EMPLOYMENT TRIBUNALS

Claimant: Ms Amy Park
Respondent: Chief Constable of Merseyside Police

HELD AT: Liverpool **ON:** 31 October 2022, 1, 2 & 4 November 2022, 29 September 2023 (in chambers), 2,3, 4(in chambers) & 5 October 2023

BEFORE: Employment Judge Shotter

Members: Mr G Pennie
Mr R Cunningham

Representation:
Claimant: Mr D Jones, counsel
Respondent: Mr S Peacock, solicitor

REASONS

JUDGMENT having been sent to the parties on 13 October 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:

The claims

1. In a claim form received on 21 December 2020 following ACAS Early Conciliation between 9 November to 24 November 2020, the claimant brings two complaints; automatic unfair dismissal under section 107A of the Employment Rights Act 1996 as amended ("the ERA") and detriment under section 43B(b).

Agreed issues.

2. The parties agreed the issues as set out below. There is no issue in respect of whether the claimant reasonably believe that the disclosure was made in the public interest. It is agreed the disclosure was made to the respondent and that the two disclosures made by the claimant were protected disclosures.

2.1 Whether R subjected C to any or all of the following detriments on the ground that C made a protected disclosure in the email of 28 April 2020 **[Disclosure A: Page 98 Bundle]** and / or on the ground that C made a protected disclosure in the email of 9 June 2020 **[Disclosure B: Page 115 Bundle]**:

**Note[1]: R has accepted C made protected disclosures in the emails referenced above*
***Note[2]: √ = R accepts C suffered detriment, but denies it was on the prohibited ground*
X *= R does not accept detriment or denies any proved detriment was on the prohibited ground*

2.2 The decision communicated at the probationary review meeting on 17 June 2020 and confirmed in a letter of 8 July 2020 to extend the probationary period by a further 3 months ? [*R accepts C suffered detriment, but denies it was on the prohibited ground].*

2.3 The attempts on and around 17th / 20th July 2020 to change the contract of employment by removing the flexi-entitlement? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

2.3 The alleged 'micro-management' and 'bullying' by C's line manager (T/ACC Perischine) in the following ways:

a. The alleged attempts to 'control confidential meetings between C and an external coach? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

b. The alleged 'constant control of work and outputs? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

c. The alleged refusal to 'pass on knowledge or skills with lack of guidance and mentorship as a new starter'? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

d. The alleged requirement to undertake 'knowledge checks' in 'excessive' 1-2-1 meetings? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

e. Subjecting C to alleged ‘constant criticism, complaining and fault finding in everything no matter how inconsequential’? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

f. Criticising C for allegedly not being visible to her team? *[R accepts C suffered detriment, but denies it was on the prohibited ground].*

g. Alleged ‘undermining of authority with direct reports’? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

h. The failure to respond to the suggestion of the external coach for a three-way meeting? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

i. The decision to invite C to a s4(8) Capability hearing, as communicated in a letter dated 27 July 2020 [*R accepts C suffered detriment, but denies it was on the prohibited ground]* and

j. alleged concealment of information relating to the C’s protected disclosures and other concerns within the People Services Strand [*R does not accept detriment or denies any proved detriment was on the prohibited ground]*

2.4 The decision by DCC Kennedy to allow T/ACC Perischine to present a ‘Supplementary Report’ at the s4(8) Capability hearing on 4 August 2020? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

2.5 The alleged failure to adhere to the procedure set out in the ‘Capability for Police Staff (Policy & Procedure)’ and / or the procedure set out in the ‘Fairness at Work (Grievance Policy & Procedure)’ in some or all of the following ways:

a. The provision on 31 July 2020, within 7 days of the meeting arranged for 4 August 2020, of information by T/ACC Perischine, consisting of colleague feedback, with an indication of intention to rely on further ‘verbal’ feedback at the meeting? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

b. The decision of DCC Kennedy to allow T/ACC Perischine to present the material at a) at the meeting on 4 August 2020 ? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

2.6 The reliance by DCC Kennedy placed on feedback from colleagues put forward by T/ACC Perischine? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

2.7 T/ACC Perischine’s conduct towards C during the Capability Hearing on 4 August 2020? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

2.8 The decision by DCC Kennedy not to uphold the grievance submitted on 30 July 2020, as communicated in the Outcome Report of 14 August 2020? *[R accepts C suffered detriment, but denies it was on the prohibited ground].*

2.9 The failure to include a number of policies and other material (11 categories) in the bundle for the appeal hearing on 12 October 2020? [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

2.10 The way the appeal was handled. [*R does not accept detriment or denies any proved detriment was on the prohibited ground].*

2.11 The decision of the panel to reject C's appeal against the decision of DCC Kennedy not to uphold her grievance. √

s103A, ERA 1996 Automatically Unfair Dismissal claim

3. Whether the reason or principal reason for the dismissal on 14 August 2020 is that C made a protected disclosure in the email of 28 April 2020 **[Page 98 Bundle]** and / or that C made a protected disclosure in the email of 9 June 2020 **[Page 115 Bundle]**.

<u>The hearing</u>

<u>Bias</u>

7 At the outset of the hearing the Tribunal discussed with the parties the fact that the judge and Mr Cunningham knew the claimant's Father, Mr Raynor, professionally as he had sat in the North West region in the capacity of a non-legal member for a number of years, and was well-respected by both and the region. Mr Raynor retired a number of years ago, however the judge and Mr Cunningham can recall sitting with Mr Raynor and the respect they held for him. Mr Raynor is not representing the claimant, his attendance at this hearing is to support the claimant, his daughter. The Tribunal was concerned with the appearance of bias and the possibility that a fair minded and informed observer would conclude that there was a real possibility two members of the panel were biased in favour of the claimant. The Judge and Mr Cunningham assured the parties that it made no difference to how the Tribunal dealt with the case, however, if the parties were concerned both would consider withdrawing and an alternative panel arranged.

8 Mr Peacock on behalf of the respondent assured the Tribunal that he was "relaxed" about Mr Raynor, especially since he was an observer, and there was no question of bias "whatever the outcome."

9 Mr Jones on behalf of the claimant confirmed there was no issue with bias as far as the claimant was concerned.

10 Accordingly, having received the parties assurances and confirmation from Mr Pennie, the second legal member, that he was happy to proceed with the existing panel, the Tribunal continued to hear the case content that there was no risk of it being

swayed in the claimant's favour or otherwise by the professional dealings it had in the past with Mr Raynor, and an objective observer having heard the exchange between the Tribunal and the parties would also take this view.

Length of hearing and adjournment

11 It is unfortunate due to illness and availability of all those involved in this case that the hearing was adjourned to 2 October 2023, almost 12-months after the final hearing started. The situation was unavoidable, and in order to avoid any possible prejudice to the parties by fading memories the Tribunal had met and made brief notes on the credibility of witnesses immediately after the first hearing, and again met in chambers for one day on the 29 September 2023 to re-read the documents and notes of evidence, prior to the reconvened hearing. In addition, Judge Shotter read into the case on the Sunday before the reconvened hearing started spending a total of 2 days reading before the hearing. This information was shared with the parties.

12 It is fortunate the case is heavily documented by contemporaneous notes, emails, letters and reports/detailed outcome letters all fundamental to the outcome in this case. The contemporaneous documents have assisted the Tribunal in its deliberations. In addition, the last witness, Serena Kennedy, the dismissing officer, was key given the fact that identifying the reason for dismissal is critically important in claims for automatically unfair dismissal. It is notable that the Tribunal spent 3-full days in chambers considering this matter before making the decision, having read through the contemporaneous documentation in detail in addition to chronology and the written and oral submissions it received from both parties that ran to a number of pages.

Claimant's application to strike out the defence at the 2022 final hearing.

13 In the middle of Natalie Perischine evidence on cross-examination, Mr Jones was instructed to make an application inviting the Tribunal to strike out the respondent's defence on the basis that Natalie Perischine had entered the respondent's waiting room that morning when Chief Inspector Cooke was sitting with Mr Peacock, Natalie Perischine having received a warning from Judge Shotter not to discuss the case or evidence during any adjournments when she was in the middle of being cross-examined. Mr Jones clarified this was about perception and a concerned that Chief Inspector Cooke discussed the evidence he was to give that day with Natalie Perischine and presumably visa vera.

14 Mr Jones made no direct reference or criticism about Mr Peacock who was also in the waiting room at the same time, and the Tribunal indicated its concern that such a serious allegation was being made and yet there was no indication as to whether any evidence existed to the effect that Natalie Perischine had discussed the case and her evidence with another witness in full sight and hearing of the respondent's solicitor. Judge Shotter made the comment that she had personal knowledge of the Tribunal room in question having conducted judicial mediations in that room, and was aware it was difficult to hear what was being said outside the room. In short, there appeared to be no apparent basis for the claimant's serious allegations as it was common practice for respondents and witnesses to wait in the respondent's waiting room and claimants and witnesses to wait in the claimant's waiting room with no issue.

15 Mr Peacock assured the Tribunal that Natalie Perischine entered into the room after he had finished taking instructions from Chief Inspector Cooke having arranged an early start that morning to discuss the case and evidence without the presence of Natalie Perischine at the conference. Mr Peacock explained that after Natalie Perischine joined them they did not discuss the case but an inquest.

16 Mr Peacock's professional and personal assurance was accepted by Mr Jones who had no option but to withdraw the application. The Tribunal made it clear that it also accepted Mr Peacock's explanation and was satisfied that throughout these proceedings he has acted with professional integrity. Both Mr Jones and Mr Peacock are highly regarded capable lawyers and there is no question mark over their professionalism. The claimant, an experienced well-qualified HR professional who held and continues to hold high office, is no doubt aware of the possible damage to reputations and professional careers when serious allegations are made, with no substance whatsoever, in an attempt to bring these proceedings to an end by striking out the response in the middle of a trial with the result of a finding in the claimant's favour on the issue of liability. It is unfortunate the application was made given the limited time for this final hearing and the consequences of it going part heard as recorded above.

17 After the hearing was adjourned on day 4 Mr Jones approached the Tribunal clerk seeking assurance on behalf of the claimant that the waiting rooms did not have recording devices hidden particularly in the ceiling. The clerk confirmed they have not, and Judge Shotter assure the parties that this is indeed the case. The Tribunal does not record the parties in conversation in the waiting rooms or anywhere else, and the Tribunal is surprised that the claimant believed this was the case given her professional standing and knowledge.

Evidence

18 The Tribunal heard evidence from the claimant on oath, and from Stephanie Bell, Branch Secretary of UNISON Greater Manchester Police seconded full time on release since February 2002. Stephanie Bell was and remains an experienced local union representative in Greater Manchester Police. Stephanie Bell was contacted by the claimant after the claimant had been served "capability papers". Stephanie Bell set out the events which culminated in the 28 July 2020 meeting when the claimant "was served with capability papers warning of potential dismissal." Stephanie Bell accompanied the claimant at the hearing held on 4 August 2020. Stephanie Bell described "I was shocked to be contacted by Amy for her to be served capability papers is unbelievable." The claimant did not seek union assistance/advice about the way she was allegedly being treated as a result of making the protected disclosures for the period from April to the first probationary review meeting on 17 June 2020, until after 28 July 2020, when Stephanie Bell first became involved followed by the 30 July grievance when the protected disclosures were referenced for the very first time.

19 The claimant's evidence was that she was subjected to detriments after the first protected disclosure, yet she did not raise the issue of detriments until months after the event, and there was no indication given to the respondent or any union representative that the 17 June and 6 July probation meeting were detriments and a result of the earlier whistleblowing. The claimant was silent and there are no written

communications concerning the probation report until the claimant's grievance, when in the words of Stephanie Bell after the claimant had been served with "capability papers warning of potential dismissal." This taken together with the claimant's evidence concerning the alleged affair and the behaviour of senior officers, raised an issues of credibility for the Tribunal as to whether the claimant truly believed she was being subjected to any detriment by Natalie Perischine, and whether protected disclosures were used much later on as a shield and sword against the potential of dismissal of an employee in their probation period who had less than 2-years' service.

20 Stephanie Bell in her witness statement and in oral evidence also maintained Natalie Perischine, Chief Inspector Cooke (referred to as "Andy Cooke") and the panel at the appeal hearing, those at "at the very top" protected Natalie Perischine, maintaining "the whole handling of Amy's case has been bogus and corrupt." Stephanie Bell could only have got this information from the claimant, and like her she was prepared to make serious allegations with no supporting evidence which brings into question her credibility. It is notable that Stephanie Bell alleged in her statement Natalie Perischine had "behaved in an unprofessional manner during the hearing, twice being personal and aggressive towards Amy, to the extent that DCC Kennedy instructed her to desist. I have been in several heated meetings but none where a senior officer in a formal hearing was so appalling and personal." The notes of the meeting attended by Stephanie Bell and the claimant, taken by the HR officer provide by Weightmans solicitors ran to 35-pages is silent as to Natalie Perischine's alleged behaviour. The handwritten notes of Stephanie Bell concerning the "Capacity Meeting" which appear to be pre-meeting notes make no reference to the allegations now raised in her statement for the first time, and neither did the claimant's appeal despite describing the hearing as a "kangaroo court."

21 The Tribunal found on the balance of probabilities, preferring Natalie Perischine and Serena Kennedy's version of events supported by contemporaneous documentation in a large part when it came to the conflicting evidence in contrast to the exaggerated and less than credible evidence given at times by the claimant and Stephanie Bell.

