RESERVED **Case No. 2406304/2023**

EMPLOYMENT TRIBUNALS

Claimant: Mrs M Unsworth
Respondent: Warrington & Halton Teaching Hospitals NHS Foundation Trust

HELD AT: Liverpool **ON:** 14, 15 & 16 February 2024

BEFORE: Employment Judge Shotter

Members: Mr A Murphy
Mr J Murdie

REPRESENTATION:

Claimant: In person
Respondent: Ms R Kight, counsel

JUDGMENT

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 claims of detriment brought under 47B of the Employment Rights Act 1996 received on 4 June 2023 were not presented before the end of the period of 3 months of 14 November 2022 in connection with alleged detriment 1 and 14 December 2022 in connection with alleged detriment 2. The Tribunal is satisfied that it was reasonably practicable for the complaints to be presented before the end of that period of 3 months and the complaint was not presented within such further period as the Tribunal considers reasonable. The Tribunal does not have the jurisdiction to consider the complaints, which are dismissed.

REASONS

Preamble

1. This is a final hearing dealing with liability only. The Tribunal had before it an agreed bundle consisting of 2 lever arch files totalling 673 pages, additional documents produced during the hearing and written submissions prepared by both parties. The Tribunal had before it a written chronology which it took into account, the claimant having largely agreed that the respondent's chronology was correct, and it took into account the contemporaneous documents set out within the hearing bundle which corroborated the chronology.

2. It was agreed throughout the hearing that the claimant, who required adjustments, could take breaks as and when she wanted (which the claimant took), that the respondent provide her with its written submissions and case law before the lunchtime adjournment in order that the claimant could take the opportunity to read beforehand what the respondent would be arguing and incorporate it into her written submissions, and she was given a break after Ms Kight had made oral submissions to finalise her submissions before she made oral submissions, including dealing with the time limit issues.

3. During cross-examination by the claimant she raised serious issues concerning documents produced by the respondent, alleging they were fabricated for this hearing by the respondent with the intention of deceiving the Tribunal. An employee of the respondent from Human Resources ("HR") was in attendance and whilst it was originally agreed she would give evidence dealing with the allegations, the position was resolved by her showing the claimant during one of the adjournments, the date and time a particular document was sent. The claimant confirmed to the Tribunal she was satisfied the document in question had not been fabricated. The claimant also alleged that a letter sent to her colleague has also been fabricated because it had the claimant's employment start date and not the start date her colleague, who had commenced her employment before the claimant. The claimant made allegations of fabricated documents with no basis for making them, having conceded in her oral evidence that she and her colleague had been treated the same. The Tribunal was satisfied that the respondent had not fabricated documents with a view to deceiving it and the claimant's allegation that it had, made on more than one occasion, brought into question her credibility, given she had no basis whatsoever for suspecting this and was prepared to use any argument she could, however unmeritorious it was, to further her claim.

Agreed issues.

4. A list of issues were agreed at a preliminary hearing held on the 26 September 2023 when the claimant is recorded as confirming that she had made one protected disclosure in her email of 14 October 2022, she had not been employed continuously for two years and was bringing the following claims:

1.1 Automatically unfair dismissal for making a protected disclosure ,contrary to section 94 of the Employment Rights Act 1996 ("ERA") and alleged to be

unfair within the meaning of section 103Aof ERA. It is common ground the claimant was dismissed.

1.2 Detriment on the ground of a protected disclosure, contrary to section 47B of ERA. The detriments relied on are:

Detriment 1–Ms Stenningss did not take her concerns about bullying seriously at the 13 November 2022 meeting.

Detriment 2 -The respondent deliberately delayed making a decision on her grievance, thinking that the claimant would give up once her fixed-term contract had ended.

24.3.Detriment 3 –Ms Stenningss decided not to renew the claimant's contract. There was a discussion at the outset as to whether detriment 3 is in effect the dismissal, and the Tribunal understood that it was, given the decision not to renew the fixed term contract ultimately resulted in the claimant's dismissal.

5. We discussed the list of issues further at the outset of this hearing, and counsel produced a separate document at the Tribunal's request for discussion and agreement with the claimant during the adjournment of approximately one and a half hours. The issues were agreed as follows and the claimant was provided with a separate copy with a request from the judge that she kept the agreed issues in mind when asking questions on cross-examination. The claimant found this difficult and we periodically re-visited the list of issues to assist her.

The final agreed list of issues

6. The agreed list of issues are as follows which follows our discussion about the issues generally and whether the claimant was bringing a claim under section 103A in connection with the decision not to renew her fixed term contract and dismiss the claimant:

PROTECTED DISCLOSURE

1. It is accepted that the claimant submitted a complaint on 14 October 2022 which contained information relating to the actions of CB and AC, which the claimant alleged amounted to bullying **[93-108]**. The issue for the Tribunal is whether that complaint amounted to a protected disclosure?

    a. Did the claimant believe that the information in the email tended to show that her health and safety was being or had been put in danger?

    b. Was that belief reasonable?

    c. If so, did the claimant believe that she was making the disclosure in the public interest?

    d. Was that belief reasonable?

AUTOMATIC UNFAIR DISMISSAL

2. It is not disputed that the claimant was dismissed when her fixed-term contract expired. Therefore, if the answer to 1 above is "yes" can the claimant prove that the fact of her making the disclosure was the sole or principal reason why the respondent did not renew her fixed-term contract?

DETRIMENT

3. It is accepted that Ms Stenningss decided not to renew C's contract. Did the following acts happen:

    a. Ms Stenningss did not take the claimant's concerns about bullying seriously at the 14 November 2022 meeting?

    b. Did the respondent deliberately delayed making a decision on the claimant's grievance beyond the 2-month timeframe, thinking that the claimant would give up once her fixed-term contract had ended?

4. If so, did they amount to detrimental treatment of the claimant?

5. If the answer to question 1 above is "yes", was the treatment significantly influenced by the fact that the claimant had made a protected disclosure?

JURISDICTION – TIME LIMITS

6. Have the claims reliant upon the alleged detriments at 3(a) and 3(b) been presented in time? As individual claims, it is accepted by both parties that neither was presented within the relevant 3-month limitation period.

Alleged detriment	**Primary limitation period end date**	**EC period**	**Extended limitation date allowing for EC/series**	**Date claim presented**
1: On 14 November 22 HS did not take C's concerns about bullying seriously	13.02.23	14.11.22-26.12.22	27.03.23 or 29.05.23 if linked to 2 or in time if similar to 3	04.06.23
2: Deliberate delay from 18 January 23 to determine C's grievance	17.04.23	23.04.23-04.06.23	29.05.23 if linked to 1 or in time if similar to 3	04.06.23
3: Decision not to renew fixed term contract	07.06.23	23.04.23-04.06.23	N/A – because claim submitted in primary limitation period	04.06.23

7. Therefore, are either or both of them, part of a series of similar acts the last such act being the decision not to renew the claimant's fixed term contract?

