold. We disagree. The draft described the offer of alternative employment as an "action short of

dismissal proposal" and stated that, because the claimant had not accepted it, the appeal panel would "support your dismissal". Like the letter that was actually sent, the draft letter confirmed that the claimant had been told that the appeal decision would be "put on hold". Both the draft and final versions of the letter showed the panel's consistent message that the claimant would not be reinstated unless she accepted an offer of redeployment.

Relevant law

Disclosures qualifying for protection

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

"

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

…

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1)."

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

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

267. What amounts to a reasonable belief that disclosure was in the public interest was considered by the Court of Appeal in *Chesterton Global Limited v Nurmohamed* [2018] ICR 731. The Court of Appeal considered that a disclosure could be in the public interest even if the motivation for the disclosure was to advance the worker's own interests. Motive was irrelevant. What was required was that the worker reasonably believed disclosure was in the public interest in additional to his own personal interest. Underhill LJ, giving the leading judgment, refused to define "public interest" in a mechanistic way, based merely on whether it impacted anyone other than the claimant or whether it impacted those beyond the workforce. Rather a Tribunal would need

to consider all the circumstances, although the following fourfold classification of relevant factors was potentially a "useful tool":

(a) The **numbers in the group whose interests the disclosure served** – although numbers by themselves would often be an insufficient basis for establishing public interest;
(b) The **nature and the extent of the interests affected** – the more important the interest and the more serious the effect, the more likely that public interest is engaged;
(c) The **nature of the wrongdoing** – disclosure about deliberate wrongdoing is more likely to be regarded as in the public interest than inadvertent wrongdoing;
(d) The **identity of the wrongdoer** – the larger or more prominent the wrongdoer, the more likely that disclosure would be in the public interest.

268. Tribunals should be cautious about concluding that the public interest requirement is satisfied in the context of a private workplace dispute merely from the numbers of others who share the same interest. In practice, the larger the number of individuals affected by a breach of the contract of employment, the more likely it is that other features of the situation will engage the public interest.

Protection from detriment

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

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

270. The concept of "detriment" should be construed widely. A detriment is something that could reasonably understood by the worker to put them at a disadvantage: *Jesudason v. Alder Hey Children's NHS Foundation Trust* [2020] EWCA Civ 73. An unjustified sense of grievance is not a detriment: *Shamoon v. Royal Ulster Constabulary* [2003] UKHL 11.

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

272. When considering whether a protected disclosure influenced the employer's act or failure, the tribunal must concentrate on the motivation of the person who took the decision to act, or not to act. An innocent decision-maker cannot be held to have acted with another person's motivation. If that other person influenced the decision by providing information, or manipulating the process, their actions must be alleged as a separate act: *Malik v. Cenkos Securities plc* UKEAT 0100/17.

273. To satisfy section 47B(1), the reason for the detrimental act or failure must be the fact that the worker made a protected disclosure, rather than some reason that was linked to the making of a protected disclosure. The

employer may successfully contend that their act or failure was done, not on the ground that the worker made the protected disclosure, but rather on the ground of the worker's conduct that was connected to the making of the disclosure: *Bolton School v. Evans* [2007] IRLR 140. Tribunal should, however, scrutinise the employer's assertion carefully before drawing this distinction. Otherwise it would be too easy for an employer to escape liability by saying that there was something about the manner of the disclosure that motivated the detrimental act or failure. See, in the context of the Equality Act 2010, a similar statement to that effect in *Martin v. Devonshires Solicitors* UKEAT 0086/10.

Burden of proof - detriment

274. Section 48 of ERA provides, relevantly:

> (1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.
>
> …

275. On a complaint under subsection (1A), it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

Unfair dismissal

276. Section 98 of ERA, so far as it is relevant, reads:

> (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-
>
> (a) the reason (or, if more than one, the principal reason) for the dismissal and
>
> (b) that is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> …
>
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case.

277. Section 103A of ERA provides:

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

278. Where an employee was continuously employed for two years or more prior to the effective date of termination, and alleges that their dismissal was unfair under both section 98 and section 103A, the tribunal must proceed as follows:

    278.1. First, decide whether the employer has proved the sole or principal reason for dismissal;

    278.2. Then decide whether that reason was one of the potentially fair reasons mentioned in section 98(1) and (2) of ERA;

    278.3. If it was, decide whether the employer acted reasonably or unreasonably in treating that reason as sufficient to dismiss;

    278.4. If the employer has failed to prove the sole or principal reason, decide whether the employee has put forward some evidence to support an arguable case that they were dismissed because they made a protected disclosure; and

    278.5. If there some evidence of that kind, decide whether the employer has proved that the protected disclosure was not the sole or principal reason for dismissal.

279. Authority for this approach can be found in *Kuzel v. Roche Products Ltd* [2008] ICR 799, CA.

280. The reason for dismissal is the set of facts known to the employer, or the set of beliefs held by him, that causes him to dismiss the employee: *Abernethy v, Mott, Hay and Anderson* [1974] ICR 323, CA.

281. A breakdown in working relationships is capable of being some other substantial reason (SOSR) within the meaning of section 98(1): *Turner v. Vestric* [1980] ICR 528.

282. Tribunals should not accept uncritically the employer's assertion that the reason for dismissal was a breakdown in relationships. The tribunal should be alert to the possibility that the employer may be using that reason as a device to avoid following proper procedures: *Eszias v. North Glamorgan NHS Trust* UKEAT 0399/09.

283. An employer is unlikely to act reasonably in treating a breakdown in working relationships as sufficient to dismiss the employee unless the employer:

    283.1. Believes on reasonable grounds that the breakdown is irremediable (*Turner)*; and

    283.2. Gives reasonable consideration of the potential injustice to the employee of dismissing them for that reason (*Henderson v. Connect (South Tyneside) Ltd* [2010] IRLR 466).

284. In applying the test of reasonableness, the tribunal must not substitute its own view for that of the employer. It is only where the employer's decision is so unreasonable as to fall outside the range of reasonable responses that the tribunal can interfere. This proposition is just as true when it comes to examining the employer's investigation as it is for the assessment of the decision itself: *J Sainsbury plc v. Hitt* [2003] ICR 111.

285. The tribunal must consider the fairness of the whole procedure in the round, including the appeal: *Taylor v. OCS Ltd* [2006] IRLR 613.

286. Where a dismissal is found to be unfair, and the tribunal does not order reinstatement or reengagement, it may make a compensatory award. Under section 123(1) of ERA, such an award may be reduced on the ground that, had the employer acted fairly, the employee would or might have been dismissed in any event: *Polkey v. A E Dayton Services Ltd* [1988] ICR 142.

287. The tribunal is required to speculate as to what would, or might, have happened had the employer acted fairly, unless the evidence in this regard is so scant it can effectively be disregarded: *Software 2000 Ltd v. Andrews* [2007] IRLR 568.