22 Chief Constable Cooke (referred to as Andy Cooke by the parties and in this document) is no longer a Chief Constable and holds the position of His Majesty's Chief Inspector of Constabulary and His Majesty's Chief Inspector of Fire and Rescue Services. The Tribunal accepted as credible Andy Cooke's evidence that he did not "protect" Natalie Perischine for any reason, including the rumours of a personal relationship which had no truth, and Serena Kennedy's confirmation that the rumours had been ongoing for some time and a meeting had taken place with senior officers (although she could not recall if the claimant was at that meeting) to quash the rumours on the basis that they were homophobic and sexist i.e. women could not advance within the force without sleeping up to the top, and unprofessional as they had no truth. The Tribunal's view was even if the claimant had not been at the meeting, she was weeks into her probation period and as Head of People Services would have fully understood the implications of spurious rumours and gossip of which she had no personal knowledge and was relying on the alleged affair as if it were a reality undermining her professionalism and credibility. The Tribunal has touched further on this below, and found that the working relationships between the claimant and some senior police officers were toxic, this state of affair had no causal connection with any

whistleblowing and could be attributed to the claimant's behaviour for the reasons set out.

23 The Tribunal was referred to an agreed bundle of documents and witness statements totalling over 1,100 pages, and having considered the oral and written evidence and written and oral submissions presented by the parties (the Tribunal does not intend to repeat all of the chronology, written and oral submissions, but has attempted to incorporate the points made by the parties within the body of this judgment with reasons), we have made the following findings of the relevant facts.

Facts

24 The respondent employed the claimant as Head of People Services from 14 April 2020 to 14 August 2020, the effective date of termination.

25 The claimant was issued with a Statement of Particulars of Terms and Conditions of A Contract of Employment signed by the claimant on the 20 April 2023. The claimant's appointment was subject to a satisfactory completion of a probationary period of three months during which the claimant "will be expected to maintain standards including satisfactory attendance, performance and establish your suitability for the post."

26 The respondent could rely on Section 4(8) of the Merseyside Police 'Capability for Police Staff (Policy & Procedure) if an employee failed their probation period, which could result in a dismissal and appeal procedure. The Tribunal has considered the respondent's Capability Procedure in detail, which it does not intend to set out. Further reference has been set out below.

27 In addition to the contractual obligation the respondent issued a document titled "Police Staff Probation Report Guidance" last updated November 2018 that set out the following:

27.1 "The probation process is an important means of ensuring that all new employees settle in to their roles and are able to confirm their ability to satisfy their role requirements. The probation process is therefore extremely important for both the organisation and the new employee, and successful completion of the probation period is required in order to confirm continuing employment."

27.2 "All new police staff employees to Merseyside Police will be required to complete, to a satisfactory standard, a period of probation service. This will last not less than 3 calendar months, during which time the individual's suitability for appointment will be assessed and the appointment will only be confirmed where his or her suitability is established. The length of the Probation Period will be confirmed in your Statement of Particulars of Employment."

27.3 New employees were responsible for raising difficulties with their managers, and managers responsible for holding "regular one to one meetings…to provide constructive and positive feedback…and where appropriate, identifying areas for improvement.

27.4 "Where issues are raised about the performance, conduct or attendance…there is an option to extend the initial 3-month period by up to a maximum of 3 months. However, such extensions will only be granted where an improvement/development plan is issued to the individual…"

27.5 At para.5 a procedure was set out for managers to be followed throughout the 3-month probation period with the final meeting taking place before the end of the probationary period when a probation report form was to be signed off and submitted to HR "at least 4 weeks before the end of the probationary period."

27.6 "All managers must ensure that the review programme established sets SMART objectives against which to assess performance."

28 The claimant was line managed by the temporary Assistant Chief Constable, Natalie Perischine, who had overseen the Head of People Services role before the claimant was recruited. The Head of People Services was a key role managing the HR function and development across the force. People Services had previously encountered problems, including leadership instability, and the aim was for the claimant, an experienced HR professional with over 20 years "proven success," a Fellow of the Chartered Institute of Personnel and Development and trained ILM Level 5 Coach and Mentor. The claimant was very well-qualified to take on the role, with a proven track record and in Greater Manchester Police where she had worked for over 15 years and held the position of head of HR for 3 years until joining the respondent. According to the Probation Report (see below) the role of Head of People's Services is "complex and multi-faceted, with the associated responsibility of leading a department per se, as well as leading the People Services enabling function for the Force."

29 It is accepted that the role emphasised the requirement for "leadership, building effective delivery and strategic delivery as per the job description" and the appointment required the claimant to establish suitability for a permanent position within a period of 3-months that could be extended.

30 At the time of the claimant's employment the respondent was seeking to recruit head of Employee Relations and Natalie Perischine acknowledged in the Probation report (see below) that the claimant's workload was impacted until an interim head of Employment Relations was appointed in June 2020.

31 The claimant found the transition from Greater Manchester Police to the respondent difficult, she complained that the handover was inadequate and found Natalie Perischine "difficult" from the outset, and told Chief Constable Cooke this on the 24 April 2020 at an informal welcome meeting. It is notable that the claimant's own evidence was the appointment did not go well from the start, before she made the first protected disclosure, and she alleged in her grievance that she was "bullied and harassed from almost the outset…"

32 During this public liability hearing the claimant alleged relying on rumour and gossip that Natalie Perischine and Chief Constable Cooke were involved in an a personal relationship, and senior police officers were protecting Chief Constable

Cooke including Serena Kennedy who wanted to take over the position of Chief Constable. In her witness statement that claimant referenced that when she expressed to Chief Constable Cooke "some concerns" about Natalie Perischine "I was unaware of any personal relationship between the Chief and T/ACC Natalie Perischine, it was only later that I became aware of the rumours relating to a much closer connection…" In oral evidence the claimant confirmed Natalie Perischine was "protected because of her relationship." The Tribunal did not find any evidence that senior officers including Serena Kennedy and Chief Constable Cooke were protecting Natalie Perischine to hide the alleged affair and "secure" their own careers from serious legal breaches as alleged by the claimant. As far as the claimant was concerned the rumoured personal relationship became an actual affair and a perceived conspiracy against her that senior officers were protecting one another because of the seriousness of the protected disclosure without any evidence or facts to substantiate her position. Natalie Perischine and Serena Kennedy were "outraged" and "very upset" about the allegations relied upon the claimant, and described by Natalie Perischine as a "smear campaign."

33 Stephanie Bell, Branch Secretary of UNISON Greater Manchester Police in her witness statement and in oral evidence maintained senior officers and the panel at the appeal hearing were "at the very top" protecting the claimant. The whole handling of Amy's case has been bogus and corrupt," serious allegations she was unable to substantiate and this undermined her credibility. The Tribunal on the balance of probabilities found she and the claimant had also exaggerated the seriousness of the protected disclosures, preferring the evidence put forward by all of the respondent's witnesses that they were not as serious as the claimant made out. It is notable that the claimant, who was asked to deal with them by Natalie Perischine, took no steps other than those described below, which brings into question their seriousness.

The first protected disclosure 28 April 2020

34 Fourteen days after the claimant commenced her employment the claimant sent two emails at 18.54 and 19.06 on the 28 April 2020 to Natalie Perischine. The respondent accepts that the emails relied upon by the claimant are qualifying protected disclosure.

35 The 18.54 email read; "Everything I touch this week seems to open a can of worms. In Helen's draft for bereavement plan which she sent me today, it refers to costs incurred last financial year for one external provider in relation to Trauma was £93,845 which I have queried…I asked Helen to send me through the exemption form that is in place for this level of spend. Helen sent me this for £40K…Merseyside Police has spent more than double this!...I know some of this will be part of the OH&WU review but I am concerned and hence I am just flagging…Do you want me to do anything further at this stage, like speak to…."

36 Natalie Perischine responded at 19.08 "My word, who signed this off? I can recall up the 40K…but that was it…Deeply concerned that procurement/finance have not put checks and balances in. **Yes, pick this up with HS and no more referrals to outside providers without going to you** but my view is that we don't use then (unless

in rare cases) as there are alternatives including the NHS. **Thanks for making me aware Amy**" [the Tribunal's emphasis].

37 The claimant's email sent at 19.06 on the 28 April 2020 a further email "…**It's slightly worse…a PD1(exemption) wasn't completed**…it doesn't appear to have been signed off. So there isn't even one on place for the 40K. Do you want me to speak to Helen…"

38 Natalie Perischine in an email sent at 19.08 confirmed "**You and Helen please.** [K] needs to be held to account too. The 40K wasn't spent by the way – it was 20K spend and up to (projected) another 20K if absolutely required" [the Tribunal's emphasis].

39 The claimant's email sent at 19.10 set out the following "**Okay will do**. Helen said the spend last year was £93,845 with her." Natalie Perischine emailed at 19.12 "p.m. speak to Chris and find out from him too" which ended the email exchange on this matter between the claimant and Natalie Perischine.

40 The claimant emailed Chris Gibson, acting Chief Superintendent, on the 28 April 2020 at 19.15 asking him if he could "shed any light on this – has PS spent £93,845 last financial year with Dr….without an exemption in place?" He responded at 20.09 on the same day "at no stage has an exemption been flagged or requested during my time in charge…chief officers are fully aware of the lack of psychologist capability and attributed costs within the force hence the commissioned OHU review that details the financial burden and seeks to address his with a number of recommendations for improvement. **On a separate note I have heave heard from a small number of people services staff that you have reported that you are not happy with the hand over that you had received from me. I'm disappointed to hear that. If you feel that you need more time and detail I would appreciate if you would come directly to me and we can diary some further handover time**" [the Tribunal's evidence].

41 The claimant responded at 20.25 that "I assume…Joyce has told you I wasn't thrilled about the list of 6 things Caroline sent me on 21 April…."

42 There was no further documents generated by the claimant's disclosure concerning costs incurred by an external consultant paid to support police officers with mental health difficulties, and the claimant did not report Natalie Perischine to Serena Kenney or the fact that a PD1 form had not been signed. She was unclear as to whether the lack of a PD1 form had occurred under Natalie Perischine's command and whether it was attributable to human error as maintained by respondent on the basis that the form was completed but not signed by a member of staff.

43 The claimant maintains today that this was "a serious matter for Natalie Perischine personally as her failings related to damaging community confidence and the public trust in the police and their expectation of them being law abiding" and yet it was not Natalie Perischine who had failed to sign the form and had no knowledge until it was brought to her attention by the claimant, as she was required to do in her role as Head of People Services.

44 In her witness statement the claimant maintained in respect of Natalie Perischine the disclosure "was problematic to her career ambitions and could be perceived as misconduct…" There was no satisfactory evidence of this before the Tribunal who concluded on the balance of probabilities that it did not, preferring the evidence given on behalf of the respondent's witnesses that there was no "failing" on the part of Natalie Perischine, the expenditure was not unusual and relatively small taking into account the overall budget, the PD1 authorisation form had been completed but not signed and the money was well spent on providing welfare support to police officers, and the fact the form had been inadvertently not signed, described as a "technical failure" would not have warranted formal action against Natalie Perischine. It is a matter of fact that no formal action was taken against Natalie Perischine and the claimant's suggestion that there was a conspiracy to prevent this because of an affair and/or cause the claimant a detriment because she had reported it, were not based in reality and had no substance. It is notable that the claimant did not raise any issues with this protective disclosure until 3-months later at the grievance meeting.

Second protected disclosure on 9 June 2020.

20 The claimant emailed Natalie Perischine at 17.57 and 18.05 on the 9 June 2020 concerning the respondent's failure to publish some equality information for 2018-2019. The claimant emailed at 17.57 "…we just seem to have a problem as the data form 18/19 does appear not to have been published on our website" and at 18.05 "Could you please direct me with a few queries unfortunately Paul can only locate this document for 17/18 and nothing for 18/19 for either workforce or grievance. Do you know if Ch Insp…published it or whether Metropol have missed a year?"

21 Natalie Perischine responded at 21.05 "Not published, if I recall, for reasons too lengthy for this email but you can check with your DEI team" suggesting the claimant approach Comms and marketing to check historical metropole intranet publications. There were no further communications between the claimant and Natalie Perischine on this matter.

22 Natalie Perischine and other senior officers were aware of the position, and the claimant's allegation that public knowledge of the failure "would bring it into disrepute," it had broken the law and "under the leadership of Natalie Perischine failed to comply with its legal obligation as it was unable to locate or provide published data for 2018/2019." It would be a relatively straightforward matter for the public to become aware of the situation, for example, the BBC who requested the information in the first place, as it did not exist for that year but was available for other years.

23 On the balance of probabilities the Tribunal accepted Natalie Perischine evidence that she was grateful to the claimant for providing the information in relation to missing data and in respect of the expenditure incurred for the external medical consultant providing specialist psychiatric and counselling services to support police officers with mental health issues. The Tribunal noted that tone of the emails were friendly. Natalie Perischine thanked the claimant content to leave the claimant to take up any follow up action she saw fit. In oral submissions Mr Jones said Andy Cooke "had actively encouraged his offers to not follow the policies" quoting Andy Cooke "I encourage them to use their common sense and instincts." Similarly Natalie Perischine gave evidence that it was "okay to deviate from policy". The Tribunal,

relying on their notes taken at the hearing, note Any Cooke's response "I want officers to use common sense and instincts as long as there is rationale behind it" and it was correct to go off Policy if doing it for the right reasons. Contrary to Mr Jones' submissions there was no evidence before the Tribunal that Andy Cooke encouraged officers, including Natalie Perischine, not to follow policies. There was no suggestion Andy Cooke "encouraged" Natalie Perischine not to follow policy in respect of the claimant because she had made a protected disclosure. The Tribunal on the balance of probabilities, concluded from the evidence before it that Andy Cooke and Serena Kennedy generated a culture which gave officers flexibility when it came to policies and procedure, for them to be prepared to use their discretion and common sense rather than slavishly follow the guidance in a prescriptive manner, and for this reason the protected disclosures relied upon by the claimant, whilst it was correct she should raise both matters, they were not front and centre of any serious breach in the minds of Natalie Perischine, Serena Kennedy and Andy Cooke, who did not have them on their radar until raised by the claimant in her grievance.