8. If so, was that last act well-founded?

9. If not, was it reasonably practicable for the claimant to present those claims within the relevant 3-month limitation period?

10. If not, did the claimant present those claims within such further period as was reasonably practicable?

Evidence

7. The Tribunal heard evidence from the claimant on oath, and on behalf of the respondent from Hilary Stennings, associate director of clinical support services and Jane Hurst, chief finance officer and a Freedom To Speak Up Guardian, a position she has held since May 2017.

8. The Tribunal did not find the claimant to be a credible witness at times, preferring the evidence given on behalf of the respondent which was supported by contemporaneous documents largely undisputed by the claimant, save for her allegations concerning fabricated documents which she withdrew as recorded above.

9. The Tribunal was referred to an agreed bundle of documents and witness statements, and having considered the oral and written evidence, agreed chronology, and written and oral submissions presented by the parties (the Tribunal does not intend to repeat all of the 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.

The claims

10. The claim form was presented on the 4 June 2023. There are two ACAS Early Conciliation Certificates. The first is dated 14 November 2022 to 26 December 2022, the second is dated 23 April 3023 to June 2023.

11. It is agreed that the first ACAS certificate related to detriment 1 referred to above as it followed the 13 November 2022 meeting with Hilary Stennings.

12. The second ACAS certificate relates to the automatic unfair dismissal claim and detriment 2. It is not argued by the parties that the second ACAS certificate does not count: see **HMRC v. Garau UKEAT 0348/16..29**. It was agreed that if the Tribunal does not find the claimant was unfairly dismissed under S.103A of the Employment Rights Act 1996 ("the ERA") both detriment claims are out of time and the issue for the Tribunal is was it reasonably practicable for the claimant to present those claims within the relevant 3-month limitation period?

13. . The Tribunal is satisfied that there are in essence three different claims consisting of two detriment allegations and one automatic unfair dismissal. With reference to the two detriment allegations both were presented outside the statutory

3-month period and are individually out of time. It considered the claimant's case that they were part of a series of similar acts culminating in the last act which was dismissal as a result of non-renewal of the fixed term contract, concluding they were not for the reasons set out below.

The facts

14. The respondent is a large hospital employing people on different types of contracts, including fixed term contracts. Hilary Stennings was responsible for approximately 1500 employees, and Jane Hurst was one of the Freedom To Speak Up Guardians trained to support any member of staff who raise concerns "about anything that gets in the way of patient care or affects your working life."

15. The Freedom To Speak Up Policy for the NHS (the "FTSU Policy") dated June 2022 specifically included eliminating harassment and set out the processes by which staff could confidentially "speak up" on an anonymous basis. Appendix B defines a protected disclosure and where an employee could seek independent advice i.e. from "Protect" with a hyperlink, or legal representative.

16. Under the FTSP Policy headed "What will we do?" the following is set out giving the respondent an option of dealing with the information under their policies; "The **matter you are speaking up may be best considered under a specific existing policy/process, for example, our process for dealing with bulling and harassment**. If so, we will discuss this with you. If you speak up about something that does not fall in to a HR or patient safety incident process this policy ensures that the matter is still addressed" [the Tribunal's emphasis].

17. Under the heading Resolution and Investigation it was recorded that "We support our managers/supervisors to listen to the issues you raise and take action to resolve it wherever possible. **In most cases it is important this opportunity is fully explored maybe with facilitated conversations and/or mediation.** When an investigation is needed this will be objective and conducted by someone who is suitably independent" (the Tribunal's emphasis).

18. It is open to respondent if an employee complains about bullying and harassment to take action under the Complaints and Concern Procedure implemented 28 April 2021 and Resolving Workplace Issues Policy implemented 1 December 2021. The Policy provides for an informal resolution and mediation "as an alternative to a formal procedure." No time frames are set out for the informal procedure, however, to be effective an "immediate resolution" should be considered. The respondent considered the time frames to be guidance as opposed to binding, and the Tribunal accepted that this was the case factoring sickness, annual leave and pressure of work as investigators were practicing clinicians and peak hospital admissions caused problems in the winter months. In short, the Tribunal concluded that the time in which it took the respondent to resolve a complaint and bullying allegation was flexible and depended on a variety of factors; it was not fixed as submitted by the claimant and there were circumstances in which the time would be extended with or without an employee's agreement.

19. The formal procedure sets out the following:

1. Acknowledge the formal form in writing within 5 working days.

2. Set up a meeting in a "timely manner."

3. Giving one week's notice of the meeting.

4. The investigation report should be completed within 6 weeks and the investigation report should be completed within a further 2 weeks, making it 8 weeks in total.

5. Parties will be kept up to date and "where possible any extension will be with the agreement of all parties."

The claimant's employment

20. The claimant accepted a fixed term contract as deputy service manager band 6 with effect from 23 May 2022 to expire 31 March 2023. The claimant was issued with a Statement of Terms and Conditions of Employment dated 23 May 2022.

21. The claimant's sister-in-law Marie Garnett was employed by the respondent as head of contracts, performance and commercial development. Marie Garnett informed the claimant of the vacancy. The claimant maintains she was promised by Marie Garnett that the fixed term contract for the role of deputy service manager would be extended. There is no documentary evidence of this and the Tribunal concluded Marie Garnett had not agreed to an extension of the claimant's fixed term contract. Marie Garnett did not have authority to extend a fixed term contract which was dependent on funding, and so the Tribunal found. It accepted Hilary Stennings' evidence that the money allocated for the service was not recurring and it involved a number of staff all of whom were either on fixed terms contracts, bank staff, locums and secondments. There was a question mark over whether the service might continue post March 2023 due to funding. The claimant was fully aware of the position.

22. The claimant was managed by Chris Barrow, Service Manager COVID Support Service, and worked with Adele Clarke, Long COVID Nurse Co-ordinator, as part of a new team referred to as Covid Support Service that included Covid 19 vaccination service and Long Covid Service.

