EMPLOYMENT TRIBUNALS

Claimant: Mr M Temperton

Respondent: Greater Manchester Mental Health NHS Foundation Trust

Heard at: Manchester **On:** 8 to 12 April 2024

Before: Employment Judge Holmes
Ms F Crane
Dr B Tirhol

Representatives
For the claimant: In person
For the respondent: Mr S Proffitt , Counsel (by CVP)

JUDGMENT AND ORDERS

It is the unanimous judgment of the Tribunal that:

1.The claimant is granted permission to amend his claims to add a further claim of detriment by reason of having made a protected disclosure, in being sent away from Priestners Ward and told to go to Golborne Ward on 16 October 2022;

2. On 14 October 2022 the claimant made a protected disclosure to Barbara Gogoma on 14 October 2022.

3. The claimant was subjected to the detriment on 21 October 2022 of having his booked and future shifts cancelled by reason of his having made that disclosure.

4. The claimant's remaining claims of protected disclosure detriment are dismissed. His claim of detriment by reason of the respondent failing on 16 November 2022 to carry out an interview with him , having being withdrawn by him, is dismissed on withdrawal.

5. The respondent did not on 16 October 2022 fail to make reasonable adjustments for the claimant's disability, and this claim is dismissed.

6. The claimant is entitled to a remedy. Remedy will determined at a further hearing to be held at Manchester on **12 July 2024** at 10.00 a.m., listed for one day. That hearing will be held in person, with the option , should it still be necessary, of the respondent's counsel joining again by CVP.

CASE MANAGEMENT ORDERS FOR REMEDY

7. The claimant shall by **10 May 2024** prepare and send to the respondent and the Tribunal (save for item (c) which is not to be) :

a) An updated schedule of loss;

b) A further witness statement relating to the issues on loss;

c) Any further documents , including any relevant medical records or other medical evidence to be relied upon in relation to the award for injury to feelings or for personal injury .

8. The respondent shall give disclosure of any documents relevant to the issues on remedy by **24 May 2024** by sending copies of the same to the claimant.

9. The respondent shall, if so advised, serve upon the claimant and send to the Tribunal any Counter Schedule of Loss by **31 May 2024**.

10. The respondent shall prepare and send to the claimant any witness statements relating to the issues on remedy by **14 June 2024**.

11. The respondent shall be responsible for the preparation of the remedy bundle, which is to be agreed and provided to the Tribunal by **28 June 2024**.

REASONS

This judgment is the Tribunal's final judgment on liability. It supersedes the Draft provided to the parties on 12 April 2024, from which it differs only in respect of minor typographical errors, and at paras. 13.16, 13.17 , 13.52 and 62, where text has been added. None of the changes affect the Tribunal's findings on the claims, which remain as in the Draft. At the end of the judgment there is also discussion of the remedy issues.

1.By a claim form presented on 23 November 2022 the claimant, who is not, and never has been during the proceedings, legally represented , brought claims of protected disclosure detriment, and disability discrimination. He also presented another claim form on 8 December 2022, in which he made the same claims, but added a claim of unfair dismissal.

2. The claims arise out of his engagement by the respondent as an agency nurse at its Atherleigh Park Hospital , in Leigh, Greater Manchester, in October 2022. The claimant made claims that he had made protected disclosures, for which he was subjected to detriments, and that the respondent failed to make reasonable adjustments for his disability.

3. The claimant's claim of unfair dismissal was withdrawn by him and was dismissed on 28 February 2023.

4. A preliminary hearing was held on 28 February 2023 before Employment Judge Porter at which the issues were identified, and case management orders made.

5. A List of Issues was attached to the record of the preliminary hearing , which was sent to the parties on 8 March 2023.

6. A number of the issues identified in that List of Issues have since ceased to be issues. In particular, disability has ceased to be an issue, the respondent conceding that the claimant was at the material times a person with a disability by reason of his conditions of multi-focal motor neuropathy and lupus. Further, whilst time limits were identified as being in issue in the List of Issues, the respondent takes no points on time limits.