288. The question for the tribunal is not what the employer was reasonably entitled to do, but what the employer *would* have done if it had not unfairly dismissed the employee, and if there is a percentage chance that the employer would have done it, what that percentage chance would have been: *Teixera v. Zaika Restaurant Ltd* [2022] EAT 171.

Discrimination arising from disability

289. Section 15(1) of EqA provides:

> (1) A person (A) discriminates against a disabled person (B) if-
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

290. Langstaff P in *Basildon & Thurrock NHS Foundation Trust v Weerasinghe* UKEAT/0397/14 (19 May 2015, unreported) explained (with emphasis added):

> "The current statute requires two steps. There are two links in the chain, both of which are causal, though the causative relationship is differently expressed in respect of each of them. The Tribunal has first to focus upon the words "because of something", and therefore has to identify "something" – and second upon the fact that that "something" must be "something arising in consequence of B's disability", which constitutes a second causative (consequential) link. These are two separate stages."

291. Treatment is unfavourable if the claimant could reasonably understand it to put him or her to a disadvantage. When deciding whether or not treatment is unfavourable, it is important to be clear about what the treatment was. Treatment does not become unfavourable just because someone else was treated, or would have been treated, more favourably: *Williams v. Trustees of Swansea Pensions & Assurance Scheme* [2018] UKSC 65.

292. These principles have been affirmed in *Pnaiser v. NHS England* [2016] IRLR 174.

293. It is no defence to a complaint under section 15 that the employer did not know that the reason for the unfavourable treatment had arisen in

consequence of the employee's disability: *City of York Council v. Grosset* [2018] EWCA Civ 1492.

294. When considering the justification defence (now found in subsection (1)(b)), the tribunal must weigh the discriminatory effect of the treatment against the reasonable needs of the business: *Hardy and Hansons Plc v Lax* [2005] ICR 1565*,* applying *Allonby v. Accrington & Rossendale College* [2001] ICR 1189.

295. In *Hensman v Ministry of Defence* UKEAT/0067/14, Singh J held that, when assessing proportionality, while a tribunal must reach its own judgment, that must in turn be based on a fair and detailed analysis of the working practices and business considerations involved, having particular regard to the business needs of the employer.

296. During the course of the parties' closing submissions, our employment judge put this proposition to counsel:

> "The looser the causal connection between an employee's disability and the employer's unfavourable treatment of the employee, the less was the discriminatory impact. Therefore, other things being equal, it would be more likely that the unfavourable treatment was proportionate."

297. Neither counsel disagreed with that proposition. It seems to us to be right. It should be easier to justify treatment that was decided on for multiple reasons, only one of which arose in consequence of the employee's disability. It should also be easier to justify treatment for which the employer only had one reason, but where that reason had multiple causes, only one of which was the employee's disability. Both scenarios may be contrasted with unfavourable treatment that had a stark discriminatory impact, such as dismissal for long-term sickness absence, where the employee's disability was the sole cause of their sick leave.

298. The *Code* offers guidance on the interrelationship between the making of adjustments and the proportionate means defence. The following extract appears to us to be relevant:

> "5.20 Employers can often prevent unfavourable treatment which would amount to discrimination arising from disability by taking prompt action to identify and implement reasonable adjustments…
> 5.21 If an employer has failed to make a reasonable adjustment which would have prevented or minimised the unfavourable treatment, it will be very difficult for them to show that the treatment was objectively justified.
> …"

299. Paragraph 5.21 of the *Code* is consistent with the following statement made by Simler J in *Dominique v. Toll Global Forwarding Ltd* UKEAT/0308/13 (concerning the Disability Discrimination Act 1995) at paragraph 51:

> "….where there is a link between the reasonable adjustments said to be required and the disadvantages …being considered in the context of ….disability-related discrimination, it is important to ensure that any failure to comply with a reasonable adjustment duty is considered as part of the balancing exercise in considering questions of justification.

> This is because it is difficult to see as a matter of practice how a disadvantage that could have been addressed or prevented by a reasonable adjustment that has not been made can, as a matter of practical reality, be justified."

Conclusions – detriment on the ground of protected disclosure

Protected disclosures

PID1

300. The claimant disclosed information to Amanda Laugharne on 13 April 2020.

301. The information was that Mrs Heaton and Mrs Morris had had a whispered conversation in which they had discussed creating a temporary Band 7 role that was not needed, using Covid-19 money, for a named Band 5 colleague, and that this was evidence of a fraud.

302. The claimant believed that this information tended to show that persons in the HR Operations Team were likely to commit a fraud. She believed that the fraud would be a breach of a legal obligation or a criminal offence or both.

303. It was reasonable for the claimant to believe that that was what the information tended to show. The word, "fraud" speaks for itself. It was reasonable for her to think that it was fraudulent to use money allocated specially for the Covid-19 response deliberately to create a promotion opportunity for a named colleague. Having come to the reasonable belief that the information tended to show a fraud, it was also reasonable for her to believe that the disclosed fraud was an offence, or a breach of a legal obligation. She was not a criminal lawyer and was not trained in the civil law of fraud.

304. We have found at paragraph 60 that the claimant believed she was disclosing this information in the public interest. In our view that belief was reasonable, too. She gave the matter considerable thought over the weekend. The wrongdoing she thought she was exposing was taking place within the National Health Service at a time of a national emergency, involving the use of central government funds earmarked to deal with the pandemic.

305. PID1 was therefore a protected disclosure.

PID2 and PID3

306. In the light of our conclusions about PID1, it is academic to determine all the issues relating to PID2 and PID3. The claimant's positive case is that her e-mails contained substantially the same information that she orally disclosed to Amanda Laugharne. Nobody suggested that any decision-maker within the respondent could have been motivated by the fact that the claimant had put the same concerns in an e-mail, as opposed to disclosing them orally.

307. In short summary, our conclusion is that PID2 and PID3 were also protected disclosures. They did not expressly state that the alleged wrongdoing amounted to a fraud. But Mrs Armstrong-Child could not have understood it any other way. The concern was escalated to her by Ms Laugharne, who knew that the claimant had said that the activity was fraudulent. The fact that the claimant reasonably believed that her e-mails

tended to show a fraud has been committed is supported by the fact that she told Mrs Armstrong-Child on 7 May 2020 that there was a fraudulent misuse of Covid money. If Mrs Armstrong-Child thought that the claimant was disclosing a fraud for the first time at that meeting, we would have expected her to have said so. The claimant's belief that she was acting in the public interest was the same as it was for PID1. Her belief was equally reasonable.

Detriment 3.1.3.1(a)

308. Mrs Leadbetter's 8 July 2020 e-mail was reasonably understood by the claimant to be detrimental to her. There were two aspects to the e-mail that made the claimant reasonably think that she had been badly treated. First, the phrase, "firing off", implied that the claimant had sent an e-mail without properly thinking about it first. The claimant quite understandably took that to be a harsh criticism. Second, Mrs Leadbetter failed to recognise in her e-mail that she could have prevented the claimant from sending the e-mail but had not done so.