23. Megan Roberts commenced her employment before the claimant, and was employed on a fixed term contract expiring 31 March 2023 as the Deputy Service Manager COVID Support Service for the vaccination service. The claimant was the deputy service manager for the Long Covid service. In or around mid-2022 Megan Roberts and the claimant jointly acted as deputies in the Covid Support Service as a whole, and were undertaking the same role by that stage and sharing duties. The claimant was concerned because she could envisage that there was insufficient work for both in the Covid Support Service, which was changing as her sister-in-law Marie Garner was no longer in charge by the summer of 2022, and Hilary Stenningss was seconded to head the department. It is evident that the claimant had a close relationship with Marie Garner and part of her duties included line managing her nephew who also worked in Covid Support Service, unknowingly in breach of the

respondent's procedures. The WhatsApp exchange underline the inappropriate relationship which was not that of manager and employee between the claimant and Marie Garner. The Tribunal found communications between the claimant and Marie Garner set out in the bundle were not ones that one would expect between head of contracts and an employee, and were more akin to communications exchanged between close relatives and friends; for example, when discussing Chris Barrow he is described as a "f…ing prick" and "f…ing cretin" and "is everyone in the NHS as slippery as him."

24. By September 2022, the claimant had discussions with Chris Barrow because her perception was that Megan Roberts was being favoured over her as far as work allocation was concerned, and there was insufficient work for them both. Marie Garner was formally replaced by Hilary Stennings in October 2022. There was issues with the claimant manging her nephew, which the claimant was unhappy about when she no longer line managed him as a result of Chris Barrow finding out that it was in breach of policy as relatives should not line manage each other. The claimant threatened to resign because of the changes.

The 12 September 2022 email to Chris Barrow

25. The claimant sent an email on 12 September 2022 to Chris Barrow stating "just to ensure transparency, the email I sent to HR threatening to resign, giving the reason as "numerous…**the easiest to explain it that there simply isn't enough work within the department for me to continue**…I'm not used to not having very much to do and it doesn't sit right with me to be earning all of this money and not doing anything to warrant it, having been so busy in very busy in previous roles." Reference was made to accrued holiday and final pay payable to the claimant on her resignation.

26. In the same email the claimant made it clear to Chris Barrow" **I genuinely really like every single person within the team (including yourself obviously…) I have seen so many examples where you have shown such a kind considerate and compassionate side to your character with myself and also with other members of the team too).** This is not about whether I like the team or not…I actually happened to think that we have an excellent team filled with really lovely people and **that we are just in a bit of an unfortunate situation.** As I said on Friday I feel that this is all about the team knowing in the back of their minds that there isn't enough work going forward and almost like being in a fight or flight mode…**I said weeks ago that I knew that there wasn't enough work going forward (especially as the vaccination service dwindles down) and that before it got to the point of competing with any other team members I would walk away from the role**. I stand by this whatever my thoughts on the service itself and how strongly I feel that I wanted to excel and to grow. **Competing for a role doesn't interest me in the slightest. I wouldn't ever want to put myself of anyone else in the team through that stress**" (the Tribunal's emphasis). The claimant's email sent on the 12 September 2022 undermined her evidence that Chris Barrow had behaved as she alleged in the FTSU complaint (see below) and so the Tribunal found.

27. The claimant discussed the position of the department with Chris Barrow in early September 2022, and emailed him on the 14 September 2022 "Further to our conversation this morning and some reflection on my part given the changes that you

have discussed bringing in and that I will hopefully feel more included, I have decided that I won't be putting forward a resignation and giving my notice period at this time. **Instead as long as the changes that are coming in work as intended I plan on seeking my contract out until the end of the FTC (or longer if extended and there is still a position to me at the time**" (the Tribunal's emphasis). The Tribunal concluded that the claimant, contrary to the less than credible evidence she gave in cross-examination, was fully aware the fixed term contract was to end, and there was no guarantee of an extension. It is notable that the claimant made no mention of her alleged conversation with Marie Garner that the contract would be extended, and the Tribunal concluded on the balance of probabilities that she was not told her contract would be extended beyond the 31 March 2023.

Freedom To Speak Up report 14 October 2022 disclosure.

28. On the 14 October 2022, the claimant submitted a Freedom to Speak report which she relies on as a protected disclosure.

29. The document runs to 10-pages of complaints including a reference to her realisation that "there was not going to be enough work to sustain both a manager and deputy manager role for a longer period."

30. The claimant complained that Megan Roberts seemed to be preferred by Chris Barrow. In oral evidence the claimant referred to one example of bullying by Chris Barrow which was also set out in detail by her in the FTSU report. She alleged there was a staff meeting, the telephone rang for Chris Barrow which the claimant answered telling him the call was for him. Chris Barlow said under his breath but loud enough for the claimant to hear said "Can't SHE just take a message" accentuating the "SHE." In later emails sent to the respondent the claimant referred to Chris Barlow's behaviour as "muttering." The claimant acknowledged in the FTSU report the "I realise that **half of this sounds very over dramatic or that I am hyping the situation up to be something it's not…its numerous small looks or single word/single line comments that wouldn't really make anyone bat an eyelid if they were a one off**…**I feel that it is definite that it will be orchestrated so that there will be no role for me come March and I take that very personally** (not the fact there will be no role but the fact that so much work is going into making me surplus to requirements…**all I know for definite that all of this is making me ill**…I **don't want this to continue in the meantime or for it to happen to anybody else involved with this team**" (the Tribunal's email). The main thrust of her 10-page report was her concern that her fixed term contract would be brought to an end, and this accords with her concerns expressed earlier in September when she threatened to resign because there was insufficient work and she did not want to compete with any other team member.

31. In oral evidence the claimant confirmed she was the only one allegedly being treated this way, and she was not complaining about the way anyone else was being treated. The claimant's evidence was that she did not have in mind she was making a protected disclosure, despite the reference to protected disclosures in the Policy document. The claimant acknowledged to the Tribunal "it does sound petty, a lot of the small things, it was a combination of small things…I understand how daft it sounds…small moments that were regularly happening that do sound really

petty…Yes, my experience is all about me. Yes, not complaining on behalf of anybody else, yes it's just about me." In this respect the claimant was giving truthful evidence and the Tribunal concluded that at the time she completed the FTSU report her concerns were for her own employment rights and whether her contract would exist beyond 31 March 2023, and despite the reference to not wanting this to happen to other members of the team, she had not one else in mind and nor did she believe the health or safety of any individual has been, is being or is likely to be endangered under S.43B(1)(d) other than in the context of her dissatisfaction with the department and its impact on her health.

32. On the 14 October 2022, the claimant copied in to Hilary Stennings and HR an email to Chris Barrow requesting an opportunity to meet both to discuss her concerns.

33. The claimant's FTSU report was acknowledged by Jane Hurst, who suggested a facilitated conversation and mediation and "if this doesn't work you might want to look at other HR policies."