<u>17.06.20 Probationary review meeting</u>

24 Natalie Perischine met with the claimant on the 17 June 2020 to discuss her draft probation report for the "Month 2" probation review meeting as required by the procedure. The claimant was left with the draft report to read which criticised her, she was found to be "not yet competent" in the role and the probation extended by 3-months. The claimant was upset. Natalie Perischine discussed her expectation that the claimant would be provided with an amended draft probation report for discussion and sign off. Natalie Perischine's expressed her opinion that the claimant had seemed unhappy since she had arrived, it had not gone particularly well and a number of issues had arisen. Natalie Perischine believed the claimant had the potential to fulfil her duties providing the claimant accepted there were areas to work on. Natalie Perischine's view of the claimant and her decision to extend the probation period by 3 months was not causally connected to the protected disclosures, and she did not have these in mind at the time. There were genuine issues with the claimant which Natalie Perischine was aware of through the team and her own experience.

25 Following the meeting the claimant did nothing about putting right the criticisms in the draft report, and did not raise any issue with or about Natalie Perischine about her belief that she was being caused a detriment as a result of whistleblowing one week before and in April 2020.

26 Natalie Perischine prepared a revised probationary report by overtyping on the original draft which was not saved. Much has been made of this by the claimant, but nothing hangs on the fact that the original report could not be include in the bundle bearing in mind that the revised probationary report covered a number of the criticism raised. Natalie Perischine was left with the revised probationary report which she emailed to the claimant on the 7 July 2020 at 23.40 stating "by all means sign/add comments should you wish and return to me." Natalie Perischine was going on holiday and yet invited the claimant to ring her "I'm sure you will be fine but call me should you need to…"

27 The claimant did not sign the report or add any comments at any stage and did not ring Natalie Perischine.

The Probation Report provided on 7 July 2020.

28 The claimant's performance was scored on a number of key indicators with 7 marked "shows potential" including communication & effectiveness, conduct/behaviour, 2 capable and 1 being commitment to the role more than capable. The claimant scored nothing under outstanding and not yet competent. At the meeting they discussed the following in addition to a number of other matters;

28.1 Working hours. The claimant was unhappy with the work life balance evidenced by a number of emails in the trial bundle. Reference was made to the claimant being required to take personal responsibility as a senior leader for how she worked "and where she may work longer hours for a period she should counter balance this against taking time away from this office. Amy has been working extensive hours which is not sustainable…has developed a trait of staying in the office very late at night and/or sending emails to staff in the early hours of the morning. I have discussed the repercussions of this practice with Amy and how such behaviour is detrimental…as her team may well be adversely affected by the pressure of having to conform to similar behaviours…this can be improved by having proper governance processes in place."

28.2 Leadership. "The governance should be the foundation supported by her leadership which ought to be visible, personal and inspiring her team…Leadership of a department should not wholly rely upon email delegation which it is clear is Amy's method of working currently…Amy and I have discussed how she should take time to consider and plan her approach enabling her to be operating in a way which is more longitudinal and strategy, rather than reactive and transactional…Amy and I discussed the fact that she had cancelled the command team management meetings upon her arrival in Merseyside. I explained to Amy it was noteworthy that so soon into her tenure, she was trying to delegate, rather than grip and lead…I discussed with Amy that the fact she was seeking to shed some responsibility, served to underscore the key point that she was having difficulty adjusting to her role and therefore, we must work together to enable her development."

28.3 Ability to perform duties. "Amy has clearly worked very hard…it is vital that she focuses her energy less on delegating from her desk and more on leading in a visible way by having a clear structure and engagement strategy…spending time on informal personable discussion, enabling her to get to know her people, as well as clear accountable meeting structures whereby her wider team are able to hear and see directly from her…one to one meetings, as well as team meetings and discussions are vital…"

28.4 History of the department. "Amy arrived within the force, following a difficult period for the department which I discussed with her at some length, upon her arrival and how it would be incumbent upon her to demonstrate authentic and credible, compassionate leadership, thus winning the support of the team…taking time to get to know and understand her team and build those relationships…it seems that Amy is still trying to understand her role and we have discussed how important it is as senior leaders, that we work together to create the environment

to enable our people to flourish, by nurturing talent though coaching and mentoring. Amy would benefit…by getting to know people better, as well as reading and interpreting reports and information, drawing her own conclusions and pausing, before she sends things on without reading them fully…I have approached Amy with honest and constructive feedback."

28.5 Working relationships:. Reference was made again to the claimant relying on email conversations and adjusting her approach "by speaking with her peers and her staff…will pay dividends and enable others to see the real Amy, by engaging with her on a more personal level. An area for Amy to work on is her emotional intelligence, understanding how her communications style and way of working impacts on others. Her style does have a tendency towards being prescriptive, formal and transactional. And she would see the benefits of softening her approach. Amy can be seen as being impolite or slightly arrogant in her demeanour and I am sure that this is not intended, however it can have an adverse impact on others and their willingness to trust and engage…it would be valuable for Amy to reflect on her style and approach…and take responsibility to develop with the additional support from me…as well as other such as a coach… I feel Amy may be worried about admitting that she is finding the initial transition into the role more difficult than she had perhaps anticipated. I have talked with her about this and that she seems unhappy since she arrived. **However, she assures me that she has no personal issues which she is worried about and is fine. Amy should recognise where her areas of development are and reach out for support**" [the Tribunal's emphasis].

28.6 The claimant's probation period was extended for a further 3 months as discussed at the meeting of 17 June 2020, to 11 October 2020. This was confirmed in a letter dated 8 July 2020. An action plan was to be developed focusing on a number of matters including developing visible leadership style and emotional awareness. The claimant did not interact very much with what was being said at the review, and a draft copy of the report was provided to her to take away and think about. The final report included a comment by Natalie Perischine "following a period of time off which I encouraged Amy to take, **she has returned to the workplace and expressed the view that she has reflected upon the feedback and is working on her approach, highlighting that she would never intentionally be rude…she did acknowledge that she has found elements of her role difficult to adapt to**, particularly having moved from another force. **I am determined to support Amy in any way I can, and I am confident that with time, we can work together to lead an exceptional people services function…I did not underestimate the challenge…Amy can flourish upon the areas for development which I have highlighted**…" [the Tribunal's emphasis].

<u>17 July 2020 emails and 1:1.</u>

29 Following up on the discussion with the claimant, Natalie Perischine emailed her on the 17 July 2020 at 17.52 referencing the workplace coach with whom a discussion had taken place already, setting out the 5 key areas including developing leadership style and emotional awareness which directly related to the manner in which the claimant dealt with her team. The provision of a work place coach was a cost to the respondent's business. Towards the end of the email Natalie Perischine

wrote "Once you have met Alison [the workplace coach] **I think it would be helpful if we could have a three-way discussion or meet to agree the objectives which Alison sets for your sessions, based upon the 5 areas**. As I explained, I have not shared your probationary report with Alison, however, I have made her aware that your probation was extended and that her role as coach is to work with you, to help you develop the areas and in doing so, improve your performance. I hope it goes well with Alison, I am sure you will find her very helpful. **Let me know about the buddy arrangement we discussed, once you have had a chance to think about it**."

30 The decision to extend the claimant's probationary period to 11 October 2020 was confirmed in a letter dated 8 July 2020 which referenced the fact the claimant would be provided with a development plan. The report and Natalie Perischine's communications with the claimant over her performance and development appeared to reflect genuine concerns and so the Tribunal found, supported by the fact that the claimant raised no allegation of detriment and made no mention of any causal link with the disclosures she had made earlier.

31 The claimant alleges in these proceedings that "the decision communicated at the probationary review meeting on 17 June 2020 and confirmed in a letter of 8 July 2020 to extend the probationary period by a further 3 months was a detriment, which the Tribunal accepts on the basis that extending a probation period is a detriment to an employee as would be a dismissal. However, having considered the contemporaneous documentation and heard oral evidence from Natalie Perischine which it found to be credible, the Tribunal concluded on the balance of probabilities that Natalie Perischine did not have in her mind the disclosures made by the claimant. As far as Natalie Perischine was concerned the claimant had been tasked to deal with the situation and that was the end of the matter, with no thought being given to them as Natalie Perischine was busy managing other aspects of her role. Natalie Perischine believed from talking to the team that there were issues with the claimant's management style, the claimant appeared to be unhappy in the role and she genuinely wanted to assist the claimant, who was very well qualified, to improve and pass her probation, hence the provision of a work coach and offer of a buddy, and so the Tribunal finds. It is notable that nowhere within the trial bundle is any email communication from the claimant disputing the criticisms of her or alleging they were only made because she had raised 2 protected disclosures. It is understandably that the claimant, who was ambitious, would have been very upset by the comments.

The workplace coaching.

32 The workplace coaching commenced on the 20 July 2020 and the coach emailed Natalie Perischine on the 20 July 2020 at 23.38 regarding the importance of objectives being agreed by both the claimant and her line manager. She wrote "In the session today Amy discussed how the way you two work together impacts her performance…I have offered a facilitation session…she completed a self-reflection…" In short, the email corroborates Natalie Perischine's evidence that there were issues with the claimant's performance. There is no reference to the difficulties in her relationship with Natalie Perischine arising out of whistleblowing.

33 The Tribunal found the relationship between the claimant and Natalie Perischine was deteriorating as a result of the criticisms set out in the probation review

and the claimant's attitude to it including her lack of any constructive feedback. There was no connection with the protected disclosures and neither party had in mind the situation was linked in any way to the disclosures.

1;1 meeting with Natalie Perischine and claimant

34 At the 17 July 2020 1:1 meeting Natalie Perischine discussed with the claimant the "inadvertent" inclusion of flexitime in her contract of employment. She explained no other manager working at the claimant's grade had the right to flexitime. The claimant emailed Natalie Perischine on the 17 July 2023 pointing out it had been agreed and took into account continuous service with no factoring of extra days as an incentive for not having flexi-entitlement, that changes had not been agreed and consultation had not taken place. Natalie Perischine sought confirmation of the position concerning the factoring of extra days and whether the same grade heads of department had the right to flexitime, and emailed the claimant "Noted, thank you." That was the end of the matter.

Gold DEI pre-meetings with Serena Kennedy.

35 The claimant was present at two pre-meetings convened to discuss preparation for the Gold DEI meeting on 23 July 2020.

36 Serena Kennedy on 8 July 2020 discussed slides and the further work needed to be carried out by the claimant. At the second pre-meeting on 21 July 2020, when it became apparent the claimant had not undertaken the necessary work in the intervening fortnight and was unable to answer questions put to her. Serena Kennedy had a separate meeting with the claimant and fed back that she was disappointed in her and there had been an unacceptable lack of preparation. The claimant had two weeks to prepare and yet left it to her team 2-days before the Gold DEI meeting to prepare, and because the claimant had not been doing anything her team had approached Serena Kennedy for guidance.

37 The Tribunal found the situation had further deteriorated on the 22 July 2020 when the claimant put her team under pressure to prepare for the Gold DEI meeting on the 23 July 2023. Team members complained to Natalie Perischine who had also received an email from the claimant at 18.06 the evening before the Gold DEI meeting; "very late slides for the DEI Gold Meeting tomorrow. I appreciate the time factor but could you please review these ahead of the meeting…." Natalie Perischine responded on the 23 July 2020 at 5:46 "Only just arrived home. Very busy night and no time to review unfortunately."

38 Team members complained to Natalie Perischine about the claimant who had left work in tears and the claimant was given an extended weekend off work of 4-days returning 28 July 2020 by Natalie Perischine .

Steve Cox critical email 23 July 2020 sent at 07.37 and the DEI Gold meeting.

39 The negative feedback from the claimant's colleagues continued.

40 A key document in this litigation is an email from Steve Cox, command team and Head of Employee Services, sent to the claimant setting out the complaints from the team. There is no suggestion that the email was a sham and/or written at the request of Natalie Perischine to set up the claimant's dismissal. It is hard hitting and reflects the situation known to Natalie Perischine. It followed a conversation Steve Cox had with the claimant on the 22 July 2020 when she was putting unreasonable pressure on her team. He wrote "I've reflected on our conversation overnight and thought about the issues I raised. It was difficult, but I believe it was the correct thing to do given the feelings shown by the staff….**I feel there is a risk that some managers could either go sick or leave due to the current feelings that they have displayed to me recently. In confidence I found [P] crying…she feels like she wants to leave the department. [P] is unhappy at some of the work she was given by you to do with tight timescales and she rang me yesterday to complain over the work she was given…with the short completion time of today**…**I have concerns raised by [H] about workload. [K] is unhappy in her role and I am led to believe that she would leave the department…[PL] has asked to be considered for a move in the next round of Chief Inspector moves as he is also unhappy**. **Unfortunately each member of staff has cited their feelings are due to your management and manner**…I worked a 13.5 hour shift on Tuesday and was back at 0630 yesterday to help complete the work for the DEI Gold meeting, [P], [M] and [D] also stayed late and in my opinion that work should have been actioned out far earlier…this is causing me stress…I believe that there needs to be a process put in place by yourself that will provide some consideration and planning regarding work that can be foreseen, to be allocated for completion in good time, to reduce stress and pressure on all of us. **I don't believe that there is sufficient leadership displayed by yourself within the department to set strategic direction or manage staff workloads currently…I am more than willing to sit down with you [P] and [K] to manage these issues so we can move forward as a team and put processes in place to improve our working conditions and work life balance"** [the Tribunal's emphasis.