309. Nevertheless, the complaint of Detriment 3.1.3.1(a) is not well-founded. Mrs Leadbetter's e-mail, though detrimental, was not in any way motivated by the fact that the claimant had made a protected disclosure. Our finding to this effect is at paragraph 91 above.

Detriment 3.1.3.1(b)

310. This is a complaint about what Mrs Leadbetter wrote in the one-to-one form. Our findings at paragraph 96, in our view, provide the complete answer to it. As we explained there, part of the one-to-one form was reasonably understood by the claimant to be detrimental to her. The wording suggested that the claimant was unsure about the progress of her long-term sickness absence cases or, in other words, was not on top of her caseload. But Mrs Leadbetter's use of those words had nothing to do with any protected disclosure that the claimant had made. It was because Mrs Leadbetter had meant to say that the claimant had not understood what was expected of her.

Detriment 3.1.3.1(c)

311. This complaint concerns the response of Mrs Heaton and Mrs Grice to the claimant's 14 July 2020 e-mail about putting maternity consultation on hold. Two acts of the respondent are said to have put the claimant to a detriment, namely: (i) Mrs Heaton's decision to escalate the claimant's concerns to Mrs Grice, and (ii) Mrs Grice's decision to get involved. As a result of our findings at paragraphs 102 and 103, both complaints must fail. Neither Mrs Heaton's nor Mrs Grice's actions here were motivated in any way by the claimant having made PID1 or any other protected disclosure.

312. We would also add that it was not reasonable for the claimant to think that she had been disadvantaged in any way by the response of Mrs Heaton and Mrs Grice. For the reasons we also explained in paragraphs 102 and 103, Mrs Heaton did entirely the right thing by not getting personally drawn into an e-mail argument with the claimant. Mrs Grice was quite justified in her decision to intervene. The claimant had criticised Mrs Heaton in an e-mail and copied it into her CBU. Better working relationships would be fostered by keeping such matters internal to the HR Operations Team. It was not detrimental to the claimant to be reminded of that.

Detriment 3.1.3.1(d)

313. Our findings at paragraph 119 to 121 are key to understanding our conclusions about Detriment 3.1.3.1(d). We are concerned here with Mrs Grice's "ping pong" e-mail of 20 July 2020 and, in particular, her accusation that the claimant had a tendency to be aggressive and unpleasant towards managers. Self-evidently it was reasonable for the claimant to perceive this accusation as detrimental.

314. As we have found, Mrs Grice's accusation was motivated, to a significant extent, by the fact that the claimant had made a protected disclosure.

315. Mr Boyd, for the respondent, reminded us that it is not unlawful to treat a worker detrimentally because of the manner in which they have gone about making their protected disclosure, if that behaviour can be properly distinguished from the disclosure itself. He also submitted that, for a contravention of section 47B, it is not enough for the tribunal to find that the disclosure was part of the "background and context" for the detrimental act or failure: it must have actually operated on the mind of the decision-maker. The "ping pong" e-mail was, says Mr Boyd, a case in point.

316. This submission was made with Mr Boyd's customary skill, but we disagree with it. PID1 was not just the background and context for Mrs Grice's detrimental comment. The disclosure itself acted upon Mrs Grice's thinking in three ways.

316.1. Mrs Grice, as we have found, was influenced by the fact that HRBPs had felt undermined by the claimant using the FTSU procedure to raise her concern about the creation of the Band 7 role. Practically speaking, this is the same as saying the Mrs Grice was influenced by the fact that the claimant had made PID1, and HRBPs resented it. It is artificial to try to distinguish the HRBPs' negative reaction from the disclosure itself. In coming to this view, we have borne in mind the legislative purpose of section 47B. Whistleblowers whose disclosures are inoffensive to management generally have nothing to fear. Section 47B is there for the workers whose disclosures are unwelcome.

316.2. Mrs Grice took into account that the claimant could have raised her concern within the HR Operations Team, but chose to use the FTSU procedure instead. We do not rule out the possibility of an employer ever legitimately penalising a worker for using whistleblowing procedures inappropriately. In theory, an employer might be motivated solely by the worker's abuse of whistleblowing procedures, as opposed to the disclosure of information they made under that procedure. An example might be a worker who repeatedly escalates minor health and safety issues immediately to the Chief Executive without first trying to raise them with management. But if section 47B allows room for situations like these, this case is not one of them.

316.3. Also influential on Mrs Grice's thinking was her view that the information that the claimant had provided using the FTSU procedure was incorrect and may have been malicious. We do not think that this consideration can be distinguished from PID1 either. That is not to say that a belief that a protected disclosure was malicious will *never* be distinguishable from the disclosure itself. But in order for the distinction to be drawn, it must

be clear that the decision-maker was motivated wholly by their perception of the whistleblower's bad faith, or falsehood, to the exclusion of the proscribed consideration of the whistleblower having made the disclosure in the first place. Otherwise, as we are warned in *Martin,* it would be all too easy for the employer to seize upon some inaccuracy in the protected disclosure as a pretext for reprisals. In this particular case, Mrs Grice was motivated by the fact that the claimant had made the disclosure we call PID1. She may also have been swayed by her belief that it was false, but the respondent has not demonstrated to us that that belief was completely distinct from the consideration that the claimant had made the disclosure at all.

317. Our conclusion, therefore, is that Mrs Grice, on the respondent's behalf, subjected the claimant to Detriment 3.1.3.1(d) on the ground that the claimant had made a protected disclosure.

Detriment 3.1.3.2(a)

318. The claimant reasonably understood that the lack of supportive measures from Mrs Leadbetter between 8 and 20 July 2020 put her at a disadvantage. She was noticeably unwell and yet Mrs Leadbetter did nothing.

319. As we have found in paragraphs 124 to 127, Mrs Leadbetter's failure was deliberate and was motivated more than trivially by the fact that the claimant had made PID1.

320. As with Detriment 3.1.3.1(d), we have asked ourselves whether we can properly distinguish between, on the one hand, Mrs Leadbetter being motivated by her belief that the FTSU procedure had been abused and, on the other hand, her being motivated by the fact that the claimant had made the disclosure we have called PID1. We do not believe that such a distinction can be drawn. Mrs Leadbetter's thinking was influenced, in reality, both by the fact that the claimant had not raised her concern with line management, and also by the fact that she had raised it at all.

321. Detriment 3.1.3.2(a) was therefore a detrimental deliberate failure to act on the ground that the claimant had made a protected disclosure.