34. The claimant was signed off with stress at work until the 31 October 2022. During this period emails were exchanged concerning arranging a date for the claimant to meet up with Stephanie Ward and Hilary Stennings. The claimant was essentially seeking redeployment into another department. Stephanie Ward made it clear in her email sent to the claimant on the 8 November that "really we need to try and resolve this issue as redeployment wouldn't be something to consider at this stage" and the meeting with the claimant was to be rearranged "**in order to start to understand the concerns you have in detail**" [the Tribunal's emphasis]. The claimant emailed Stephanie Ward on the 8 November 2022 referring the FTSU report unsure whether it had been shared with her, confirming her consent for it to be "shared."

35. As of 25 October 2022 the claimant had declined an offer of a meeting as she did not think she was "in the best place to attend a formal meeting." The claimant remained absent and was signed off with stress at work until 14 November 2022.

Detriment 1: Ms Stennings did not take the claimant's concerns about bullying seriously at the 14 November 2022 meeting.

36. The claimant, Hilary Stennings and Stephanie Ward met on the 14 November 2022. Prior to the meeting the claimant sent Stephanie Ward an email setting out additional concerns that are not relevant to the issues to be decided by the Tribunal, the claimant having confirmed both at the preliminary hearing and at the liability hearing that the email dated 14 November 2022 sent at 09.27 was not disclosure she relied on. At the meeting, the claimant produced approximately 20 documents, including the 10-page FTSU report and she was invited to set out all of her concerns, which she did and they are set out in a contemporaneous record. The claimant confirmed her reluctance to go through mediation and it was agreed that Chris Barrow would no longer line manage her, and she would be managed by another manager as requested by the claimant. The Tribunal does not accept the claimant's evidence that Hilary Stennings did not take her concerns about bullying seriously, and found the claimant's evidence to be less than credible on this issue. The claimant objected to Chris Barrow line managing her, Hilary Stennings listened to her objections and made

the necessary changes which in itself is an indication that the claimant's concerns about Chris Barrow were taken seriously.

37. The fact that Hilary Stennings wished to take the opportunity to explore the possibility of mediation between the claimant and Chris Barrow, the only lime manager in a small team, was not causally linked to the claimant raising disclosures in a FTSU report, but an attempt to resolve the situation described by the claimant herself as "over dramatic…hyping the situation up to be something it's not…its numerous small looks or single word/single line comments that wouldn't really make anyone bat an eyelid if they were a one off…" Taking into account the Tribunal's analysis of Hilary Stennings' conscious and subconscious mental processes it found as a matter of fact that the disclosure did not influence her treatment of the claimant in any way. Hilary Stennings was following procedure, and took the view that mediation was a possible way forward. The fact that she took this view did not reflect the claimant's concerns were not taken seriously, quite the reverse as a mediation meeting between manager and line manager is an important step in workplace disputes that often resolves issues to the benefit of both parties.

38. On the 15 November 2022, the claimant was signed off unfit to work until 13 December 2022.

39. In an email sent on the 15 November 2022 Stephanie Ward sent the claimant information on mediation including a leaflet, making it clear that once she had made her decision "we can start to plan your next steps in hopefully resolving the concerns you have."

40. On the 16 November 2023, the claimant emailed Jane Hurst stating "I have never whistle-blower before or raised any type of workplace grievance." The claimant complained that the 14 November 2022 meeting "didn't go so well…it was just apparent that there had been an explanation cobbled together for the things I had brought up." The claimant did not complain that Hilary Stennings had not taken her concerns about bullying seriously. She did ask for redeployment stating if it was not an option she should be paid in full whilst absent until the end of her contractual term on 31 March 2022. In oral evidence the claimant confirmed she had not whistle-blown and did not understand what whistleblowing was until the case management discussion, a statement which underlined her lack of credibility given FTSU report in response to the procedure provides a legal definition, and the contents of her email specifically referring to whistleblowing. The Tribunal noted that the claimant referred to Hilary Stennings and Stephanie Ward "cobbling" an explanation together, when the reality was that the aim of the 14 November 2022 was to understand the claimant's concerns and not provide an explanation on behalf of the respondent, which they did not put forward. The Tribunal concluded the claimant was prepared to use any argument with no factual basis as the means by which her concerns regarding the expiry of her fixed term contract and there being insufficient work in the department was resolved in her favour which included redeployment into another department within the respondent without any competition, or paying her in full whilst she remained off work at home until expiry of the fixed term contract.

41. On the 18 November 2022 the claimant lodged a Resolving Workplace Issues form (a grievance) to which she attached her FTSU report, the outcome sought was

full pay until the expiry of her fixed term contract without coming in to work. It was at this point the claimant alleged (for the first time) that she was not believed by Hilary Stennings, false allegations would be made against her, she would be facing a "false formal interview upon my return" and subjected to discrimination for making a FTSU report. The claimant complained that "I am not wanted or valued in the NHS." The Tribunal found that the claimant raised the complaints as a lever for a settlement whereby she did not have to return to work, bearing in mind she had one meeting with Hilary Stennings previously described by the claimant in the 16 November 2022 email to Jane Hurst as "not unpleasant, they weren't nasty with me or anything" at the start of the process, before Hilary Jennings had the opportunity to read the claimant's documents and before any investigation had taken place.

42. Hilary Stennings emailed the claimant on the 28 November 2022 summarising the issues reported by the claimant including the "muttering" comment by Chris Barrow "Can't she take a message," Adele Clerk allegedly commenting about the claimant's weight, and concern with the management structure relating to her managing her nephew and his transfer to comply with the respondent's policy by Chris Barrow. It was recorded that mediation was offered, and another senior manager, who was named, identified to support the claimant replacing Chris Barrow, and the position concerning redeployment which is the respondent would seek to resolve the concerns first. However, Hilary Stennings confirmed that the claimant could be transferred to therapies on a temporary basis until the investigation was complete, and that an investigation would commence. The email of 28 November 2022 reflects Hilary Stennings had taken the claimant's concerns seriously, listened to those concerns and acted upon them pending an investigation.

43. It is undisputed the claimant took up the offer of redeployment on 16 January 2023, which she was loath to accept and so the Tribunal found. The respondent refused to agree that she could remain off work in receipt of full pay and she was managed by another senior manager during her sickness absence, having no dealings with Chris Barrow.

44. The new senior manager had a welfare meeting with the claimant on the 30 November 2022 and she was referred to occupational health. At that meeting the claimant was informed that once an investigator was appointed she would be invited to attend a meeting and "raise her concerns and complaints." The position was confirmed in a letter dated 30 November 2023 and the claimant informed HR confirmed an investigating officer "is being appointed".