41 The email was copied to Natalie Perischine who became immediately concerned about the situation against a background that the claimant had not accepted the observations raised in the Probation Report, which she had failed to sign off and comment on.

42 There was no evidence Steve Cox was aware of the protected disclosures at the time, or that he was instructed by Natalie Perischine to complain in writing before the claimant had raised any whistleblowing complaints or any grievance. The Tribunal concluded that the Steve Cox's email was pivotal; he raised complaints about the claimant which reflected the Probation Report and the verbal complaints made by a raft of employees to Natalie Perischine as confirmed by her once she had read the claimant's grievance later in the chronology. Steve Cox's dealings with the claimant arose directly as a consequence of the difficulties she was having in her role that had been picked up previously to some extent in the earlier Probation Review. Mr Jones' submitted that as Steve Cox had offered to sit down with the claimant to work through the issue this was an indication that the claimant should have been allowed to complete her probation period. Natalie Perischine took a global view of the claimant's behaviour and took the decision that the claimant was not suitable in post. When she reached this conclusion she did not have in her mind the protected disclosures. She

did have in mind the claimant's managerial difficulties as underlined in Steve Cox's 23 July email, the Probation Report, the claimant's unhappiness in her role and her lack of proactive response to the observations about her management failures.

<u>The decision to initiate the section 4(8) suitability meeting 23 July 2020.</u>

43 Natalie Perischine was not at the Gold DEI meeting, however she was made aware of what had transpired beforehand, and matters came to a head with the complaints from colleagues about the pressure they were put on when preparing for the Gold DEI meeting, including the email from Steve Cox emphasising the unhappiness in the team and the threat of people leaving. It was at this point Natalie Perischine took the decision to initiate the section 4(8) meeting having taken legal advice from the force solicitor. The Tribunal found as a matter of fact that Natalie Perischine's decision in this regard had no causal connection whatsoever with the protected disclosures, and were solely attributable to the events that had taken place underlining the claimant's lack of suitability against the background of the negative Probation Report the contents of which the claimant disagreed with and refused to accept. Mr Jones submitted, relying on the claimant's evidence and Stephanie Bell, that it was highly irregular and unheard of for a section 4(8) meeting to be convened, and therefore the Tribunal should accept the automatic unfair dismissal and detriment claims. The Tribunal found on the balance of probabilities taking into account the factual matrix before it, the respondent had a contractual right to convene a section 4(8) meeting and Natalie Perischine had sufficient information before her to refer the claimant in a belief that she was not suitable. Contrary to the submissions put forward by Mr Jones, the Tribunal did not accept that the time between making the second protected disclosure and the decision to refer the claimant to a section 4(8) meeting, pointed to a causal connection with the protected disclosures. The period leading to 23 July 2020 Gold DEI meeting was critical culminating in the Steve Cox email and complaints from the team. These were the matters that led to the section 4(8) meeting, not the protected disclosures and so found the Tribunal on the balance of probabilities. Steve Cox's email had crystallised to Natalie Perischine that there was little point extending the claimant's probation period as she was not suitable and to retain her could result in damage in the department and people leaving.

44 T/D Inspector Catherine Cox in an email sent on 27 July 2020 at 11.36 to Natalie Perischine confirmed the criticisms she had made at an exit interview including being asked by the claimant to work on a project secretly without people knowing she was involved and on 11 June 2020 "privately sit on this meeting and not disclosure that I was there." The meeting was by skype. The claimant criticised Catherine Cox for sending work Catherine Cox had completed to another department and then proceeded to take part in the skype meeting making out that work was her own; "Amy talked through my process maps and reports with my silent assistance (nodding yes, shaking head no, writing on a piece of paper etc) and was thanked by Mr Garden for her work. She accepted his thanks without any mention that she wasn't responsible for it. At the conclusion of the meeting Mr Stanton asked me if she was going to brief me on what had bene discussed…Amy said she would. This made me feel really uncomfortable because I had been present at a meeting with chief officers without their knowledge and felt like I was lying by omission by not disclosing my presence. Shortly afterwards I went back into Amy's office and shared my concerns about this. I said it felt underhand and I wasn't comfortable about how she handled that meeting. I

said I didn't mind not being credited for my work, but that I didn't like that it was behind closed doors…I was being tasked with work outside Steve's knowledge as she knew that Steve had directed me to work on the promotion process…he was asking me where the Supts process was up to and this added to my discomfort because I knew that telling him what I was actually doing would cause its own issues. I asked Amy that from now on any work I was to be given should be open to I didn't feel that I had to hide my involvement…I have found working…with Amy frustrating because I felt responsible for making a lot of decisions and providing options…which she would then take and present as her own…"

45 Chris Gibson, superintendent Response and Resolution RR Command discussed the claimant with Natalie Perischine following which he emailed her on the 28 July 2020 setting out his criticisms of the claimant, including "quite rude" when she commenced her role on the 14 April 2020, had a "complete lack of emotional intelligence" and gave examples, she constantly referred to Greater Manchester Police and the work she had done there, "caused some upset amongst the team," gave the impression of not wanting to be in the workplace and when I provided her with verbal feedback…brushed off as not important." The claimant reported to Chris Gibson that Natalie Perischine was "not happy with you" and that she "lacked emotional intelligence but stated that I did…" When Chris Gibson spoke with Natalie Perischine concerning this "NP clarified that she did not say that to AP…on 20 April I challenged AP regarding the conversation and she became flustered and 'back paddled.' With reference to his handover to the claimant Chris Gibson recorded that "I had been notified from a number of HR staff that AP had bene openly stating that she was not happy. Abrupt email received from AP questioning OHU finance…I replied and offered to meet up if she felt she needed a more detailed handover. NP declined." This was a reference by Chris Gibson to his email above. The criticisms of the claimant continued ranging from refusing to take responsibility, "calling the R&R officer a liar" and how she dealt with a sensitive issue concerning death of a serving member of staff."

46 Natalie Perischine was also sent additional emails from a female member staff on 6 July 2020 onwards, accusing the claimant of treating her badly, for example, "I was shocked at the way she spoke to me, curt offhand…shocked, angry upset and intimidated by her demeanour and her tone of voice. I knew I had done nothing wrong and yet she was clearly blaming me…taking her own anger and frustration out on me as a lower grade member of staff rather than tackle the senior officers who made the decision that she hadn't agreed with and caused her anger. I felt for the first time ever in over 30 years intimidated, bullied and treated this way because I am a Grade D member of support staff… 8 July…When I met Amy I explained that I felt she had treated me badly and explained why. I told her I was acting on ACC orders and had been upset and angry at the way she had spoken to me. I told her that in my role I had supported a number of senior officers and many managers over 30 years in Merseyside Police and had never before had to have a conversation like this with anybody else. I told her I found her rude, not just with me, but I noticed she didn't engage with staff in the corridors and people had commented on this to me. She was clearly still angry with me and told me I should have texted or emailed her to let her know you were withholding the emails…our conversation last 40 minutes, she accepted no blame and in fact turned it all on me and told me I was at fault. She told me I was grumpy and offhand to her…that I refuted…I was not rude, I was assertive as she asked me to do things I didn't agree with or that I knew were against processes

adopted in Merseyside Police…she continued to refer to me in emails as her PA rather than the Command Team secretary…9 July Amy left plant on my desk…a peace offering…I agreed and explained we needed to work professionally together. Since this time…we do not have the relationship that is required between our roles which should be based on trust and loyalty…It is fair to say that I have struggled to be loyal or trust Amy…from her first day she spoke in a derogative manner about T/CH. Supt Gibson…about yourself and your management style and told me during her first week that I had to help her manage you and record in infinite detail every single email and task that came into the whole departments from you on a spreadsheet…she explained that the reason for this was to evidence that you were overtasking and it was unmanageable.” The member of staff recorded that she had reported the claimant “demeaning and disrespectful…she treated me like her personal slave at times” treatment of her to Steve Cox and wrote “the reason for me sending this email now is that I have tried hard to help Amy settle into the organisation…I feel completely undervalued and demotivated after just over 3 months of dreading to come to work every day, something I have never experienced in Merseyside Police over 30 years. I know you and I have worked together in HR and although I am not a shrinking violet I think that you will agree that I am hard working, loyal and without doubt trustworthy. I do not moan or complain…until Amy arrived I enjoyed my role…I have recorded my experience of Amy over the last few months, again something I would never had to do ever before but have been advised to do so when I discussed how I felt with trusted friends and colleagues…I have also shared my experiences in the strictest confidence with my line manager…”

Decision to section 4(8) capability hearing and section 4(8) Report.

47 Natalie Perischine made the decision on the 23 July 2020 that consideration should be given to terminating the claimant’s employment as a result of the complaints brought against her and the deteriorating relationship. The Tribunal found on the balance of probabilities that Natalie Perischine’s decision in this regard had no causal connection with the protected disclosures, which were not in her mind.

48 On the 24 July 2020 Natalie Perischine spoke with the solicitors who made contact with Deputy Chief Constable Serena Kennedy with a view to a capability hearing taking place under section 4(8) of the Merseyside Police ‘Capability for Police Staff (Policy & Procedure). The claimant had booked a meeting with Serena Kennedy via her PA without referring to any subject matter or forwarding her notes relating to the grievance. Serena Kennedy took the view that the meeting should not go ahead with her in the knowledge that the section 4(8) papers would be served on the claimant and she was going to be decision maker in at the hearing. Serena Kennedy took this decision without possessing knowledge of the protected disclosures, the claimant’s grievance relating to them and the alleged behaviour of Natalie Perischine and there was no causal connection between any of these events. Serena Kennedy was aware from her recent 1:1 with the claimant that there were issues with her performance.

49 Natalie Perischine completed her s4(8) Report on 24 July 2020 attached to a letter dated 27 July 2020 inviting the claimant to a hearing “to consider the issue of suitability for the post during the probationary period.” The report referenced and attached the Police Staff Probation report dated 6 July 2020, the extension of the probation period and the deteriorating situation. At para.10 Natalie Perischine wrote

"…the factors here are such that despite the relatively short period of employment, it is apparent that the appointment as our Head of People Services has not worked out…despite Amy's experience, qualifications and skills which may well bring great benefit to the right employer. It is clear that it is not a suitable long term appointment for Merseyside Police…leadership of the department has not been evidence, there is a loss of confidence in Amy from her team and others, in particular senior leaders…Amy has not been able to win the support of her team or others that have engaged with her and that is a situation that has not improved since the probationary review meeting. Things came to a head with a presentation on 23 July 2020 that did not go at all well. Her team felt that they had been put under immense pressure…and delivery of the presentation did not meet the expectations of those participating in it. There is no doubt that Amy has worked long hours to meet the demands of the role. However, this rather emphasises the point that Amy's way of working and the way she spends her time is not directed to where the organisation requires it to be. The issues are not resolving and the situation is not improving…" Ten areas of concern were set out including "loss of confidence from People Services team, who feel alienated…loss of confidence from Senior Leaders. Evidence of generally not coping and at times chaotic presentation…a perceived inflexibility to change, issues with demonstrating authentic, credible, compassionate leadership…our circumstances are such that it is clear Amy is not the right person to take People Services forward to where we need to be and it is neither fair nor reasonable to expect her to do so against the difficulties experienced so far in the short working relationship. It is reasonably clear that Amy is unhappy in the role and it is not working out as I'm sure she would herself have hoped….the recommendation is for a meeting with Amy to consider whether her employment can reasonably be expected to continue on the grounds that 'suitability for the post' has not been established."

<u>Formal grievance</u>

50 The claimant responded by raising a formal grievance which she requested to be heard prior to the capability hearing. The grievance dated 30 July 2020 alleged the claimant had suffered detriments as a result of raising a breach of the legal framework/regulations in relation to public sector procurement on the 28 April 2020 and breach of a legal obligation to publish data in accordance with Public Sector Equality duty for 2018-2019 raised on 19 June 2020. The allegations of detriment included "bullying and harassment, micro managing, unfairly extended my probation period – 17 June 2020 attempted to unilaterally change my contract of employment – 17 July 2020, being invited to a capability hearing."

51 The bullying allegations relate to Natalie Perischine who was alleged to have bullied and harassed "almost from the outset of my employment…intensified over time and since raising concerns about People Services Strand culminating in my inability to effectively perform at the Gold DEI meeting on 23 July 2020." Seventeen separate allegations were set out including "withholding information from me regarding alleged complaints, therefore hindering my ability to correct any mistakes or develop…provision of inaccurate probation report – 17 June 2020, volume of meetings I am required to chair and attend (different to my male predecessor)…no remedial action or improvement/development plan…failure to practice what she preaches…no final assessment meeting…I have tried to work through some of these issues in the hope that I won't have to raise then formally. I have actively sought coaching on how

to work through my concerns and discussed many of these bullying and harassment issues with Alison…to this end Alison emailed T/ACC Perischine on the 20 July to propose a three way discussion to agree a way of working together. To my knowledge T/ACC Perischine has not responded…the way I have been treated by T/ACC Perischine is degrading, humiliating, unacceptable…I have been quite unwell as a direct result of the treatment I received".

52 The Tribunal finds as a matter of fact that the grievance of 30 July 2020 was the first occasion when the claimant made the allegations of detriment and before this at no stage did she respond in writing to the 17 June 2020 probation report and decision to extend the probation period. A period of approximately 6 weeks lapsed when there was no hint from the claimant that the criticisms made by Natalie Perischine in the probation report and at the probation meeting, the referral of the claimant to a work place coach and reference to flexitime which went no further, were causally linked to a protected disclosures she made earlier.