Detriment 3.1.3.2(b)

322. In our view, it was not detrimental for Mrs Leadbetter to hold back from regular support meetings. She did not think that the absence of regular meetings with Mrs Leadbetter put her at any disadvantage. Nor could she reasonably have thought that it would. The claimant did not want to talk to Mrs Leadbetter. She had told Mrs Leadbetter that she wanted contact to be by text. Moreover, as revealed in her e-mail of 28 July 2020 to Mrs Leadbetter, and in her correspondence with Mrs Grice, the claimant thought that Mrs Leadbetter had acted "unprofessionally and unpleasantly" towards her and had an "agenda".

323. In any case, for the reasons we have given in paragraph 175, Mrs Leadbetter's deliberate failure was not significantly influenced by any consideration of the claimant having made a protected disclosure.

Detriment 3.1.3.2(c)

324. The claimant could not reasonably have understood the absence of a stress risk assessment to put her at a disadvantage. This is so, despite Dr Shah

having called for one. Any reasonable person in the claimant's position would have understood that there was nothing that a stress risk assessment could realistically achieve. There was no point in considering the stress factors associated with a return to work until there was at least some prospect of the claimant returning. As Dr Shah had made clear, whilst the workplace issues were outstanding, the claimant would not be well enough to return. Those workplace issues would not change until Mrs Green's investigation had concluded.

325. The complaint in relation to Detriment 3.1.3.2(c) would fail in any case, because of our finding about Mrs Leadbetter's motivation: see paragraph 175.

Detriment 3.1.3.3

326. The claimant complains here about a failure to investigate her conduct under the Disciplinary Policy. In our experience that is an unusual complaint for an employee to make. A disciplinary investigation carries with it the risk that the employer will decide to impose a disciplinary sanction, which most employees would prefer to avoid. The claimant's case is that she would have run that risk, given the chance, because it would have given her the chance of vindication. More precisely, it would have given her an opportunity to clear her name against the criticisms of her behaviour in the Grice Report. But that is not the purpose of disciplinary procedures. The decision at hand at a disciplinary hearing is whether to impose a disciplinary sanction. Establishing the facts of what an employee has done is not the end in itself. It is a means towards the end of deciding whether disciplinary action should be taken or not. If the employer has already decided not to take disciplinary action, the employee cannot complain about being deprived of the chance to be vindicated.

327. In case we are wrong about that, we would in any case find that Detriment 3.1.3.3 did not contravene section 47B because Mrs Royds was not in any way motivated by the claimant having made a protected disclosure. Her actual reasons are set out in paragraph 135.

Detriment 3.1.3.4(a)

328. Mrs Grice agreed to investigate the claimant's FTSU concern because Mrs Armstrong-Child, the Chief Executive, had asked her to do so. It may be said that, had the claimant not made a protected disclosure, there would have been nothing to investigate and therefore no reason for Mrs Grice to become involved at all. But that is beside the point. It was Mrs Armstrong-Child's request for an investigation, and not the claimant's disclosure, that influenced Mrs Grice's decision to begin investigating.

329. The claimant could not in any case have reasonably understood herself to have been disadvantaged by Mrs Grice's decision to investigate. The claimant positively wanted an investigation. Mrs Grice, the newly-appointed Interim Deputy HR Director, was an appropriate person to do the investigating, and the claimant could not reasonably think otherwise.

Detriment 3.1.3.4(b)

330. Mrs Grice did not specifically investigate the signing of the PAG authorisation form. We did not reach a conclusion either way about whether the claimant

reasonably understood this omission to be deliberate or detrimental. This is because the complaint of Detriment 3.1.3.4(b) would in any case fail on the ground that the failure, even if deliberate, was wholly motivated by what Mrs Grice would have understood from the Grice Terms of Reference and was not motivated by the fact that the claimant had made a protected disclosure. See paragraph 110 where that finding is recorded.

Detriment 3.1.3.4(c)

331. Likewise, at paragraph 111, we found that Mrs Grice's decision to include references to other events was not motivated by the fact that the claimant had made a protected disclosure.

Detriment 3.1.3.4(d)

332. By contrast, our finding was that Mrs Grice had accepted the version of Mrs Heaton and Mrs Hilton uncritically, and had done so on the ground that the claimant had made PID1. Our finding, and the reasons for it, are set out at paragraph 112.

333. Just as with Detriments 3.1.3.1(d) and 3.1.3.2(a), we examined Mrs Grice's thinking with an eye on a possible distinction (in Mrs Grice's mind) between the claimant's protected disclosure itself and other features that the respondent says were separable from it. We could not find any proper distinction.

334. For Mrs Grice to take at face value the word of an HRBP and Head of HR on these matters was reasonably understood by the claimant to be detrimental to her. On Mrs Heaton's and Mrs Hilton's account, the claimant was difficult to manage and – at best – had not given an accurate version of what she had heard in the Heaton-Morris conversation.

335. Mrs Grice, and therefore the respondent, accordingly subjected the claimant to Detriment 3.1.3.4(d) on the ground that she had made a protected disclosure.

Detriment 3.1.3.5(a)

336. As mentioned at paragraph 9.15, we could not identify any new complaint of substance here. The only factual allegation we could find in the claimant's written submissions was an echo of Detriment 3.1.3.4(a).

Detriment 3.1.3.5(b)

337. This is a complaint about the extent of redaction of the Grice Report. She had asked for it in a SAR.

338. Decisions about what information to provide in response to the claimant's SAR were made by Mr Brooks, and not Mrs Royds: see our finding at paragraph 143. Mr Brooks is not alleged to have been motivated by the fact that the claimant made a protected disclosure.

339. We would in any case have dismissed the complaint of Detriment 3.1.3.5(b). This is because the claimant has not established that she could reasonably have understood the SAR response to be detrimental to her.

340. A worker who is disappointed with their employer's response to a SAR would suffer no detriment unless they were entitled under data protection legislation

to the information that they had requested. Otherwise, all they would have is an unjustified sense of grievance.

341. In this case, the claimant has not put forward any argument that she was entitled under data protection legislation to any more information than she actually got. There was no reference in the claimant's evidence or submissions to any provision of the Data Protection Act 2018 or the General Data Protection Regulation, or any right enshrined in those laws.

342. The claimant's written submissions rely on the fact that, during the process of disclosure for the purposes of the employment tribunal proceedings, the version of the Grice Report that was disclosed to the claimant was much less heavily redacted than the SAR response. But that tells us nothing. The claimant is conflating two entirely different legal regimes. The legal obligation to provide access to personal data is different from a case management order for disclosure and inspection of documents.

343. We happen to know that, when redacting a document in response to a SAR, two important considerations for a data controller are (a) the extent to which an unredacted document would provide information that is not personal information and (b) the extent to which the unredacted document may provide the personal information of others. It appears that that balance was struck by Mr Brooks. We do not know whether he got his decision right or wrong. He was, however, specifically trained in this area and can be taken to have known what he was doing. In the absence of any argument advanced by the claimant as to how Mr Brooks may have erred, we are unpersuaded that he redacted anything that the claimant could reasonably have expected him to have disclosed.