45. In a WhatsApp message exchange with Marie Garnett the claimant referred to the fact that she was "extremely unhappy and that our HR process is shit" stating she was prepared to discuss the "protected disclosure as part of my investigation interview, a clear reference to the FTSU report which undermines the claimant's evidence at this hearing that she knew nothing about whistleblowing until the preliminary hearing dealing with case management.

46. On the 28 November 2022, the claimant contacted ACAS with a view to issuing these proceedings. However, the ET1 and Grounds of Complaint were not presented until 4 June 2023, outside the statutory time limit for detriment number 1 alleged to have occurred on the 14 November 2022, over 6 months past.

47. On the 29 November 2022, the claimant emailed the respondent stating she was still signed off work due to stress, "I haven't accepted or declined redeployment…I know that if I admit my whistleblowing for further interviews or applications, it will not necessarily be viewed favourably. Ultimately I don't feel there is any place for me within the NHS and I will be forced to leave" proposing a settlement, referring to having less than 2 years employment and the Employment Tribunal. The respondent had not said or done anything to suggest that the FTSU report would result in the claimant being unsuccessful were she to apply for internal roles, and that she would be forced to leave. The reality was the claimant had been offered the redeployment she had been outwardly seeking, when her intention was to be paid her salary without being required to work, before the expiry of the fixed term contract, and so the Tribunal found on the evidence before it.

48. In an occupational report dated 5 December 2022 the occupational health physician confirmed he had been told by the claimant that a formal investigation was planned with regard to her work situation and issues, and there was no medical reason to consider the claimant unfit for work and she was fit to attend meetings.

49. On the 14 December 2022 Diane Plaat, the grievance investigating officer, wrote to Adele Clark and Chris Barlow about the claimant's complaint. On the same date Hilary Stennings wrote to the claimant with reference to her grievance confirming she was the "commissioning manager for this matter and will be overseeing the progress of the investigation." The claimant was informed Diane Platt was the appointed investigating officer and she would "shortly" be invited to attend a meeting. Hilary Stennings wrote; "on completion of the investigation the investigating officer will provide me with a copy of their findings at which point I will carry out a full review and consider any outcome to the concerns you have raised. I will communicate the outcome to you in writing." The dates or times for compliance were set out. By this stage, the claimant was fully aware that Hilary Stennings had made no decision, there was to be an investigation into her grievance by an independent manager to which the claimant had no objection, and her allegation before this Tribunal that her concerns about bullying were not taken seriously were undermined by the factual matrix.

50. The claimant returned to work on the 16 January 2023 having agreed the redeployment in the Therapies department.

<u>30 January 2023 Claimant's investigatory meeting</u>

51. The claimant attended an investigatory meeting on the 30 January 2023. The notes of the meeting ran to 8-pages and their content is undisputed. The claimant confirmed her view that there were "too many people" in her department, "you don't need a manager and 2 deputies…**so I was prepared not to be there – don't think the role was necessary. And I said I would not compete with anyone for roles**" [The Tribunal's emphasis]. This was the nub of the claimant's case and her concerns about her employment.

52. The Integrated Care Board who had provided funding for the claimant's role confirmed to the respondent that it would make available funds with a 8.9% reduction across the board to the Covid Support Service for a further 12 months at the end of

February 2023. Chris Barrow and Hilary Stennings decided two deputy service managers were not required as there was insufficient work and that administrative band 3 roles would be downgraded to band 2. The claimant and Megan Roberts were informed of this and the requirement for interviews as part of a formal recruitment process.

53. The claimant emailed Hilary Stennings on the 23 February 2023 pointing out (in direct contrast to her evidence before the Tribunal) that there was no guarantee "my FTC would have been extended anywhere," there should be consultation and "would my future with the NHS depend on the outcome of the complaint I raised? I have started looking for/applying for jobs as discussed a few weeks ago as **I am starting to get a little worried about potentially being left without a job at the end of March which I know was always the risk anyway** with going from a permanent role to the FTC contract role that I applied for/accepted with the NHS **so it's not a shock to the system that I could perhaps be out of a job altogether by the end of March**" [the Tribunal's emphasis].

54. On the 23 February 2023, the claimant was formally invited to a meeting to discuss the upcoming end of her fixed term contract on 31 March 2023, as was Megan Roberts whose contract was also ending at the same time. Both were advised their contracts would terminate on the 31 March 2023 and they could be placed on the redeployment register prior to the termination date. Both received identical letters dated 7 March 2023 confirming the position.

55. In an email dated 14 March 2023 the claimant confirmed she had been offered a new role (outside the NHS), would not be applying for the role of deputy service manager and she would not be going on the redeployment register.

56. In direct contrast to the claimant Megan Roberts applied for and as the only applicant, was successful in her application with the result she commenced a further 12 month fixed term contract in the role of deputy service manager.

57. At the liability hearing the claimant attempted to argue that she should have automatically been assigned to the position of deputy service manager on the basis that she had been interviewed for the role originally, when Megan Robert's had been interviewed for the vaccinations role before she held the exact same position as the claimant when they were both carrying out the same duties. The client was unable to point to any policy whereby the respondent was required to forgo any recruitment process in such circumstances, and the Tribunal took the view that the respondent's decision to invite both the claimant and Megan Robert's to apply for the role with no predetermined outcome, was totally unconnected to her disclosure. The claimant was aware at the time that the respondent only needed one deputy service manager, there was not enough work for two and reducing the roles down from two to one was the only step taking into account the financial position and the public purse.

<u>Detriment 2</u> -The respondent deliberately delayed making a decision on her grievance, thinking that the claimant would give up once her fixed-term contract had come to an end.