53 In short, the claimant repeated her allegations raised against Natalie Perischine, accusing her over "being set to fail…overloaded with work…I am not prepared to carry on being Natalie's whipping boy…she judged me but didn't take account of me being new to the organisation or reflect the fact I signed up for 1 job but she made me do 2 full time roles with very little support…feels toxic…I am firefighting…it's impossible for me to perform the head of services role effectively…are you going to make Natalie break me or are you going to help me?"

54 Serena Kennedy responded to the grievance on the 31 July 2020 pointing out that "the grievance and capability issues are closely related and interconnected…there is some degree of common ground regarding the difficulties with employment. The key question for both the grievance and the s.4(8) Capability Policy hearing concerns the reason for those difficulties and the extent to which the treatment complained about has caused or contributed to those difficulties. There is also a common question regarding the fairness and integrity of the probationary review process and the Probationary Review report…it is appropriate and proportionate to deal with the common issues at the meeting arranged…"

55 On the 31 July 2020 the claimant was provided copies of the four statements referred to above by Natalie Perischine who confirmed she would be referring to them at the meeting.

56 In a document dated 2 August 2020 Natalie Perischine responded to the claimant's allegations as follows: "the emails referred by Amy reveal in both cases human error was at the core, rather than a calculated conspiratorial attempt to subvert rules and legislation…1) budget – I actually thank Amy for making me aware, for her to link in with finance and not make any more outside referrals without going through her. She asked if I want her to doing [sic] anything such as speaking with HS; I reply 'yes.' She highlights herself that finance should have flagged Simple fact is invoices appear to have been authorised by Elaine but the PD1 was never completed hence, unless finance flagged it, neither myself nor Chris would have known any sooner. Email from Amy 28/4 asking me if she should stop digging (why say this is one feels one has uncovered 'unethical behaviours?) I reiterate as per my previous email Amy – explore further. Email 5 May asking for budget to be included in our 121's (2) I make

it clear that the publication did not happen owing the people issues…this was flagged by myself and [KW] at the time but ignored…"

57 Natalie Perischine responded to the allegations of bullying and harassment in a further 4 pages confirming "I held her to account, more so as the weeks passed by and I grew increasingly concerned about her grasp of the role and her behaviours…making me sit in front of her and read a highly critical probation report (earlier version-17 June 2020) this is categorially untrue. I took a mature and fair approach to give AP the opportunity to comment on the draft before I finalised the report as I wanted to hear her view and discuss, as professionals. I explained that I was interested to hear her views and left the room to allow her to read it (CCTV on 1st floor will corroborate). It was not served as a fait accompli. Curiously, given the horror she expressed within her grievance =, the prominent issue raised by the AP at the time was that she did not understand the MerPol acronyms…I advised her she could provide any feedback to me as she wished, in person or in writing, however, to date, she has failed to do so. I repeatedly informed Amy of the detail of the feedback which I had received about her regarding her behaviours including her rude arrogant attitude, critical and judgmental views and lack of emotional intelligence…she had also received feedback from Steve Cox…Amy's seeming inability to display humility, regret or learn from mistakes is startling and is a significant factor in my assertion that she is not suitable for the role."

58 Natalie Perischine responded to the allegation of "constant criticism" as follows: "constructive criticism which is my duty as a line manager and leader…having the courage to challenge and deliver unpleasant messages to someone is not easy, particularly if they are lacking emotional intelligence however I have not shied away from doing so, even in the face of stonewalling and passive aggression from Amy…Unfortunately, given Amy's trait of refusing to accept or reflect on any sort of developmental feedback, this very tactic adopted by her, perhaps well practiced, can only lead to repeated feedback, since she maintains her position, no matter how powerful the evidence to the contrary. This is a trait that others can attest to…Amy and I had repeated discussions about her behaviours and performance (including remedial action)…unfortunately matters had deteriorated to such an extent…it was clear that Amy's suitability for the role was in grave doubt. **Having received further feedback from people…I came to the regrettable realisation that a capability meeting was required, having to act quickly, before many members of the team either went off sick or walk out, as a consequence of Amy's behaviours**" [the Tribunal's emphasis].

59 Reference was made to the claimant's allegation concerning unfairly extending her probation period without agreement or signature that her agreement "is not required, albeit, it would have been a sure sign of maturity and emotional intelligence should she have done so." Natalie Perischine confirmed that it was her intention at the next scheduled 1:1 to discuss "how her coaching session went prior to me sending a response to Alison…what AP fails to mention is the email which I sent to her on the 17 July outlining what I had informed Alison of, in terms of her area to focus on and suggesting in due course we had a three way meeting. I received no response to this email.…These allegations are profoundly inaccurate, without foundation and hurtful, and serve to further emphasise how Amy does not possess either the appetite or capability to reflect upon her poor behaviours and performance with a view to learning

and developing. The grievance signals in my opinion a last throw of the dice distraction technique, to deflect any responsibility from herself and turn all the focus on to me."

60 On the 3 August 2020 the claimant produced additional documents for the hearing.

<u>4 August 2020 Grievance and suitability meeting with Deputy Chief Constable Serena Kennedy and claimant accompanied by Stephanie Bell, union representative.</u>

61 The grievance meeting took place at 11am on the 4 August 2020. The claimant was accompanied by Stephanie Bell, Unison GMP branch secretary. The contemporaneous notes taken of the meeting record the claimant alleging Natalie Perischine had a "pattern of behaviour – if you upset her, a week later you suffer a detriment, as far as I'm concerned the probation process hasn't been supportive, only critical, excessive demands…report wasn't balanced…nor time to demonstrate areas which need to be developed…Advises me meeting with you would not be appropriate…" Serena Kennedy pointed out that she was the one who had cancelled the meeting explaining "I was advised it wasn't appropriate – we can put that one to bed as it was my instruction to cancel because I knew we were having this meeting" to which the claimant responded "That wasn't how it felt to me…" The claimant, as a HR professional, would be aware that as Serena Kennedy had received advice about the meeting and her standing back from it was due to a section 4(8) meeting.

62 With reference to the protected disclosure the claimant alleged "I raised protected disclosures – pattern of behaviour with this being raised and punishment 1 week later…I've become unwell as a result of 15 weeks working for NP." Stephanie Bell set out her understanding which could only have been reached from her discussions with the claimant, maintaining "AP has actively and deliberately pursued her, relentless, so deliberate an act…astounds me that there is pattern of behaviour we're being punished" suggesting the probation report should "be withdrawn."

63 The claimant confirmed she had been offered a "buddy, the one she suggested was Mary" and explained that she had "not picked it up since, next thing was coaching…" When asked what outcome she wanted from the grievance by the Weightmans HR advisor who commented "As an outsider, there does appear to be a breakdown in the relationship between yourself and Natalie" the claimant stated "I didn't think to see there was a breakdown at the time I booked the initial meeting…I think now she had issued capability meeting it's now moved to a different level…" confirming it would e difficult to work alongside Natalie Perischine and she would like to report to a different officer.

64 The claimant alleged that Serena Kennedy had "witnessed and experienced first-hand T/ACC Perischin's attitude towards Amy…and twice had to address her for being personal to her…" In her written statement the claimant described Natalie Perischine's had "cut in and raised her voice at me" and made a personal comment "that's because Amy has no emotional intelligence…this was first hand evidence of bullying tactics…" Stephanie Bell described Natalie Perischine's conduct as "appalling and personal" and omitted from the notes. Stephanie Bell in oral evidence stated Natalie Perischine's "behaviour appalling banging on the table" and when it was put to Stephanie Bell that it did not happen Stephanie Bell responded that it was a "blatant

lie." There is no reference to Natalie Perischine's banging on the table at the appeal hearing. On the balance of probabilities the Tribunal found this did not happen.

65 Natalie Perischine provided a supplementary report for the hearing which included text messages and a precis of concerns from other people raised with her including a Superintendent and head of Academy, People Services who complained about the claimant's lack of leadership skills, alleging she treated a DCI "appallingly" stating "AP seems inexperienced, lost and out of her depth and is very keen to offload meetings onto others…when AP had chaired meetings including the command team meeting and the staff webinar recently, they had bene a 'car crash" Paddy resorting to challenging Amy as a consequence of several matters which had come to a head w/c 20 July 2020. She is not an effective chair, doesn't task or direct…the staff webinar where she unexpectedly asked very junior staff to speak and put them on the spot was wrong and very badly judged. Staff in the Academy don't really know her because even though she attends weekly, she never engages with them."

66 The deputy head of the Academy PL was reported to have said that "he has never worked with such a poor leader as AP. AP has ostracised him from the command team (as well as the other CI/Grade G and HS) from the outset by cancelling the command team meetings, of which he felt they were a valued part. She did this in a stroke without any consultation or explanation and left him and his peers in People Services very deflated…AP has displayed no leadership qualities whatsoever, gives no direction and does not engage with him…he has never felt so undervalued in his entire career…her treatment of him has been very poor and he was disgusted at how she treated him when PK was on leave…He was offended and upset by her comments to PK that he was not a 'can do' person and believes that she made these because he disagreed with her and she did not like it. He feels upset that he felt he had little choice but to make attempts to exit the department…predominately because of his treatment by Amy. PL stated Amy has a crushing effect on all the managers and whenever he visits HQ the bad atmosphere is palpable…which he finds very sad given the good people who are working hard and are left feeling completely dejected."

67 Another employee, KB, "was particularly upset by her treatment from Amy…she intimidated…found her abrupt, unapproachable, nor engaging and clearly not interested in getting to know her or other members of the team…Her treatment by Amy has led to her exploring other employment opportunities…the first time she has ever had cause to do so in her c.30 year career. Amy is highly demanding, wanting everything "now"…she does this to others too…AP refers to GMP [Greater Manchester Police] constantly and how we should be adopting their ways of working…displays no leadership or directions…she has 'obliterated' the good will of People Services staff, especially the managers and that's despite trying to keep them all at arm's length…she has destroyed the morale of the department…Kelly feels Amy may have difficulty in building professional relationships with women, especially women who challenge back at her and will always default to men…Whenever Kelly has dared to challenge back and advise that her small team can't cope with the workload from her, Amy has told her 'You need to step up as a line manager' which she finds insulting, especially given that it is Amy who should be stepping up."

68 A number of employees related their concerns about the claimant and their dealings with her. The T/OHU Manager reported how she had "felt under extreme

stress working for AP…she has been treated very poorly…everything is urgent 'now now now' even when it isn't…never felt so undervalued in all her career and was on the verge of tears as she spoke to me. She said AP is not a people person, not approachable, is abrupt and difficult to work for…displays no leadership, does not make decisions which has become a real issue…and is not able to chair meetings." Dr Roy reported to Natalie Perischine that the claimant had sent him emails he considered to be "rude in tone…he was surprised that he had so little contact with AP and would have expected more…. The Medical Retirement officer reported to Natalie Perischine that the claimant had told her that "her role did not exist in GMP and she didn't see the need…it was wrong AP should make such a public comment…it left PB wondering whether she would lose her job…"

69 The head of workforce management reported to Natalie Perischine that "she felt AP favoured men and treated her differently to her subordinate…undermining…wouldn't engage with her. AP has not exercised any leadership of direction, cancelled command team meetings leaving the managers feeling undervalued…Morale in the department is at an all-time low because of Amy and her style and approach." The head of workforce development stated "it is common knowledge that AP has treated other managers poorly…and it is unfair. It is also clear AP sometimes takes credit for the work of other's, does not acknowledge work from others and even copies and pastes emails sent to her from others, purporting it to be her own work. This is very disheartening and displays lack of authenticity. Morale in the department is at an all-time low and the good will is going. People have remained committed to MerPol and are only stopped from walking out owing to loyalty and respect towards me (ACC).

70 The Chair of BAME Chief Inspector Diversity and Equality and Inclusion Team, secretary people services, chief superintendent, head of local policing, chief superintendent, head of response and resolution, ACC Chris Green, Superintendent Chris Gibson, response and resolution, former head of people services, two HR shared services managers, former promotions manager, head of performance and analysis, head of force resource unit and head of Employee services all criticised the claimant for her poor leadership, describing her as rude and discourteous.. The head of fore resource unit described "how she had considered early retirement as a direct result of how she has been treated." Steve Cox, head of employee services "has articulated to me on numerous occasions that AP is very difficult to work with, refuses to make decisions, offloads work onto him…is arrogant and lacks emotional intelligence…his own wellbeing has been compromised…he is at the end of his tether and whilst a very hardy character, has been forced into giving AP very strong feedback which was not easy for him and yet she has no emotional intelligence to reflect, learn or admit when she is wrong. AP simply blames others…the reputation of the department is being detrimentally affected by her behaviour."

71 Natalie Perischine made it clear when providing the summary of account from other staff members it was "not actively sought but obtained as a result of people trust in me to deal with their disclosures in the most appropriate way…she has been given every opportunity to develop and improve her behaviours and performance yet alas, has failed to recognise her areas for development notable, her behaviours and relationships with others and stubbornly failed to demonstrate humility by refusing to

acknowledge her faults and mistakes, and instead resort to deflecting blame onto others…"

Investigation by Serena Kennedy

72 Serena Kennedy wrote to the sixteen employees who provided Natalie Perischine with their concerns in a broadly similar format to each employee, cutting and pasting some of the information given. Serena Kennedy asked the employees "Please can you confirm…that the information you provided to T/ACC Perischine is accurately summarised. If you wish to add or remove anything from the summary please let me know…" In general terms the responses from the employees confirmed what had been reported to Natalie Perischine, and there were examples of staff asking for amendments to be made contrary to the submissions made on behalf of the claimant by Mr Jones, that staff would not go against their line manager, Natalie Perischine or Serena Kennedy. It was evident that a number of employees/officers did make changes. For example, the health & wellbeing manager put together a word document "which reflects my own words" before she proceeded to describe the claimant's lack of interaction with the team. The Tribunal having considered the letters sent to individuals, noted some including cut and paste and others tailored to the individual in an attempt to genuinely seek clarification. It is clear that the employees/officers were prepared to put forward their view, and make changes, for example, Dr Roy who wrote "I have not taken personal offence at the emails." In conclusion, the Tribunal found a number elaborated, pushed back and expanded, and it found people were prepared to challenge and set out their version of events. It was entirely fair and proper for Serena Kennedy to rely on the responses emailed to her before she made the decision to dismiss, a decision that had no causal link with any of the protected disclosures and was the result of the serious allegations made against the claimant by her colleagues and the deteriorating relationships within the department.