Detriment 3.1.3.6

344. Whilst Mrs Green was carrying out her investigation, Mrs Royds deliberately failed to commission a separate, parallel, investigation of the claimant's Dignity at Work concerns.

345. The claimant reasonably understood Mrs Royds' decision to put her at a disadvantage. A Dignity at Work procedure would have focused specifically on the complaints that the claimant wanted to make and the redress that the claimant herself was seeking. By contrast, the Green Terms of Reference were much wider. The claimant's Dignity at Work concerns were only relevant to Mrs Green's investigation so far as they explained the state of working relationships within the HR Operations Team.

346. The claim about Detriment 3.1.3.6 nonetheless fails. This is because, as we found at paragraph 183, Mrs Royds' reason for refusing to follow parallel procedures was nothing to do with the fact that the claimant made a protected disclosure.

Detriment 3.1.3.7

347. Paragraph 181 records our finding that Mrs Royds did not refuse to provide clarity. She gave responses that the claimant did not like, but that does not mean that they were unclear. If there was any failure on Mrs Royds' part to make her answers clear, that failure was not deliberate.

348. What we suspect that Detriment 3.1.3.7 may also have been getting at was Mrs Royds' failure to provide specific *information* that the claimant was seeking. That failure was deliberate. Mrs Royds would not tell the claimant what would happen after Mrs Green had concluded her investigation. We do not think that the claimant could reasonably have understood that refusal to be detrimental to her. The possible outcomes were too speculative.

349. In any case, we also found, at paragraph 182, that Mrs Royds' decision was not motivated in any way by the fact that the claimant had made a protected disclosure.

Detriment 3.1.3.8

350. Under the heading of Detriment 3.1.3.8, the claimant complains that Mrs Royds never progressed her grievance about Mrs Grice's investigation. Mrs Royds' failure was deliberate: it was a prioritisation of the SOSR hearing over any other process. It was also detrimental to the claimant: she never did, in the end, get the answers she wanted about how and why Mrs Grice had conducted the FTSU investigation as she did, and how and why the Grice Report was so unfavourable to her. But the detrimental failure was not on the ground that she had made a protected disclosure: see our finding at paragraph 216.

Detriment 3.1.3.9.

351. For the reasons we have given at paragraph 214, the claimant has not shown that Mrs Royds actually did the detrimental act that is alleged to have been Detriment 3.1.3.9. Her characterisation of the management statement of case is not accurate.

352. In case we are wrong about that, we also looked at Mrs Royds' motivation and found (also at paragraph 214) that it was not motivated to any significant extent by the fact that the claimant had made a protected disclosure.

Detriment 3.1.3.12

353. In her letters of 3 February and 9 March 2021, Mrs Royds relayed to the claimant a key conclusion in the Green Report that the claimant's allegations were not evidenced and did not stand up to scrutiny. Mrs Royds did not try to distance herself from Mrs Green's opinion in that regard. The claimant had expressly invoked the Dignity at Work Policy when making some of those allegations. In substance, what Mrs Royds was doing was the equivalent of a determination that there was insufficient evidence to substantiate her Dignity at Work complaint. Had the complaint been investigated under the Dignity at Work Policy, the claimant would have been entitled to appeal against that determination. She could reasonably understand that she had been disadvantaged by Mrs Royds' omission to provide that recourse to her.

354. The complaint falls down at the stage of considering Mrs Royds' motivation. There is a simple, non-proscribed, explanation for why Mrs Royds did not mention a right of appeal. Our paragraph 208 says what that explanation is.

Detriment 3.1.3.13

355. The claimant could reasonably understand that it would be detrimental to her to face the SOSR hearing. It carried with it the risk that her employment might be terminated. But Mrs Royds' decision to subject her to that detriment was

not on the ground that the claimant had made a protected disclosure. Our finding to that effect can be found in paragraph 216 above.

Detriment 3.1.3.14(a)

356. There were shortcomings in Mrs Royds' transparency in prosecuting the SOSR process. For the most part, the various pieces of withheld information are the subject of a separate detriment allegation. There is no need to go over the same ground under this heading. There is one point that does not, however, appear to be dealt with elsewhere in the list of issues. That is Mrs Royds' not informing the claimant of her influence on Mrs Green's investigation at its outset. The claimant could reasonably understand that omission to be disadvantageous to her. At paragraph 220, however, we found that Mrs Royds' decision to hold this information back was not in any way influenced by the fact that the claimant had made a protected disclosure.

Detriment 3.1.3.14(b)

357. Likewise, though Mrs Royds did to an extent manipulate Mrs Green's investigation by secretly setting its direction, we were satisfied that the fact that the claimant had made a protected disclosure had nothing to do with it. That finding is explained in more detail at paragraph 154.

Detriment 3.1.3.15

358. This complaint overlaps almost completely with the detriment allegations we have already considered and dismissed. The claimant's attempt to impugn as a whistleblowing detriment Mrs Royds' decision to progress to the SOSR hearing has already failed: see our conclusion on Detriment 3.1.3.13 and paragraph 216. Here, under the heading of Detriment 3.1.3.15, we must additionally consider why Mrs Royds sought to persuade Mrs Morgan that there had been a fair investigation. Our relevant finding of fact is at paragraph 237: Mrs Royds' reason was nothing to do with the claimant having made a protected disclosure.

Detriment 3.1.3.17

359. It was plainly detrimental to the claimant to learn from the Green Report that the concerns she raised had been adjudged to be not only unfounded, but evidence of the claimant's own difficulties with being managed. That is what we take the claimant to mean in Detriment 3.1.3.17 when she says that her dignity at work concerns were used against her.

360. This part of the claim still fails. Paragraph 197 contains the decisive finding of fact. Mrs Green was not motivated by the fact that the claimant had made a protected disclosure.

Detriment 3.1.3.18

361. The claimant was subjected to a detriment by the deliberate failure of Mrs Royds to disclose Sections 5 and 6 of the Green Report and, importantly, Mrs Green's interview notes. The absence of these documents generally made it harder to test the evidence upon which the conclusions of the Green Report were based. It made it impossible for the claimant to find evidence (such as Mr Davies' interview notes) that might point towards a more nuanced conclusion. Not having the Royds Interview Notes also meant that the

claimant did not know the influence that Mrs Royds had had at the start of the investigation.

362. Our finding, however, was that none of these deliberate failures were motivated by the fact that the claimant had made a protected disclosure: see paragraph 218 and 220.

Detriment 3.1.3.19

363. Mrs Green told Mrs Morgan that the claimant was accountable for the dysfunction in the HR Operations Team. That comment was reasonably understood by the claimant to be detrimental to her. Whlist the claimant could not reasonably wash her hands of any responsibility for what had happened, she had a legitimate point of view that others in the team bore equal, if not greater, responsibility.

364. Where this complaint fails is, again, on the issue of Mrs Green's motivation. In paragraph 236 we found that Mrs Green made the comment because she believed it to be true, and not at all because the claimant had made a protected disclosure.