58. The claimant did not dispute the respondent's evidence that her grievance investigation took place during a busy time for the respondent due to the pressures of wintertime admissions of patients. During this period Diane Platt, who worked as a clinician and was the investigating officer, interviewed the claimant. Chris Barrow (on 23 February 2023), Adele Clerk on the same date and five additional witnesses, the last being on 6 March 2023. The report ran to 54 pages and it is apparent from the email exchanges that the statements taken from the individuals was sent back to them to check, which took time. The Tribunal accepted the explanation given by Hilary Stennings that if there was any delay, it was down to workload, absences and time it took to gather the evidence. The Tribunal found on the balance of probabilities that there was no causal link between the claimant's FTSU report followed by her grievance, and the time it took for the final report to be sent to the claimant. It is notable that the claimant does not allege Diane Platt intentionally delayed the report because she had made protected disclosures, and she was unable to say on cross-examination who from the respondent had deliberately delayed making a decision and sending it to her on this basis. The claimant does not allege that Hilary Stennings deliberately delayed the report. The Tribunal is aware from its own experience of organisations, including the NHS, that investigations can take time, and often do, especially if there are a number of witnesses involved, allegations covering 10-pages and another email that included, in the claimant's own words, "small matters" but cumulatively amounted to bullying in addition to a substantial amount of documents, which was the case here. There is no satisfactory evidence before the Tribunal that the respondent delayed making a decision on her grievance, thinking that the claimant would give up once her fixed-term contract had ended, and it found that it had not. By the 14 March 2024, the claimant had made it clear she had found another job, on 31 March 2023 the claimant's fixed term contract had ended and she was no longer an employee. Nevertheless, the investigation continued until the outcome was sent to the claimant on the 16 June 2023.

59. The investigation report confirmed that there had been no bullying and harassment. All the employees who were spoken to as part of the investigation did not support the claimant's version of events. Diane Platt concluded the claimant was upset by the structure that would resolve the issue around family members and hierarchical relationships, she could have benefitted from a 1-2-1 discussion about the decision to restructure including when her nephew was moved from the claimant's line of supervision to comply with policy. It was confirmed a formal disciplinary hearing should not follow.

60. The outcome was sent to the claimant on the 16 June 2023 after toing and froing about the report between a number of individuals from early May 2023 until the claimant was sent her copy. There was no satisfactory evidence whatsoever that the time it took to check over and finalise the report after the investigation had been completed including witnesses confirming the contents of their witness statement, was causally connected in any way to the disclosure. The claimant had left the business with an 8 week payment in lieu of notice on 31 March 2023, and yet the respondent continued to carefully deal with her grievance, covering the complaints that she had

raised, and provided her with a substantial report reflecting an objective arm's length investigation untainted by any retribution for the claimant making the disclosure.

The law

Disclosure of information

61. Section 43B ERA defines a qualifying disclosure as 'any disclosure of information' relating to one of the specified categories of relevant failure. What amounts to a 'disclosure of information' for the purposes of S.43B was explored by the EAT in the well-known case of Cavendish Munro Professional Risks Management Ltd v Geduld *2010 ICR 325, EAT*. The EAT noted the lack of any previous appellate authority on the meaning of 'disclosure of information', and observed that S.43F, which concerns disclosure to a prescribed person drawing a distinction between 'information' and the making of an 'allegation'. In its view, the ordinary meaning of giving 'information' is 'conveying facts.' The solicitor's letter had not conveyed any facts; it simply expressed dissatisfaction with G's treatment. For that reason, it did not amount to a disclosure of information and could not be a protected disclosure.

62. In the equally well-known case of Kilraine v London Borough of Wandsworth *2018 ICR 1850, CA*, the Court of Appeal held that 'information' in the context of S.43B is capable of covering statements which might also be characterised as allegations. Thus, 'information' and 'allegation' are not mutually exclusive categories of communication — rather, the key point to take away from Cavendish Munro (above) was that a statement which is general and devoid of specific factual content cannot be said to be a disclosure of information tending to show a relevant failure. The Court in Kilraine endorsed observations made by Mr Justice Langstaff when that case was before the EAT — Kilraine v London Borough *of Wandsworth 2016 IRLR 422, EAT* — that 'the dichotomy between "information" and "allegation" is not one that is made by the statute itself' and that 'it would be a pity if tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggest that very often information and allegation are intertwined.'

63. The Court of Appeal in Kilraine went on to stress that the word 'information' in S.43B(1) has to be read with the qualifying phrase 'tends to show' — i.e. the worker must reasonably believe that the information 'tends to show' that one of the relevant failures has occurred, is occurring or is likely to occur. Accordingly, for a statement or disclosure to be a qualifying disclosure, it must have sufficient factual content to be capable of tending to show one of the matters listed in S.43B(1)(a)–(f). It is a question that is likely to be closely aligned with the issue of whether the worker making the disclosure had the reasonable belief that the information he or she disclosed tends to show one of the six relevant failures. Furthermore, as explained by Lord Justice Underhill in Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) 2018 ICR 731, CA, this has both a subjective and an objective element. If the worker subjectively believes that the information he or she discloses does tend to show one of the listed matters, and the statement or disclosure he or she makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his or her belief will be a reasonable belief.

64. Ms Kight submitted that to fall within the definition of a protected disclosure a disclosure of information conveying facts is required and a bare allegation of wrongdoing is insufficient relying on Cavendish Munro above.

65. In relation to the issue of "reasonable belief" Ms Kight referred the Tribunal to in Korashi v Abertawe Bro Morgannwy University Local Health Board [2012] IRLR 4, EAT. HHJ McMullan QC explained at paragraph 62 that **"in our judgment what is reasonable in s43B involves of course an objective standard - that is the whole point of the use of the adjective reasonable – and its application to the personal circumstances of the discloser."**

66. Ms Kight also referred to the likely relevant factors when identifying whether a disclosure was made in the public interest as listed in Chesterton above:

(i) The **numbers in the group** whose interests the disclosure served;
(ii) The **nature of the interests** affected and the extent to which they are affected by the wrongdoing disclosed;
(iii) The **nature of the wrongdoing** disclosed; and
(iv) The **identity of the alleged wrongdoer**.

67. In Ms Unsworth's case the Tribunal took the view that she succeeded on both the subjective and objective element in that she did subjectively believed that the disclosures tended to show her health or safety has been, is being or is likely to be endangered — S.43B(1)(d) because she was under stress. Ms Kight referred the Tribunal to the EAT judgment in Fincham v HM Prison Service EAT 0925/01 at paragraph 30 Mr Justice Elias stated *"We found it impossible to see how a statement that says in terms "I am under pressure an stress" is anything other than a statement that [the employee's] health and safety is being or at least is likely to be endangered…[That] is not a matter which can take its gloss from the particular context in which the statement is made."*

Automatic unfair dismissal

68. 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 *Fecitt and ors v NHS Manchester (Public Concern at Work intervening) 2012 ICR 372, CA*, 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.

Detriment

69. In the key case of Chief Constable of West Yorkshire Police v Khan [2001] 1 WLR the term "detriment" 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*."

70. In the well-known cases of 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'…*"

71. The Tribunal took the view that a dismissal can give rise to a detriment, as can a failure to take concerns about bullying seriously and deliberately delaying a grievance outcome thinking the claimant would give up once her fixed term contract had ended.