The hearings

73 The grievance and section 4(8) meeting took place on the 4 August 2020, the grievance in the morning and the section 4(8) meeting in the afternoon. Serena Kennedy's decision is set out in a letter of the 14 August 2020 and Grievance Outcome Report and Employee's in Probationary Period Outcome Report. The Tribunal concluded that Serena Kennedy had conducted an objective and comprehensive hearing, made enquiries satisfying herself that the information given to Natalie Perischine had been correctly recorded. The claimant had suggested the names of individuals, and Serena Kennedy had written to two (including the newly appointed head of employee relations) on the basis of her decision to make a selection, having decided she had enough information from 20 employees/officers who gave similar responses and Steve Cox's damaging email referred to above.

74 On the 7 August 2020 the claimant submitted a supplementary report alleging bullying and victimisation as a result of Natalie Perischine attaching emails from members of staff in the letter dated 31 July 2020 and the verbal updates from other members of the team. The claimant and her union representative was able to out forward their arguments and responses, which were taken into account by Serena Kennedy.

75 At the Appeal meeting referenced below, Serene Kennedy referred to the hearing being “challenging” and “Amy states that I had challenged Natalie over her personal conduct in the meeting but I also had to remind Amy to direct her answers to her and interjected several times.” The hearing notes taken on behalf of the respondent reflect this. Neither the claimant nor Stephanie Bell took any notes. The Tribunal concluded, preferring to rely on the contemporaneous record rather than the claimant’s evidence and evidence given on her behalf by Stephanie Bell, which it did not always find credible for the reasons stated, that the hearing was a difficult one, by its very nature acrimonious as the claimant did not accept the criticisms made about her professionalism and abilities as a manager. The hearing notes make no reference to bullying and harassment of the claimant by Natalie Perischine or any inappropriate behaviour falling short of bullying and harassment and so the Tribunal found on the balance of probabilities.

The decision to dismiss.

76 Serena Kennedy took Natalie Perischine’s report at face value, and she took the view that the relationship between the claimant and Natalie Perischine had broken down with no prospect of a repair and this state of affairs had no connection with whistleblowing, she accepted the evidence given by 20 employees of the difficulties within the team due to the claimant’s actions. She also had in mind the face-to-face meeting she had with the claimant after the second pre-meeting and before the Gold DEI meeting, the fact the claimant had not responded to or accepted the criticisms within the Probation Report and she held a genuine belief, taking into account all of these factors, that the claimant was not suitable to be confirmed in her probation or for her probation period to be extended. In oral evidence Serena Kennedy confirmed that she had carefully considered all the material presented to her by the claimant, Natalie Perischine and the team. Contrary to Mr Jones’ submissions, the Tribunal did not accept Serena Kennedy had made up her mind before taking into account the evidence before her, it was not predetermined and the Tribunal found she had tested the evidence and the dismissal was not causally linked in any way to the protected disclosures. Mr Jones and the claimant also criticise the respondent for a lack of procedure and/or breaching procedure, which is not relevant as this is not an ordinary unfair dismissal complaint and the Tribunal took the view that, for example, whether the claimant was offered welfare support (as submitted by Mr Jones) was not relevant to the issues to be decided.

77 The claimant was dismissed on 3 months’ notice, and her last day of service the 14 August 2020.

Appeal

78 The claimant appealed on the 20 August 2020 and requested copies of the notes of the grievance and suitability meeting held on the 4 August 2020. On the 11 September 2020 the claimant was provided with copies of the notes.

Appeal hearing

79 On the 7 October 2020 a Grievance Appeal Statement was submitted by the claimant's UNISON representative and the appeal hearing took place on the 12 October 2020 before Andy Cooke, the chair, and two independent panel members Mr Howarth and Ms Beard. Notes of the hearing were taken by a Weightmans's HR advisor.

80 The appeal hearing started at 2pm and finished 3.45pm culminating in the Chief Constable Andrew Cooke promising to send the claimant missing documents that included "half of the grievance related documents and a statement from Keith Lloyd." The claimant and Stephanie Bell raised the missing documents at the outset and were invited to draw the attention of Andrew Cooke, Clive Howard, chief executive – office of Police and Crime commission, and Sian Bread, independent panel member, to any documents. Stephanie Bell's response was "that's fine" and the hearing proceeded without issue. The documents had not been intentionally omitted and so the Tribunal found. Their omission was down to it a mistake that cannot be attributed to Serena Kennedy, who took no part in preparing bundles for hearings.

81 At the Appeal meeting Serene Kennedy referred to the hearing he had conduct of being "challenging" and "Amy states that I had challenged Natalie over her personal conduct in the meeting but I also had to remind Amy to direct her answers to her and interjected several times."

82 The panel had before it the Management Statement of Case for appeal and Employee Statement of Case for appeal: UNISON.

<u>Additional documents provided by claimant.</u>

83 In an email sent on the 13 October 2020 at 11.47 Stephanie Bell attached a number of documents, some of which were already before the panel. The panel had sight of all the documents and had heard all the claimant wished to say about her grounds of appeal before it made the decision to reject both appeals.

84 The claimant supported by Stephanie Bell was able to present her appeal to the panel referring to all the relevant information and documents, and so the Tribunal found. Stephanie Bell sent to the panel the 11 missing documents as agreed on the 13 October 2020.

<u>Appeal Panel Outcome Report</u>

85 Andrew Cooke sent the claimant the Appeal Panel Outcome Report on the 16 October 2020 which confirmed the following conclusions reached by the panel relating to the various points relied upon by the claimant in her grounds of appeal. The Outcome Report sets out in details why the claimant's appeal was unsuccessful. The Tribunal has concentrated on the panel's reliance upon reports from the claimant's colleagues and the allegations relating to the protected disclosures.

86 Reference was made to the feedback provided by colleagues referenced above as follows; "we considered the feedback included in the appeal bundle. **It is from a number of colleagues across the range of grades. The level of dissatisfaction varies, as might be expected. The consistent feature of the feedback is that it is**

negative and collectively puts into question Amy's suitability" [the Tribunal's emphasis]. The observations and conclusion included:

86.1 "The feedback is generally indicative of a lack of confidence in Amy in the role, which is one of the key areas for T/ACC Perischine's s4(8)'s recommendation. We can understand why Amy seeks to have the feedback disregarded. It does not help her appeal. It is clearly persuasive when considering the issue of suitability for the role in line with her contractual probationary requirement…Our view is that it would be wrong to exclude this evidence…it is clearly relevant to the decision of DCC Perischine in response to both the grievance and the s.4(8) consideration.

86.2 It is relevant to our appeal consideration….disregarding the evidence would have presented a false reality, which is ultimately not helpful to any party…**DCC Kennedy was satisfied, as we are, what was required was a proportionate inquiry to satisfy herself that the overall thrust of the feedback produced by T/ACC Perischine which clearly goes some way to supporting concerns about suitability for the role, was accurate and credible…we are satisfied with the overall credibility and integrity of the feedback, as was DCC Kennedy. It cannot be seriously disputed that the thrust of it is consistent with the concerns that resulted in the section4(8) recommendation and was relevant to the suitability assessment undertaken by DCC Kennedy for the purposes for her decision regarding termination of employment in the probationary period**" [the Tribunal's emphasis].

86.3 We have considered the Probationary Report…whist we acknowledge that Amy did not sign the Probationary Report and it is clear from her grievance that she regards it as unfair, **she did not…respond to T/ACC Natalie Perischine's request to explain to her why she considered it fundamentally unfair, or provide the written response she said…she would do…it is unfortunate for all that the role did not prove suitable…we are satisfied…from the weight of material we considered that there were credible reasons why T/ACC Perischine felt it necessary to make the 4(8) recommendation** [the Tribunal's emphasis].

86.4 "Our understanding is that a consideration of suitability has a relatively wide scope. It is not therefore inconsistent for a new employee to be perfectly capable of doing the role, yet nevertheless not be suitable for confirmation of appointment for a variety of others reason. **This is where factors such as demonstrating effective leadership, instilling confidence, coping with workloads and building good relationships with team members and colleagues might all play a part, as they did here. We are satisfied that there was reasonable evidence before DCC Kennedy to accept the recommendation of T/ACC Perischine that suitability had not been established as the contract requires. Nothing produced to us at appeal persuades us to interfere with that decision**" [the Tribunal's emphasis].

86.5 With reference to the detriments as a result of whistleblowing the panel found "there is nothing at all before us to support the complaint of victimisation on the grounds of either disclosure or any reason why T/AA Perischine or anyone else might wish to victimise Amy."

86.6 "**The key question therefore, it seems to us, is what caused the shift from T/ACC Perischine extending the probation meeting following the meeting on 17 June 2020 and investing in trying to turn around the situation, to the decision on or around the 23 July 2020 that it had deteriorated to the point where she felt a section4(8) recommendation was necessary. There is nothing at all to suggest the disclosures had anything whatsoever to do with the 'shift**." **The reason why the position changed…was (1) the frustration of T/ACC Perischine experience of the Probation Review Report and understanding what aspects Amy considered was unfair ('going round in circles'), (2) a loss of confidence that Amy would grasp the issues that had been highlighted and engage with development, (3) the volume of concerning feedback from colleagues, (4) an increasing sense that any investment by T/ACC Perischine in trying to support Amy with turning around the situation was unwelcome and futile, (5) feedback from Amy's team as to the pressure they felt they had bene placed under due to chaotic preparation for an important GOLD DEI meeting on 23 July 2020" [**the Tribunal's emphasis].

86.7 "We agree with DCC Kennedy in so far as she says she can understand how Amy may have felt the intensive management by T/ACC Perischine crossed the line in to bullying and harassment. However, we are satisfied that the management by T/ACC Perischine had nothing to do with disclosures…"

86.8 With reference to point 4, T/ACC Perischine preventing Amy from meeting with DCC Kennedy on 28 July 2020 the panel accepted that "as far as we are aware" the claimant becoming very upset at work and going home" after the Gold DEI meeting "one of the main reasons…feedback from the People services team about the pressure they believed they had been unnecessarily placed under with the chaotic preparation for that important meeting coincided with the decision of T/ACC Perischine to make the 4(8) recommendation."

86.9 **The appeal body confirmed they were unanimous in their decision not to uphold the appeal against DCC Kennedy's decisions in respect of the grievance and unsuitability for the role** [the Tribunal's emphasis]."

87 The Tribunal finds as a matter of fact that a through, objective and balanced appeal hearing took place, with considerable amount of documents considered, including lengthy arguments and evidence put forward by the claimant. As had the Tribunal, the appeal panel took cognisance of the considerable number of complaints raised against the claimant, 20 in total, made by employees and officers from different levels of the organisation, and to have ignored these would have been detrimental to the business and according to a number of complaints could have resulted in employees leaving the department . In oral submissions Mr Jones asked the Tribunal to look at the "conduct of CC Cooke during the appeal hearing" alleging that Mr Cooke together with other senior officers "had closed ranks in this case and T/ACC Perischine was protected by CC Cooke. The tribunal need not concern itself with the personal relationship (if any) between the two, it would suffice to consider the core facts of this case and the evidence of Mrs Park that T/ACC Perischine "*was protected by the CC.*" The Tribunal has touched upon the allegations made by the claimant concerning

senior offices conspiring against her to protect Natalie Perischine either to further their own career, or in the case of Andrew Cooke, protect her because of their alleged personal relationship (see above). The Tribunal finds no evidence whatsoever that Natalie Perischine was protected by the Andrew Cooke or the panel he chaired at appeal stage, and when considering the core facts as set out within the Tribunal's factual matrix above, the claimant's evidence was unreliable in direct contrast to Andrew Cooke who gave honest and credible evidence concerning the decision making process of the unanimous panel and his own motivation.

Law

Detriment

88 Section 47B gives a worker the right not to be subject 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. Section 48(2) provides that on a complaint under certain subsections, including that concerned with detriment on the ground of having made a protected disclosure: **" …. it is for the employer to show the ground on which any act or deliberate failure to act was done."**

89 Mr Peacock submitted that both the s47(B)(1) claim and the s103A claim concerned the 'reason why' question; i.e. what the grounds for any detrimental treatment were and what was the principal reason for the dismissal. Consideration of it requires an analysis of the mental processes, conscious or unconscious, which caused the individual concerned to have acted as they did.

Detriment

90 Mr Jones referred to the meaning of "*detriment*" submitting it is necessary to consider the case of **Chief Constable of West Yorkshire Police v Khan [2001] 1 WLR** where it was said that the term has been given a wide meaning by the Courts and quoting the case of **Ministry of Defence v Jeremiah [1980] QB 87** where it was said that:

> "*a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment*".