Detriment 3.1.3.20

365. This is another complaint about an employer's response to a SAR.

366. For the reasons we have given in relation to Detriment 3.1.3.5(b), the claimant has not shown that was subjected to any detriment. The claimant has not put forward any argument to contradict Mr Brooks' view that the claimant was not legally entitled to the information she was seeking.

367. It may be thought that our approach is over-technical, and that what the claimant is really complaining about is that the information was not provided *one way or the other.* We have therefore looked at the underlying substance of the allegation. What it boils down to is a further complaint about the non-disclosure of Mrs Green's interview notes.

368. The claimant's allegation is that her request was "blocked by HR", without identifying any particular decision-maker within the HR function.

369. When dismissing Detriment 3.1.3.18 we concluded that Mrs Royds' decision not to disclose Mrs Green's notes was nothing to do with the fact that the claimant made a protected disclosure.

370. We also found Mrs Neary's reasons for refusing to disclose the same notes. Our finding is at paragraph 244.2. Her reasons were entirely free of any consideration that the claimant had made a protected disclosure.

Detriment 3.1.3.21

371. As with the claimant's other disappointments in her dealings with Information Governance, she does not suggest that Mr Brooks' decision-making was tainted in any way by the protected disclosures she made. Her case, expressed in Detriment 3.1.3.21, is that someone in HR did have that motivation, and lied to Mr Brooks so that the file creation properties of Mrs Hilton's file note could be concealed.

372. We put to one side, for the moment, whatever difficulty the claimant may have in establishing that Mr Brooks' reply amounted to a detriment. It is at least

arguable that the claimant could reasonably understand the reply to have been detrimental to her, even if, ultimately, the Freedom of Information Act 2000 did not entitle her to receive the file creation properties. The basis on which Mr Brooks refused the claimant's FOI request was that the respondent did not have the file creation properties at all; if that explanation was false, it was arguably detrimental to the claimant even if the respondent would in any case have been within its rights to withhold any file creation properties in its possession from the claimant.

373. The complaint nonetheless fails. This is because of our findings at paragraph 242. The alleged detrimental act did not happen. Nobody in HR, on our findings, lied to Mr Brooks about the file creation properties. If anyone did, we are satisfied that they were not motivated by the claimant's protected disclosure.

Conclusions - discrimination arising from disability

Knowledge of disability

374. The respondent could reasonably have been expected to know of the claimant's disability by the time of the SOSR hearing. This is because:

374.1. Mr Ezechukwu and Ms Jones had both separately raised concerns about the claimant's wellbeing with HRBPs in July 2020.

374.2. Mrs Leadbetter believed that the claimant was unwell in July 2020.

374.3. The claimant had informed Mrs Armstrong-Child of her migraines and insomnia.

374.4. The claimant had been absent on sick leave for nearly 10 months.

374.5. Her GP fit notes mentioned stress and anxiety as the cause of her unfitness to work.

374.6. In two occupational health reports, Dr Shah had related the claimant's perception that she was unable to return to any form of work whilst the workplace issues remained.

374.7. The claimant reiterated that she was suffering from anxiety in her statement of case.

375. By the time of the appeal meeting, the respondent had an additional reason for being expected to know of the claimant's disability. The claimant had informed Mrs Neary that she was too unwell to make a decision about the redeployment offer.

Unfavourable treatment - dismissal

376. The claimant could reasonably understand dismissal to be unfavourable to her. Most employees do not want to be sacked. The respondent did not make any submissions to the contrary.

Reason for dismissal – emotional responses

377. Mrs Morgan's decision to dismiss the claimant was, in part, based on the claimant's emotional responses. Those responses informed Mrs Morgan's opinion that the claimant had completely lost trust in Mrs Royds and (by the "kangaroo court" remark) with the respondent's wider organisation.

Emotional responses arose in consequence of disability

378. Our finding is that the claimant's emotional responses arose in consequence of the claimant's anxiety disability. The claimant was in a heightened emotional state at a stressful meeting. Due to her anxiety, she was unable to stop herself from outbursts when she heard something with which she profoundly disagreed.

379. There is no expert medical evidence to tell us that the claimant's anxiety was the cause of the claimant's emotional responses. We did not need any. Some symptoms of anxiety disorders are so well known that they are part of our general knowledge.

380. We are reinforced in our view by Chapter 4, paragraph 89, of the *Equal Treatment Bench Book.* Relevantly, it states:

> "A person might appear disrespectful [or] difficult, but these impressions might be erroneous if they have a mental health condition. … The Prison Reform Trust says the following behaviour might indicate a person has a mental health condition:
>
> …
>
> • Being very emotional and crying.
>
> …
>
> • jumping into conversations when he or she has not been asked a question."

381. The timing is important, too. Two of the claimant's emotional responses were swiftly followed by the claimant leaving the room. It is unusual behaviour to walk out of an important meeting without the chair of the meeting having called a break. It suggested to us that the claimant could not bear to be there. It would be surprising if that feeling had not arisen at least in part from her anxiety disability.

Means of achieving the aims

382. Dismissing the claimant was not a means of "investigating a breakdown in relationships".

383. Dismissal was, however, a means of "taking steps to resolve the breakdown in relationships between the claimant and the respondent". A broken relationship can be resolved by ending the relationship.

Legitimacy

384. It is legitimate, in our view, for an employer to try to resolve breakdowns in working relationships, if necessary, by terminating an employee's employment. We did not understand the claimant to be suggesting otherwise.

Proportionality

385. Rightly, in our view, the parties focused their submissions on the question of proportionality. Here we must balance the importance of the aim against the discriminatory impact of the unfavourable treatment.

386. The aim was important. It has to be seen in its wider context. The breakdown in working relationships between the claimant and the respondent did not just affect the claimant and her immediate line manager. There is evidence from a variety of sources that the failed relationship had a wider impact on the HR Operations Team, and on the ability of the HR Operations Team to support the CBUs. We accept what Mrs Morris told Mrs Green about the claimant's emotional behaviour contributing to the difficulties between the HRAs and HRBPs. It is also plain that relationship difficulties (including between the claimant and Mrs Heaton) were visible to the CBUs: see the claimant's maternity consultation e-mail that became the subject of Detriment 3.1.3.1(c). It also affected a succession of line managers. The breakdown between the claimant and Mrs Heaton was common ground. Evidence of the breakdown between the claimant and Mrs Baxter was overwhelming. The claimant had then lost trust in Mrs Leadbetter. Managing those difficulties in turn impacted on the work of Mrs Hilton, Mrs Grice and Mrs Royds.

387. The discriminatory impact on the claimant was relatively slight. It has to be remembered that the claimant's emotional responses were only one small part of Mrs Morgan's reason for dismissing the claimant. Paragraph 234 lists the thoughts that went through Mrs Morgan's mind; her emotional responses were only one of them.