Causation

72. The burden of proof to show that the ground or reason for detrimental treatment to which he or she is subject is a protected disclosure he or she made is on the claimant – International Petroleum Ltd & Ors v Osipov & Ors [2017] 7 WLUK 424. The claimant Ms Unsworth has failed to discharge the burden of proof and so found the Tribunal.

73. Ms Kight submitted that the words "subjected to" are words of causation; they encompass direct acts done to the employee and deliberate failures to act, but do not extend so far as to **failure to fulfil an expectation** that the employer would behave in a particular way – *Abertawe Bro Morgannwg University Health Board v Dr M Ferguson [2013] ICR 1108. These cases say failing to fulfil an individual's expectation is not the means of satisfying the burden of proof and if I had not made the PID none of this would have happened. Without something more to demonstrate the causative link is not enough for the burden of proof to be met.*

74. In the well-known case of Fecitt(above) 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.

75. As the legal test is whether the protected disclosure materially (in the sense of more than trivially) influenced the respondent's treatment of the claimant as a whistle-blower, it involves an analysis of the mental processes (conscious or unconscious) of the relevant decision makers; Ms Stennings in relation to the 14 November 2022 meeting and non-renewal of the claimant's contract, and according to the claimant's evidence unknown person(s) in relation to deliberately delaying the grievance outcome. The Tribunal has analysed the conscious and subconscious decision making process of Ms Stennings in relation to detriment allegation 1and 2 in addition to the unfair dismissal, as she was in charge of the grievance hearing although not the investigation itself.

76. Ms Kight reminded the Tribunal that is not sufficient to demonstrate that "but for" the disclosure, the employer's act or omission would not have taken place – Chief Constable of Greater Manchester Police v Paul Bailey [2017] EWCA Civ 425.

Detriment claims: time limits

77. **Section 48(3)(a) ERA 1996:** *An [employment tribunal] shall not consider a complaint under this section unless it is presented—*

a. before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

b. within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

78. The relevant test in respect of securing an extension of time is whether it was "reasonably practicable."

Conclusion : applying the law to the facts

PROTECTED DISCLOSURE

79. It is accepted that the claimant submitted a complaint on 14 October 2022 which contained information relating to the actions of CB and AC, which the claimant alleged amounted to bullying **[93-108]**. The issue for the Tribunal is whether that complaint amounted to a protected disclosure, and the Tribunal found that it did not.

80. With reference to the first and second issue (a) and (b), namely, did the claimant believe that the information in the email tended to show that her health and safety was being or had been put in danger, the respondent accepts there was a reasonable belief on the part of the claimant that the conduct about which she complained tended to show that it was a danger to her health and safety, relying on Fincham (above). The

Tribunal agreed. The claimant held a reasonable belief that the changes made in the department, including taking the line management responsibility of her nephew from her, pointed to there being insufficient work for two deputy service managers even if funding was in place, and she felt under so much pressure by this that she threatened to resign rather than compete with Megan Roberts, the other deputy service manager, and she was signed off with stress at work.

81. With reference to the third issue, namely, did the claimant believe that she was making the disclosure in the public interest, the Tribunal found she did not applying the factors set out in Chesterton (above) and applying the test of "reasonable belief" in Korashi:

81.1 The numbers in the group whose interests the disclosure served; the claimant confirmed in oral evidence that she was not complaining about how anybody else was being treated, she did not have in mind that she was making a protected disclosure at the time and the employment issues she complained about were personal to her and nobody else. It is notable that when the claimant completed the FTSU report she had access to the statutory definition in Appendix B which defined a protected disclosure and where an employee could seek independent advice i.e. from "Protect" with a hyperlink, or legal representative.

81.2 The **nature of the interests** affected and the extent to which they are affected by the wrongdoing disclosed; the claimant seeks to rely on the reference at the bottom of the FTSU report to ""I don't want this to continue in the meantime or for it to happen to anybody else involved with this team" as evidence that other people were affected. The factual matrix did not support such an interpretation, and inserting a bland vague statement is insufficient to demonstrate the disclosure was made in the public interest when the reality was that the claimant was complaining about her two colleagues and the changes made in the department that affected her. The Tribunal preferred Ms Kight's submission that this was not a disclosure the claimant reasonably believed was in the public interest and fell squarely in to the realm of a private employment dispute where the alleged breach was personal to the claimant with no wider public interest implications.

81.3 The **nature of the wrongdoing** disclosed; and identity of the alleged wrongdoer; Ms Kight submitted that the claimant was relying on an accumulation of issues concerning Chris Barrow's management and behaviour of Adele Clarke. Ms Kight reminded the Tribunal of the claimant's description of her complaints as "neither of these things sound too bad really," "maybe quite a petty point" "something else that sounds petty," "I realise that half of this sounds very over-dramatic" but which cumulatively she said in evidence "made her feel quite poorly" and described in a later email on 8 November 2022 as "bullying." There was no reference to bullying in the FTSU report. The Tribunal's factual matrix reflects this evidence, and it agrees with Ms Kight the wrongdoing was not of a type that might obviously be observed as something which objectively speaking, even taking into account claimant's personal circumstances, could reasonably be considered to be in the public interest.

82. If the Tribunal is wrong in concluding the FTSU report did not amount to a protected disclosure, in the alternative it reached the following conclusions on the automatic unfair dismissal claim and the two detriments alleged.

AUTOMATIC UNFAIR DISMISSAL

83. It is not disputed that the claimant was dismissed when her fixed-term contract expired. As the answer to 1 above is "yes" can the claimant prove that the fact of her making the disclosure was the sole or principal reason why the respondent did not renew her fixed-term contract, the Tribunal found it was not. The claimant was fully aware she was on a fixed term contract dependent on funding. She complained from the summer of 2022 when her sister-in-law Marie Garner was no longer in charge, about the changes in the department and her perception that there was not enough work for two deputy services managers making it clear that she did not want to compete for the role. The claimant was true to her word, and when she had the opportunity to apply for the one remaining deputy service manager position after some funding had been withdraw, it was her decision not to do so. The claimant took up a new position outside the respondent on the expiry of her fixed term contract, having taken part in consultation meeting on 7 March 2023 which followed an identical format to Megan Robert's who did apply and as the only applicant was successful. This is a distinguishing factor which was insurmountable for the claimant when it came to answering the question; what was the sole or principle reason why the respondent did not renew her fixed term contract. In short, the claimant took herself out of the selection process preferring to take up a position elsewhere, and refused to be put on the redeployment register.