91 Clearly dismissal can give rise to a detriment, as can a critical probation report in certain circumstances.

92 Mr Jones also referred to **Derbyshire & others v St Helen's Metropolitan Borough Council [2007] ICR 841** where the case of **Shamoon v Chief Constable of The Royal Ulster Constabulary [2003] ICR 337** was quoted with approval. In **Shamoon**, Lord Hope stated as follows: "*… the word 'detriment' draws this limitation on its broad and ordinary meaning from its context and from the other words with which it is associated… the Court or Tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he has thereby been disadvantaged in the circumstances in which he had thereafter to work. But once this requirement is satisfied the only other limitation that can be read into the words is that indicated by Brightman LJ as he put it in the Ministry of Defence v Jeremiah [1980] QB 87 one must take all the circumstances into account. This is a test of materiality.*

Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to 'detriment'…"

Causation

93 It is agreed that the issue of causation is crucial in this case.

94 Mr Jones referred to **Fecitt & Ors v NHS Manchester [2012] ICR 372,** was a decision of the Court of Appeal, Elias LJ giving the main speech, Davis and Mummery LJJ concurring. The Court held that the correct test, in relation to such a detriment claim, is whether the protected disclosure materially influenced, **in the sense of being more than a trivial influence upon, the employer's treatment of the whistle-blower**, **as opposed to the test being the one that would apply in the unfair dismissal context, of whether the protected disclosure was the sole or principal reason for the dismissal**. See in particular paragraph 45. Further on, the Court of Appeal considered the question of whether such a claim must succeed if the treatment complained of was found to be "related to" the disclosure, or whether it was possible on appropriate facts for the Tribunal to distinguish, for example, between the fact of the disclosure and the manner in which it was made. The Court of Appeal accepted that in an appropriate case such a distinction should be drawn, although caution was required. This was the context and sense of its remarks at paragraph 51.

95 The parties are in agreement that the legal test is whether the protected disclosure materially (in the sense of more than trivially) influences the employer's treatment of the whistleblower? As submitted by Mr Jones whether detriment is on the ground that Mrs Park made a protected disclosure therefore involves an analysis of the mental processes (conscious or unconscious) of the relevant decision makers. It is not sufficient to demonstrate that "*but for*" the disclosure, the employer's act or omission would not have taken place. The Tribunal carefully considered the conscious and subconscious mental processes of Natalie Perischine, Serena Kennedy and Andrew Cooke, satisfied that there was no causal link between the protected disclosures and the decisions they made in respect of the claimant, either in relation to the probation report both in draft and final form, the decision to initiate a S.4(8) suitability/capability meeting (Natalie Perischine), the grievance outcome, investigation and dismissal at the section 4(8) meeting (Serena Kennedy) and dismissing the appeal (Andrew Cooke).

Was the dismissal for the real reason (whistleblowing) or the invented reason (suitability)

96 Mr Jones relied on the Supreme Court ruling in **Royal Mail Group Ltd v Jhuti (2019) UKSC 55.** An employee made protected disclosures to her line manager within the meaning of s.43A of the Act and that the line manager responded by bullying her and pretending that her performance of her duties was inadequate. The employer appointed another officer to decide whether the employee should be dismissed. By that time, she had been signed off work with stress, anxiety and depression. She was invited to attend a meeting with that officer, but was too ill to do so. The officer decided that the employee should be dismissed, having no reason to doubt the truthfulness of the material indicative of her inadequate performance. The EAT found that if someone in a managerial position, responsible for the employee, had manipulated a decision to

dismiss her which had been made in ignorance of the manipulation, the manipulator's reason for dismissal could be attributed to the employer for the purpose of s.103A. The Supreme Court held if a person in the hierarchy of responsibility above the employee determined that the employee should be dismissed for a reason, but hid it behind an invented reason which the decision-maker adopted, it was the court's duty to penetrate through the invention rather than to allow it also to infect its own determination. The reason for the dismissal was the hidden reason rather than the invented reason. There was no conceptual difficulty with attributing to the employer the state of mind of the person placed by the employer in the hierarchy of responsibility above the employee, rather than that of the deceived decision-maker (paras 46, 52, 58-62). If a person in the hierarchy of responsibility above the employee determined that the employee should be dismissed for a reason, but hid it behind an invented reason which the decision-maker adopted, it was the court's duty to penetrate through the invention rather than to allow it to infect its own determination.

Automatic unfair dismissal

97 S.103A ERA provides there may be more than one reason for a dismissal. An employee will only succeed in a claim of unfair dismissal if the tribunal is satisfied that the 'principal' reason is that the employee made a protected disclosure. The principal reason is the reason that operated on the employer's mind at the time of the dismissal — Lord Denning MR in **Abernethy v Mott, Hay and Anderson [1974] ICR 323, CA.** If the fact that the employee made a protected disclosure was merely a subsidiary reason to the main reason for dismissal, then the employee's claim under S.103A will not be made out. Furthermore, as Lord Justice Elias confirmed in the well-known case of **Fecitt** (above) the causation test for unfair dismissal is stricter than that for unlawful detriment under S.47B — the latter claim may be established where the protected disclosure is one of many reasons for the detriment, so long as the disclosure materially influences the decision-maker, whereas S.103A requires the disclosure to be the primary motivation for a dismissal.

98 Mr Peacock relied on the guidance given by the EAT on the burden of proof in **Kuzel v Roche Products Ltd [2007] IRLR 309 (EAT),** endorsed by the Court of Appeal in **Kuzel v Roche Products Ltd [2008] IRLR 530,** where the employee does not have the qualifying service necessary to bring a claim for ordinary unfair dismissal, the burden is on the employee to show the reason for dismissal (following **Smith v Hayle [1978] IRLR 413**).

Burden of proof

99 There was discussion during oral closing submissions on the burden of proof and S.48(2) ERA which provides that on a complaint to an Employment Tribunal:

> "*… it is for the employer to show the ground on which any act deliberate failure to act, was done.*"

100 In a claim brought under section 47B of the ERA it is for the employer to show the ground on which any act, or deliberate failure to act, was done — S.48(2). Once all the other necessary elements of a claim have been proved on the balance of

probabilities by the claimant — i.e. that there was a protected disclosure, there was a detriment, and the respondent subjected the claimant to that detriment — the burden will shift to the respondent to prove that the employee was not subjected to the detriment on the ground that he had made the protected disclosure. Inferences can be drawn when considering whether there was a sufficient causal link between the making of the protected disclosure and the detriment complained of, as to the real reason for the action on the basis of its principal findings of fact given that it is for the respondent to show the ground on which it acted, or deliberately failed to act.

101 The EAT summarised the proper approach to drawing inferences in a detriment claim in **International Petroleum Ltd and ors v Osipov and ors EAT 0058/17:**

a. •the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure that he or she made

b. •by virtue of S.48(2), the employer (or worker or agent) must be prepared to show why the detrimental treatment was done. If it (or he or she) does not do so, inferences may be drawn against the employer (or worker or agent) — see **London Borough of Harrow v Knight 2003 IRLR 140, EAT.**

c. •however, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found.

Conclusion: applying the law to the facts

102 When considering the individual detriment claims the Tribunal had in mind the test in **Fecitt** (above), in relation to such a detriment claim, is whether the protected disclosure materially influenced, **in the sense of being more than a trivial influence upon, the employer's treatment of the whistle-blower**, **as opposed to the test being the one that would apply in the unfair dismissal context, of whether the protected disclosure was the sole or principal reason for the dismissal**. In relation to each of the allegations the Tribunal concluded that the protected disclosure did not materially (in the sense of more than trivially) influence the respondent's managers/appeal panel treatment of the claimant. In arriving at this decision the Tribunal took into account the mental processes (conscious or unconscious) of Natalie Perischine, Serena Kennedy and Andrew Cooke, satisfied that there was no causal link between the protected disclosures and the decisions they made in respect of the claimant, either in relation to the probation report both in draft and final form, the decision to initiate a S.4(8) suitability/capability meeting (Natalie Perischine), the grievance outcome, investigation and dismissal at the section 4(8) meeting (Serena Kennedy) and dismissing the appeal (Andrew Cooke).

The Tribunal's response to the agreed issues

103 Taking the issues in the same order as agreed between the parties the Tribunal on the balance of probabilities has found the following:

<u>s47(B)(1), ERA 1996 'Whistleblowing' Detriment claim</u>

A. Whether the respondent subjected the claimant to any or all of the following detriments on the ground that C made a protected disclosure in the email of 28 April 2020 **[Disclosure A: Page 98 Bundle]** and / or on the ground that C made a protected disclosure in the email of 9 June 2020 **[Disclosure B: Page 115 Bundle]**:

1. With reference to the decision communicated at the probationary review meeting on 17 June 2020 and confirmed in a letter of 8 July 2020 to extend the probationary period by a further 3 months, the respondent accepted the claimant suffered a detriment but denied it was on the prohibited ground. The burden shifted to the respondent to prove that the claimant was not subjected to the detriment on the ground that she had made the protected disclosures, and on the balance of probabilities the Tribunal found that there was no causal link and no adverse inferences can be drawn. Taking into account the credible evidence of Natalie Perischine the only reason for the action was as found in the findings of fact above, namely, that Natalie Perischine had genuine concerns whether the claimant was suitable 2-months into her probation period as a result of feedback she had received from staff and her own observations. The contemporaneous documents reflect the reality of the situation.

2. With reference to the attempts on and around 17th / 20th July 2020 to change the contract of employment by removing the flexi-entitlement, the respondent does not accept the claimant suffered a detriment and in the alternative denies any proven detriment was on the prohibited ground. The Tribunal did not agree that there was no detriment to the claimant, despite the fact that her flexi-entitlement was not removed, she was clearly concerned as evidenced in the contemporaneous emails that her contract would be unilaterally changed, possibly on 3-months' notice. Taking into account the evidence and motivation of Natalie Perischine, the Tribunal recognised that managers will often hide the true reason for their actions when detriments are being caused to employees as a result of them whistleblowing. In Natalie Perischine's case she recognised that the claimant's contract included a mistake by incorrectly providing her with a benefit the claimant should not been entitled to because of her rank as the right to flexi-entitlement had been withdrawn following a consultation process that included giving extra leave instead. No other department heads at the claimant's grade had the right to flexi-entitlement and Natalie Perischine took legal advice on the issue, satisfied that the claimant's contract included a mistake which she raised with the claimant. The Tribunal accepted the issue of the error was brought to the claimant's attention at the 1:1 meeting on the 17 July 2020 when it was first discussed. Email exchanges followed and no action was taken to remedy the error, unilaterally or otherwise. The handing of this issue by Natalie Perischine is an undisputed fact, and taking into account her conscious and subconscious motivation, the Tribunal found on the balance of probabilities that it was not causally linked in any way to the protected disclosures. The conversation was not retaliatory and would have taken place with or without the protected disclosures.

3. The alleged 'micro-management' and 'bullying' by C's line manager (T/ACC Perischine) in the following ways:

    a. With reference to the alleged attempts to 'control confidential meetings between the claimant and an external coach': the Tribunal on the balance of probabilities found that there was no satisfactory evidence Natalie Perischine attempted to control the meetings as alleged. Natalie Perischine emailed the claimant on the 17 July 2020 at 17.52 referencing the workplace coach with whom a discussion had taken place already, and set out the 5 key areas including developing leadership style and emotional awareness which directly related to the manner in which the claimant dealt with her team. She wrote; "Once you have met Alison I think it would be helpful if we could have a three-way discussion or meet to agree the objectives which Alison sets for your sessions, based upon the 5 areas…I have made her aware that your probation was extended and that her role as coach is to work with you, to help you develop the areas and in doing so, improve your performance." After one coaching session the workplace coach emailed Natalie Perischine on the 20 July 2020 at 23.38 regarding the importance of objectives being agreed by both the claimant and her line manager, and "In the session today Amy discussed how the way you two work together impacts her performance…I have offered a facilitation session…she completed a self-reflection…" The Tribunal does not accept that there was any attempt by Natalie Perischine to control confidential meetings as alleged, the evidence points to the claimant being referred to a workplace coach Alison in order that she could support and assist the claimant to resolve the issues set out in the Probation Report. The claimant, despite maintaining the confidential meetings were controlled by Natalie Perischine, was able to criticise her and blame her for performance criticisms with no acknowledgment from the claimant that she had work to do to meet the concerns set out within the Probation Report, which the claimant did not recognise as valid. The Tribunal finds the claimant was not subjected to the detriment alleged. In the alternative, the Tribunal finds the protected disclosures did not influence Natalie Perischine in any way when she decided to arrange for a workplace coach to support the claimant, and communicate with the coach. The claim is dismissed.

    b. With reference to the alleged 'constant control of work and outputs' the claimant did not specify how she was controlled as alleged, one of Natalie Perischine's criticism of the claimant, which she was entitled to make in the circumstances of this case, was that she concentrated on the wrong type of work. One of the complaints made by a member of staff was that the claimant had intentionally passed the work she had undertaken as the claimant's own work taking credit for it whilst the employee hidden from the meeting assisted the claimant with no acknowledgment of her input, which suggests there was no control by Natalie Perishine over the claimant's work and outputs. The Tribunal finds the claimant was not subjected to the

detriment alleged. In the alternative, the Tribunal finds the protected disclosure did not influence Natalie Perischine in any way when she dealt with the claimant's work and outputs. The claim is dismissed.

c. With reference to the alleged refusal to 'pass on knowledge or skills with lack of guidance and mentorship as a new starter' the Tribunal on the balance of probabilities found this was not the case. It has been difficult to reconcile this allegation with the production of the draft Probation Report and the claimant's rejections of the suggestions made to her, and there was no satisfactory evidence Natalie Perischine "refused" to pass on knowledge and skills, which would entail the claimant asking for guidance and mentorship, which she did not. Following the 17 June 2020 meeting the claimant was offered not only the workplace coach and a buddy having undertaken an induction and 2 week handover/shadowing with Chris Gibson, superintendent and her immediate predecessor in People Services. The Tribunal finds the claimant was not subjected to the detriment alleged. In the alternative, the Tribunal finds the protected disclosure did not influence Natalie Perischine in any way when she managed the claimant as a new starter. It is clear from the contents of the Probation Report and previous discussions Natalie Perischine had with the claimant concerning the best way of approaching the team, together with input from Serena Kennedy in the lead up to the Gold DEI meeting, guidance was offered but ignored by the claimant. The Tribunal finds the claimant was not subjected to the detriment alleged. In the alternative, the Tribunal finds the protected disclosure did not influence Natalie Perischine in any way when she dealt with the claimant as a "new starter" and the claimant has not established any causal connection with the protected disclosure. The claim is dismissed.