388. We have considered whether "taking steps to resolve the breakdown" could have been achieved by some means short of dismissal. The claimant has only suggested one adjustment that the respondent could have made. Her argument, as we understand it, is that she could have been redeployed instead of having her contract terminated altogether. In our view, an offer of redeployment would not have achieved the legitimate aim. The claimant would either have rejected such an offer, or would have failed to accept it within any reasonable timescale. We explain this particular conclusion more fully below when considering the appeal.

389. Having carried out the required balancing exercise, we are satisfied that the dismissal was proportionate.

390. By dismissing the claimant, the respondent did not, therefore, discriminate against the claimant arising from her disability.

<u>Unfavourable treatment – confirming dismissal on appeal</u>

391. The claimant had appealed against her dismissal. When her appeal turned out to be unsuccessful, it was reasonable of her to understand that the appeal panel had treated her unfavourably.

<u>Reason for appeal decision</u>

392. Part of the panel's reason for its ultimate decision was that the claimant had not accepted Ms Neary's offer of redeployment.

<u>Failure to accept redeployment arose in consequence of disability</u>

393. The claimant's failure to accept the redeployment offer arose, at least partly, in consequence of her disability. Her decision-making was impaired by her mental health, in the way that we described at paragraph 258.

<u>Means of achieving a legitimate aim</u>

394. Like the dismissal itself, the confirmation of dismissal on appeal was:

394.1. no means of achieving the aim of investigating a breakdown in relationships; but

394.2. a means of achieving the legitimate aim of resolving such a breakdown.

Proportionality

395. When conducting the balancing exercise, we bear in mind that, as with dismissal, there was a relatively loose connection between the appeal decision and the claimant's disability. This is for two reasons:

395.1. First, the claimant's failure to accept Ms Neary's offer of redeployment was not the sole reason why the panel confirmed the original decision to dismiss. This is a controversial factor to take into account. The claimant's case is that the panel decided to take "action short of dismissal", and only changed its mind when the claimant did not accept Ms Neary's offer of redeployment. In our view, the claimant's analysis is too simplistic. It ignores the panel's central conclusion that there had been an irretrievable breakdown in relationships, such that the claimant had to leave the HR Operations Team. But for that finding, the question of redeployment would not have arisen at all. The panel's reasons for finding an irretrievable breakdown did not arise in consequence of the claimant's disability.

395.2. Second, the claimant's disability was not the sole or main cause of her failure to accept the offer of redeployment. See our finding at paragraph 258.

396. The aim of taking steps to resolve the breakdown in working relationships was important.

397. We have asked ourselves whether or not that aim could have been achieved by means other than confirming the dismissal on appeal. Theoretically, the appeal panel could have reinstated the claimant and kept her on sick leave until she was well enough to make a decision on redeployment. Alternatively, the appeal panel could have bought the claimant that additional time by delaying its appeal decision to an unspecified future date. In our view, neither of these possibilities were realistic. There was no way of knowing whether the claimant would ever be well enough to make a decision about accepting or rejecting Ms Neary's offer of redeployment. All the outward signs were that, if she did become well enough to make a decision, she would reject the offer. She had (unwittingly) expressed reluctance to work under Mrs Royds. The claimant was intent on clearing her name.

398. For these reasons we have reached the conclusion that the appeal panel's decision was proportionate. By upholding the original dismissal decision, the panel did not discriminate against the claimant arising from her disability.

Conclusions - unfair dismissal

Reason for dismissal

399. The reason for the claimant's dismissal was the belief held by Mrs Morgan and by the appeal panel that there had been an irretrievable breakdown of working relationships between the claimant and key managers in

the HR Operations Team. The respondent has proved that this was the reason. See our paragraphs 234 and 250 and 263.

400. Mrs Royds' mental processes are capable of being attributed to the respondent, because of her role in shaping Mrs Green's investigation with a view to having the claimant removed from the HR Operations Team. But that does not alter the respondent's reason for dismissal. As we found (for example) at paragraphs 154 and 220, Mrs Royds was not motivated by the fact that the claimant had made a protected disclosure. She acted because of her belief that the claimant had had a breakdown in relationships with a succession of line managers.

401. We are satisfied that this reason was substantial. It was capable of justifying the dismissal of an HRA.

402. The reason was not one of the reasons listed in section 98(2) of ERA. In coming to this view, we have rejected the claimant's (alternative) case that the reason for dismissal was related to her conduct. The concern genuinely held by Mrs Morgan and the appeal panel was about a present state of affairs and a risk of future repetition. Their decision was primarily based on a pattern of failed relationships, and of the claimant's lack of trust in others, rather than on particular things that she had done.

Reasonableness

403. We must therefore consider whether the respondent acted reasonably or unreasonably in treating this reason as sufficient.

404. Before turning to the claimant's particular criticisms of the decision, we have to remind ourselves that the respondent is a large organisation which could be expected to devote considerable resources to investigating breakdowns in relationships and to finding ways (such as alternative employment) to restoring them.

405. We considered first some of the claimant's points which we found unpersuasive.

406. First, it was put to Mrs Royds in cross-examination that Mrs Green had not properly investigated the working relationships before producing the Green Report. Specifically, the claimant contended that Mrs Green had failed to interview important witnesses whose roles sat within the HR Operations Team but who were neither HRAs nor HRBPs. We disagree. In our view, Mrs Green interviewed a reasonable selection of witnesses. It was open to her to focus on the HRAs and the HRBPs, as that was where the difficult relationships were. Other colleagues worked on a different floor and were less likely to be aware of day-to-day interactions. In any case, Mrs Green did look to some other witnesses. She interviewed Mr Davies and Mr Sourbutts, who were able to bring a different perspective.

407. Second, the claimant says that Mrs Morgan unreasonably ignored the turnover of managers within the HR Operations Team. By the time Mrs Morgan had to take her decision on dismissal, Mrs Baxter, Mrs Heaton, Mrs Hilton, Mrs Leadbetter and Mrs Grice had all left the organisation. Dismissing the claimant could not help to rebuild working relationships with any of them.

408. This point was attractively argued by Ms Halsall on the claimant's behalf, but we cannot accept it. As we found at paragraph 234, Mrs Morgan addressed her mind to the significance of colleagues having departed. It would be reasonably open to her to think that the problems would continue. Mrs Morgan was reasonably entitled to take account, not just of the existing working relationships that had broken down, but also of the risk that future working relationships with HRBPs would break down. What had happened between the claimant and Mrs Baxter was particularly relevant here. A pattern of past events was a reasonably reliable predictor of future events. In any case, there were people still working within the HR function with whom the claimant's working relationship had severely deteriorated. Not only had the claimant demonstrated to Mrs Morgan that she mistrusted Mrs Royds, but evidence in section 8 of the Green Report also suggested that the HRBPs who were left would also be likely to find it difficult to manage the claimant. Mr Hill had borne witness to the series of "broken relationships" with the claimant. Mrs Morris had told Mrs Green that, because of the claimant's behaviour, there was a lack of "psychological safety". For her part, the claimant had referred to both of these HRBPs as having been influenced by the "gang". This evidence was all visible to Mrs Morgan and the claimant in the disclosed sections of the Green Report.