84. Ms Stennings decided not to renew the fixed term contracts issued to the claimant and Megan Roberts, and both were treated equally. There is no satisfactory evidence that the claimant was promised an automatic extension by her sister-in-law and the Tribunal finds that this was not possible given the limitations of funding, and the claimant's evidence was not credible as recorded above in the note of the contemporaneous evidence reflecting the claimant was fully aware her fixed term contract was coming to an end. The non-renewal of the claimant's fixed term contract had no causal connection in any way to the FTSU report. S.103A ERA provides there may be more than one reason for a dismissal. In order for the claimant to succeed the 'principal' reason is that she made a protected disclosure. The principal reason is the reason that operated on Hilary Stennings' mind at the time of the dismissal — Abernethy (above). What operated on Hilary Stennings' mind has been set out in the findings of facts, it is a straightforward reason and the claimant, who did not have the qualifying service necessary to bring a claim for ordinary unfair dismissal, has failed to discharge the burden of showing the reason for the dismissal was because she had made a protected disclosure – Smith v Hayle [1978] IRLR 413).

85. The Tribunal's finding in relation to the automatic unfair dismissal that it was not a well-founded claim has implications on both detriment claims, which are out of time and for the reasons set out below, the Tribunal found it was reasonably practicable for the claimant to have presented her claim within the statutory time limit in respect of both detriment complaints, particularly the first complaint dated 14 November 2022

which was followed by ACAS early conciliation certificate dated 28 December 2022 which extended the limitation to the 27 March 2023.

86. The Tribunal has dealt with time limit issues in greater detail below, and in the alternative has dealt with the agreed issues in respect of the two detriments relied on following the agreed list of issues.

DETRIMENT

87. It is accepted that Ms Stennings decided not to renew the claimant's contract. Did the following acts happen:

a. Ms Stennings did not take the claimant's concerns about bullying seriously at the 14 November 2022 meeting, the Tribunal found, for the reasons set out above that the claimant's concerns were taken seriously, and were considered following a full investigation with the claimant being offered another manager, workplace mediation and redeployment into a different department, as part of the process. This claim fails at the first hurdle.

b. With reference to second alleged detriment, namely, did the respondent deliberately delay making a decision on the claimant's grievance beyond the 2-month timeframe, thinking that the claimant would give up once her fixed-term contract had ended, for the reasons stated above the Tribunal found it did not. There was a delay, however, a credible explanation has been given for this by the respondent's witnesses which is supported by the contemporaneous evidence. There was no satisfactory evidence apart from the claimant's suspicions, that someone other than Hilary Stennings, possibly an unknown person in HR, had deliberately delayed the grievance outcome in the hope that the claimant would no longer pursue it after she left. Given the factual matrix and the dates recorded above, the claimant's allegation has no basis. The reality is simple as opposed to a Machiavellian attempt aimed at extracting the respondent from investigating the claimant's grievance. There is no evidence of the respondent seeking to persuade the claimant to drop her grievance once she had left its employment, and the reality is that the investigation continued. It was a full investigation carried out objectively by a practitioner who had her own case load and during the relevant period the respondent was particularly business with patients who rightfully were given priority in comparison to the claimant's grievance described by the claimant herself as "petty…daft…a lot of small things…small moments that were regularly happening…" against a backdrop where the claimant felt unable to attend any meetings because she was not well enough to do so. It is notable that once occupational health confirmed in a report dated 5 December 2022 that the claimant was fit to work and attend meetings, 9-days later Diane Platt commended her investigation. Having reached this finding there is no requirement for the Tribunal to deal with the remaining issues relating to detriment and causation other than to record that there is no evidence whatsoever the time it took to complete the grievance investigation and outcome report was influenced by the fact that the claimant had made a protected disclosure.

JURISDICTION – TIME LIMITS

88. Have the claims reliant upon the alleged detriments at 3(a) and 3(b) been presented in time? As individual claims, it is accepted by both parties that neither was presented within the relevant 3-month limitation period.

Alleged detriment	**Primary limitation period end date**	**EC period**	**Extended limitation date allowing for EC/series**	**Date claim presented**
1: On 14 November 22 HS did not take C's concerns about bullying seriously	13.02.23	14.11.22-26.12.22	27.03.23 or 29.05.23 if linked to 2 or in time if similar to 3	04.06.23
2: Deliberate delay from 18 January 23 to determine C's grievance	17.04.23	23.04.23-04.06.23	29.05.23 if linked to 1 or in time if similar to 3	04.06.23
3: Decision not to renew fixed term contract	07.06.23	23.04.23-04.06.23	N/A – because claim submitted in primary limitation period	04.06.23

89. With reference to the issue, namely, are either or both of them, part of a series of similar acts the last such act being the decision not to renew the claimant's fixed term contract, the Tribunal found that they were not for the reasons stated above.

90. With reference to the issue, if so, was that last act well-founded, the Tribunal found it was not.

91. With reference to the issue, namely if not, was it reasonably practicable for the claimant to present those claims within the relevant 3-month limitation period, the Tribunal found that it was. Contrary to the claimant's submissions she was aware of her rights, having undergone Early ACAS Conciliation on the 28 November 2022 before the expiry of the time limit in relation to detriment 1. The claimant underwent early conciliation a second time on the 23 April 2023, after the expiry of the primary limitation period on 17 April 2023 in relation to detriment 2. It is not credible that the claimant, who made reference to the Employment Tribunal on the 29 November 2022 when proposing a settlement, was unaware of the time limits and if she could not understand her claims in full, discuss them with ACAS during the early conciliation and she had access to the internet where time limits are made noticeably clear.

92. In conclusion, 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. The claimant's claim of detriment brought under 47B of the Employment Rights Act 1996 presented on 4 June 2023 was not presented before the end of the

period of 3 months of 14 November 2022 in connection with alleged detriment 3(a) and 14 December 2022 in connection with alleged detriment 3(b). The Tribunal is satisfied that it was reasonably practicable for a complaint to be presented before the end of that period of 3 months and the complaint was not presented within such further period as the Tribunal considers reasonable. The Tribunal does not have the jurisdiction to consider the complaints, which are dismissed.

93. In the alterative, had the detriment claims been presented within the statutory time limit (which they were not) the Tribunal would have dismissed them on their merits having found (a) the FTSU complaint did not amount to a protected disclosure as it was not made in the public interest, and in the alterative had it been a protected disclosure either the detriments alleged by the claimant did not happen or in the alternative, the claimant has not discharged the burden of proving that the protected disclosure influenced the respondent's treatment of her. The claims are dismissed.

Employment Judge Shotter

6.3.24

JUDGMENT AND REASONS SENT TO THE PARTIES ON

19 March 2024

FOR THE SECRETARY OF THE TRIBUNALS