d. With reference to the alleged requirement to undertake 'knowledge checks' in 'excessive' 1-2-1 meetings, there was no evidence of excessive meetings and as the claimant was on probation it is entirely reasonable for the immediate line manager to be checking to understand how things were going. The Tribunal repeats its observation above, finding it difficult to reconcile this allegation with a refusal to guide and mentor a new starter. The claim is dismissed.

e. With reference to subjecting the claimant to alleged 'constant criticism, complaining and fault finding in everything no matter how inconsequential," and criticising her for allegedly not being visible to her team, there was no evidence that the claimant was "constantly" criticised and the Tribunal found on the balance of probabilities it did not happen. The claimant was criticised on the 17 June 2020, at and following her probation review and in the Probation Report. The criticisms were serious, they were not inconsequential and could not be ignored. Objectively assessed, any organisation facing such criticisms from staff and the line manager of a new member of staff on probation would treat them seriously, and the claimant with her

depth and breadth of experience, should have realised this. The Tribunal accepts the claimant was upset by the criticism, however, had she stepped back and looked at them objectively, reflecting on how her new employment had gone, the difficulties she had and the way she handled members of her team, she may have realised that the concerns could have had some merit, but the claimant rejected this possibility wholesale. The Tribunal finds the claimant was not subjected to the detriment alleged. In the alternative if the Tribunal is wrong, it finds the protected disclosures did not influence Natalie Perischine in any way. Her criticisms of the claimant were justified for the reasons set out above, and the claimant has not established any causal connection with the protected disclosure. The claim is dismissed.

f. With reference to criticising the claimant for not being visible to her team, the respondent accepts the claimant suffered a detriment. The Tribunal found on the balance of probabilities that the claimant was told this because Natalie Perischine genuinely held this view, wanted the claimant to improve visibility, and there was no connection to the protected disclosures. It is notable that other employees/officers also referred to the claimant's lack of visibility and lack of engagement with the team. The claim is dismissed.

g. With reference to alleged 'undermining of authority with direct reports' the Tribunal found there was no evidence to this. The Tribunal heard evidence that ahead of the Gold DEI meeting employees in the claimant's team went direct to Serena Kennedy to request clarification and confirmation that what they were doing was on the right track. There is contemporaneous evidence culminating in Steve Cox's email concerning the claimant's underperformance and the consequences of her failing to lead the team. There was no satisfactory evidence of Natalie Perischine undermining the claimant's authority with direct reports. The Tribunal finds the claimant was not subjected to the detriment alleged. In the alternative, the Tribunal finds the protected disclosures did not influence Natalie Perischine in any way when she dealt with the claimant's direct reports, a number of whom raised serious complaints about the claimant's management of them and the team, and the claimant has not established any causal connection with the protected disclosure. The claim is dismissed.

h. With reference to the failure to respond to the suggestion of the external coach for a three-way meeting, Natalie Perischine herself suggested a three-way meeting and the reason it did not happen was because it was overtaken by events as a result of the Steve Cox email and the aftermath. Objectively assessed, it was not a detriment, and if the Tribunal is wrong on this point, it is satisfied that there was no causal connection with the protected disclosures. The claim is dismissed.

i. With reference to the decision to invite the claimant to a s4(8) Capability hearing, as communicated in a letter dated 27 July 2020, the respondent accepted that this was a detriment and the Tribunal agreed. However, it was satisfied for the reasons already stated that there was no causal connection with the protected disclosures. The claim is dismissed.

j. In relation to the alleged concealment of information relating to the claimant's protected disclosures and other concerns within the People Services Strand, the claimant produced no evidence to this effect and it was not explored in cross-examination. For the avoidance of doubt, as the Tribunal found above, Natalie Perischine empowered the claimant to deal with both protected disclosures and the claimant did nothing. The claim is dismissed.

4. With reference to the decision by DCC Kennedy to allow T/ACC Perischine to present a 'Supplementary Report' at the s4(8) Capability Hearing on 4 August 2020, the respondent accepts the claimant suffered a detriment. The Tribunal has reservations; the claimant could not have reasonably seen this to be a detriment, and given her experience and qualifications, should have recognised the importance of gathering all of the relevant information. The complaints from staff were very relevant, and DCC Kennedy's reliance of it, having tested the evidence by sending emails to each of the 16 people who had provided oral information to Natalie Perischine, was not a detriment objectively assessed. In short, a number of employees raised serious concerns that raised a question mark over the claimant's suitability, and Serena Kennedy objective was to test the evidence to make sure it was reliable. In any event, the claimant was faced with the insurmountable hurdle of Steve Cox's critical email dated 23 July 2020 which underlined and corroborated the criticisms made by 20 people about the claimant's management and leadership. If the Tribunal is wrong in its finding that the claimant was not subjected to the detriment alleged, in the alternative, the Tribunal finds the protected disclosure did not influence Serena Kennedy when she allowed Natalie Perischine to present a supplementary report, and the claimant has not established any causal connection with the protected disclosure. For the avoidance of doubt, it also found that Natalie Perischine's production of the supplementary report had no causal connection to the protected disclosures. The claim is dismissed.

5. With reference to the alleged failure to adhere to the procedure set out in the 'Capability for Police Staff (Policy & Procedure)' and / or the procedure set out in the 'Fairness at Work (Grievance Policy & Procedure)' the Tribunal repeats its findings above.

   a. With reference to the provision on 31 July 2020, within 7 days of the meeting arranged for 4 August 2020, of information by T/ACC Perischine, consisting of colleague feedback, with an indication of intention to rely on further 'verbal' feedback at the meeting, the respondent accepts that the material provided by both Natalie Perischine and the claimant was less than 7-days before the 4 August meeting. The respondent does not accept detriment and denies any proved detriment was on the prohibited ground. The

Tribunal agreed. As reflected in the findings of facts, the claimant had time to read the documents and neither she nor Stephanie Bell requested an adjournment either before or at the meeting held on the 4 August 2020. It is clear from the notes taken of both hearings (the grievance being heard first followed by the section 4(8) meeting in the afternoon) that the claimant had sufficient opportunity to put her case forward with the assistance of documents and her trade union representative who actively took part. After the hearing she then submitted a supplemental report alleging bullying and victimisation. The Tribunal finds the claimant was not subjected to the detriment alleged. In the alternative, the Tribunal finds the protected disclosure did not influence Serena Kennedy when she arranged the provision on 31 July 2020, within 7 days of the meeting arranged for 4 August 2020, of information by T/ACC Perischine, consisting of colleague feedback, with an indication of intention to rely on further 'verbal' feedback at the meeting. The claim is dismissed.

b. With reference to the decision of DCC Kennedy to allow T/ACC Perischine to present the material at a) at the meeting on 4 August 2020, the Tribunal repeats its findings above. In short, the Supplemental Report produced by Natalie Perishine included material that was fundamental to the issues, including colleague feedback and Natalie Perischine's response to the claimant's grievance. Serena Kennedy was required to objectively take into account all relevant information presented by both parties, which she did, including feedback from the claimant's colleagues which she tested. The claimant responded to the material in a lengthy document on 7 August 2020 which was taken into account as reflected in the detailed grievance and S.4(8) outcome report dated 14 August 2020. It is notable that day before the 4 August 2020 hearing the claimant produced additional documents which were dealt with at the hearing and beyond. The claim is dismissed.

6. With reference to the reliance by DCC Kennedy placed on feedback from colleagues put forward by T/ACC Perischine, the Tribunal finds the claimant was not subjected to a detriment. Serena Kennedy was required to objectively take into account all relevant information presented by both parties, which she did, including feedback form colleagues, which she tested following which she reached the conclusion that the claimant was not suitable to be confirmed in post. If the Tribunal is wrong in its finding that the claimant was not subjected to the detriment alleged, in the alternative, the Tribunal finds the protected disclosures did not influence Serena Kennedy when she placed reliance on feedback from colleagues, and the claimant has not established any causal connection with the protected disclosures. The claim is dismissed.

7. With reference to T/ACC Perischine's conduct towards the claimant during the Capability Hearing on 4 August 2020, for the reasons set out above, the Tribunal found Serene Kennedy referred to the hearing being "challenging" and "Amy states that I had challenged Natalie over her personal conduct in the meeting but I also had to remind Amy to direct her answers to her and interjected several times." The hearing notes taken on behalf of the respondent reflect this. Neither the claimant nor Stephanie Bell took any notes and the Tribunal took the view that as in many hearings involving unpalatable criticism

and the prospect of a dismissal, it was emotional and at times confrontational as one would expect. Natalie Perischine's conduct at the capability hearing, bearing in mind she was the claimant's line manager, could be perceived to be a detriment and in this regard the Tribunal did not agree with the respondent. However, there was no causal link taking account the vast amount of information gathered confirming the claimant's unsuitability, which Natalie Perischine wished to get across. Serene Kennedy controlled both the claimant and Natalie Perischine, instructing them to direct answers to her as recorded in the contemporaneous notes which do not reflect the case the claimant now wishes to put forward of bullying and harassment. The claim is dismissed.

7(a) With reference to the decision by DCC Kennedy not to uphold the grievance submitted on 30 July 2020, as communicated in the Outcome Report of 14 August 2020, the Tribunal accepted the claimant suffered a detriment, but found having considered Serena Kennedy's motivation and what operated on her mind at the time as reflected in the Tribunal's findings above, there was no causal connection to the protected disclosures. The claim is dismissed.

8. With reference to the failure to include a number of policies and other material (11 categories) in the bundle for the appeal hearing on 12 October 2020, the Tribunal did not accept this was a detriment. The claimant and Stephanie Bell raised the missing documents at the outset of the hearing and were invited to draw the attention of the panel to any documents. Stephanie Bell's response was "that's fine" and the hearing proceeded without issue. The documents had not been intentionally omitted, it was a mistake that cannot be attributed to Serena Kennedy, who took no part in preparing bundles for the appeal hearing. In an email sent on the 13 October 2020 Stephanie Bell attached a number of documents, with the result that the panel had sight of all the documents and had heard all the claimant wished to say about her grounds of appeal before it made the decision to reject both appeals. If the Tribunal is wrong in its finding that the claimant was not subjected to the detriment alleged, in the alternative, the Tribunal finds the claimant has not established any causal connection between the missing documents in the appeal hearing bundle with the protected disclosure. The claim is dismissed.

9. With reference to the way the appeal was handled the Tribunal found the claimant was not subjected to any detriment for the reason already stated. It accepts, as does the respondent, that the decision of the panel to reject the claimant's appeal against the decision of DCC Kennedy not to uphold her grievance did amount to a detriment. However, it did not accept the rejection was causally connected in any way to the grievance. In short, the claimant was not subjected to the detriment on the ground that she had made the protected disclosure as recorded by the Tribunal in its findings of facts. The claim is dismissed.

s103A, ERA 1996 Automatically Unfair Dismissal claim

B. With reference to the issue, namely, whether the reason or principal reason for the dismissal on 14 August 2020 is that claimant made a protected disclosure in the email of 28 April 2020 **[Page 98 Bundle]** and / or that claimant made a protected disclosure in the email of 9 June 2020 **[Page 115 Bundle]**, the Tribunal found the reason for the dismissal was the claimant's lack of suitability as recorded above. S.103A ERA provides there may be more than one reason for a dismissal. An employee will only succeed in a claim of unfair dismissal if the tribunal is satisfied that the 'principal' reason is that the employee made a protected disclosure. The principal reason is the reason that operated on the employer's mind at the time of the dismissal in **Abernethy** (above)**.** In the present case the Amy Park made a protected disclosure was subsidiary reason to the main reason for dismissal, As Lord Justice Elias confirmed in the well-known case of **Fecitt** (above) the causation test for unfair dismissal is stricter than that for unlawful detriment under S.47B. S.103A requires the disclosure to be the primary motivation for a dismissal. The Tribunal found that Natalie Perischine, Selena Kennedy and Andy Cooke did not have the protected disclosures in mind when they made the decisions in respect of the claimant's suitability, dismissal and appeal outcome, and the claimant, who has less than 2-years qualifying service, has not met the burden of proof: **Kuzel** (above).

C. With reference to whether the dismissal was for the real reason (whistleblowing) or the invented reason (suitability), the Tribunal found there was no invented reason. In contrast to **Jhuti** above, Serena Kennedy had a vast amount of documentation before her, the claimant and her union representative were able to put forward their arguments in full, and Serena Kennedy carried out her own investigation which confirmed to her the truthfulness of the material provided about the claimant's performance including some serious criticisms from staff and there is no question of Natalie Perischine manipulating the decision to dismiss and Serena Kennedy being ignorant of the manipulation,. This was not a case of an invented reason by a line manger which the decision-maker adopted.

104 In conclusion, the unanimous judgment of the Tribunal is that:

1. The claimant's claim of automatic unfair dismissal brought under section 103A of the Employment Rights Act 1996 as amended, is not well founded and is dismissed.

2. The claimant's claim of detriment brought under section 47B of the Employment Rights Act 1996 as amended is not well-founded and is dismissed.

Employment Judge Shotter
Date: 27 February 2024

REASONS SENT TO THE PARTIES ON

Date: 7 March 2024

FOR THE SECRETARY OF THE TRIBUNALS