409. Third, it was put to Mrs Morgan that it was unfair to the claimant to deprive her of the chance to amend her statement of case. This did not affect the fairness of the dismissal. Mrs Morgan's freeze on further amendments was imposed at Mr Flannery's request. She did it to accommodate the claimant's concern that Mrs Green might tailor her evidence to fit with the claimant's case statement.

410. Fourth, the claimant complains that Sections 5 and 6 were withheld. This did adversely affect the fairness of the investigation, but not to the extent of taking it outside the range of reasonable responses. Two things happened to cure this defect:

410.1. at the reconvened SOSR hearing Mrs Morgan offered to look at Sections 5 and 6 and to have them made available to the claimant, but the claimant refused; and

410.2. the appeal panel looked at Sections 5 and 6, disclosed them to Mr Flannery, and gave him the opportunity to make representations about them.

411. Fifth, the claimant makes the point that she should have been redeployed as an alternative to dismissal. We have largely dealt with this point when considering the complaint of discrimination arising from disability. We must consider the whole process in the round. This must include the appeal. In our view, Ms Neary made a reasonable effort to find the claimant a way back into the organisation. No employer, faced with the evidence in Sections 5 to 9 of the Green Report, could have been expected to allow the claimant to remain in the HR Operations Team. It was reasonably open to Ms Neary to make the claimant's reinstatement conditional upon the claimant accepting that she would return into a role outside the HR Operations Team. That did not mean that the claimant would have to return to work immediately. She had the option of delaying her start date for a reasonable time to allow her health to improve. A more generous employer might have agreed to reinstate the

claimant unconditionally, and to investigate options for redeployment whilst the claimant was on sick leave. But we cannot substitute our view for that of the respondent. Ms Neary's approach was well within the range of reasonable responses.

412. Having dealt with those unmeritorious points, we have nevertheless come to the conclusion that the dismissal was unfair. This is because the respondent could not act reasonably in treating broken relationships as a sufficient reason for dismissing the claimant unless it first carried out a reasonable investigation into those breakdowns and their causes.

413. In our view, the investigation was fundamentally flawed by Mrs Royds secretly pointing Mrs Green's investigation specifically in the direction of the claimant's working relationships, whilst giving the outward impression of asking Mrs Green to investigate neutrally the state of relationships within the HR Operations Team as a whole.

414. The unfairness this caused was aggravated by Mrs Royds' refusal to disclose Mrs Green's interview notes to the claimant. This stopped the claimant from discovering what Mrs Royds had told Mrs Green at the outset of the investigation. It also meant that the claimant did not have the opportunity to see the first-hand evidence upon which the Green Report was based.

415. In considering this latter point, we have considered the respondent's explanation that the witnesses spoke to Mrs Green in an expectation of confidence. This does not, in our view, mean that any reasonable employer could have simply withheld Mrs Green's interview notes. No attempt was made by Mrs Royds to ask witnesses if they would waive confidentially. More fundamentally, Mrs Royds' right to confidentiality in the Royds Interview Notes was hers alone to waive.

416. The respondent could have been in no doubt about what the claimant thought about Mrs Green's interview notes. Her consistent message was that she needed them. Mr Flannery asked for the interview notes before the SOSR hearing; the claimant asked for them during the SOSR hearing (explaining that she wanted to test whether the quotes in the Green Report were actually said by witnesses); in the run-up to the appeal, Mr Flannery again asked for the notes.

417. We have reached our conclusion by considering whole process in the round, including the appeal. Although the appeal undoubtedly cured some earlier procedural defects (such as the withholding of Sections 5 and 6), it did not do anything to make up for the non-disclosure of the interview notes. Nor did the appeal alert the claimant to how the investigation had been influenced by Mrs Royds in the first place.

418. For these reasons we find that the respondent acted unreasonably in treating the breakdown in relationships as sufficient to dismiss the claimant. Her dismissal was therefore unfair.

Conclusions – would the claimant have been dismissed in any event?

419. There is one more issue with which we must grapple. It is at paragraph 6.7 of the list of issues. We must attempt, if we can, to recreate an imaginary world in which the respondent had acted fairly. Would the claimant have been

dismissed in any event? Might she have been dismissed? If so, what is the chance that it would have happened, and would it have happened at a different point in time?

420. Before embarking on that speculation, we should be clear about what would have needed to happen for the respondent to act fairly. Mrs Royds would have had to be open about what she was asking Mrs Green to investigate. She could have done this by incorporating her opinion about the claimant's particular difficulties with working relationships into the Green Terms of Reference, or by disclosing the Royds Interview Notes. She would additionally have had to approach colleagues to ask them if they would consent to Mrs Green's notes of their interviews being disclosed to the claimant.

421. We now imagine the counter-factual scenario in which these things happened. What decision would Mrs Morgan and the appeal panel have made?

422. We can say with certainty that the decision would have been the same. The claimant would, of course, have made the point at the SOSR hearing that Mrs Green's investigation was not truly independent because of the way in which Mrs Royds had influenced it at the outset. Faced with that argument, Mrs Morgan and the appeal panel would have adopted a more cautious approach to the Green Report. They would have had to allow for the possibility of Mrs Green having simply found what Mrs Royds had guided her to look for. Ultimately, however, it would not have made a difference. Mrs Green's interview notes would have revealed to them that Mrs Green had started each interview by asking open questions, allowing each witness to describe the problems in the HR Operations Team in their own words. Even allowing for the possibility of influence, the evidence of broken relationships in the interview notes was overwhelming. Particularly trustworthy were the accounts of Mr Hill, Mrs Morris and Mr Davies. Some e-mail exchanges, such as those between the claimant and Mrs Grice and the maternity consultation e-mails (Detriment 3.1.3.1(c)) spoke for themselves. The claimant did not appear to have any insight into the part she had played in the breakdown in relationships with Mrs Baxter, Mrs Heaton and Mrs Leadbetter. The evidence supported a conclusion that those HRBPs might also have deserved some of the blame, but there was a clear pattern of breakdowns attributable at least in part to the claimant. Seeing that pattern, Mrs Morris would never have allowed the claimant to continue working in the HR Operations Team. Nor would the appeal panel. The claimant would not have accepted redeployment because she wanted her name to be cleared. The chance of her remaining in employment in those circumstances would have been zero.

423. In conclusion, had the respondent acted fairly, the claimant's employment would have inevitably have terminated on the same day that it actually terminated. Any compensatory award will be reduced accordingly.

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Employment Judge Horne

10 November 2023

REASONS SENT TO THE PARTIES ON

20 November 2023

FOR THE TRIBUNAL OFFICE