7. The claims that were identified in the List of Issues therefore , as at the start of this hearing , were (renumbering the issues for the purposes of this hearing) :

A.Protected Disclosures:

1.The claimant claims that he made the following protected disclosures ("PDs"):

a. PD1 On 14 October 2022 to Barbara, the nurse in charge of the ward to which he had been assigned. He complained to her that putting a patient in seclusion due to staffing issues was a breach of the Code of Practice which they were required to observe. The complaint was verbal, witnessed by Peter, a support worker;

b. PD2 On 14 October 2022 to the doctor called to consider the claimant's objection the patient being placed in seclusion. The claimant explained to the doctor that putting a patient in seclusion due to staffing issues was a breach of the Code of Practice which they were required to observe. The complaint was verbal, witnessed by Peter, a support worker and Barbara, the nurse;

c. PD3 On 20 October 2022 the claimant informed Kirsty Chasmer of Blackstone's Agency about his concerns. He reported the incident which had occurred on 14 October 2022 and explained that he thought that the respondent was in breach of the Code of Practice. This was verbal, by telephone, following an email to the agency from the claimant, explaining that he wished to raise concerns about his work with the respondent;

d. PD4. On 21 October 2022 the claimant lodged a complaint with CQC using their online portal

2.Did the claimant disclose information?

3.Did the claimant believe the disclosure of information was made in the public interest?

4.Was that belief reasonable?

5. Did the claimant believe any such disclosure it tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation;

6. Was that belief reasonable?

7. If the claimant made a qualifying disclosure, was it made to the claimant's employer or who with reference to the relevant requirements of ERA sections 43C, 43D, 43E, 43F, 43G, or 43H

B.Detriments

1.The claimant asserted that he was subjected to the following detriment(s):

a. Cancelling all the claimant's future shifts;

b. On 16 November 2022 failing to conduct an interview arranged by the respondent at a different hospital (Bolton) for a Band 5 post

2.Did the claimant reasonably see that act or deliberate failure to act as subjecting him to a detriment

3.If so, was any detriment done on the ground that he made a protected disclosure?

8. Pausing there , whilst that was the position at the outset of the hearing, there were two developments at the start of the hearing. The first was that , having received the respondent's witness statements (which were late) and reviewed that of Nadia Coggin relating to the failure to carry out an interview with the claimant on 16 November 2022, the claimant accepted that this was not an act of retaliation for his having made any protected disclosure, and withdrew this claim of protected disclosure detriment.

9. The second was that the claimant made application to amend his claims to include as a claim of protected disclosure detriment his being sent away from Priestners Ward and being sent to Golborne Ward on 16 October 2022. Those matters already formed the basis of the claimant's one claim of disability discrimination, but he had not appreciated that he had not, and the Tribunal had not, expressly included this as an alternative claim arising out of those facts. The Tribunal , despite objection from the respondent, granted the application, for reasons given orally at the time. No application was made by the respondent as a result of the granting of the application.

10. The effect of the amendment , and the withdrawal, therefore was that there were two detriment claims before the Tribunal, namely:

The treatment of the claimant in not being admitted onto Priestners Ward, and being sent to Golborne Ward on 16 October 2022

The treatment of the claimant in his shifts being cancelled on 21 October 2022.

11. In terms of the disability discrimination claim, now that the respondent had conceded disability, the issues were:

C.Disability discrimination.

1. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? If so, from what date?

2. Did the respondent apply a provision, criterion or practice to the claimant of requiring the claimant to work on a ward classified as "In outbreak" (by reference to a presence of Covid 19 on the ward)

3. Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant 's disability, in that the claimant was categorised as being at high risk of exposure to Covid and was required to take steps to avoid infection, which would make him extremely ill?

4. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

12. The claimant gave evidence, but called no witnesses. The respondent called Dr Zuhair Imtiaz, Miss Jessica Burns, and Mrs Jeanette Mather. Witness statements from Barbara Gogoma and Anya Leadbetter were adduced from the respondent, but these witnesses were not called. Given the withdrawal of one of the detriment claims, the Tribunal did not receive or consider the witness statement of Nadia Coggin. There was an agreed bundle, and references to page numbers are to that bundle, to which some pages were added during the course of the hearing.

13. The parties made submissions, Mr Proffitt preparing written submissions, on 10 April 2024, which the claimant was able to consider, and he then made his also in writing on 11 April 2024. Having heard and read the evidence and the documents that were referred to, and considered the submissions made by each party, the Tribunal unanimously finds the following facts:

13.1 The claimant is a registered Mental Health Nurse. He is employed by the Priory Group as a Regulatory Inspector, and works for the CQC on an ad hoc basis, providing support to full – time inspectors. In or about May 2022 , however, he decided to seek additional work by registering with an agency, Blackstone Recruitment, for opportunities to work , part – time, and when available, for other healthcare employers.

13.2 As part of that process he completed a health questionnaire, a New Starter Clinical Form, (pages 283 to 285 of the bundle) for Blackstone. In it he answered "yes" in the box provided under the heading "Medical History" to the question did he have any illness, impairment, or disability which may affect his work. Having done so, he went on to provided further information in which he informed Blackstone of his diagnosis of MNN and Lupus. He went on to say that he had regular treatment at Walton Centre for Neurology, but was stable at present.

13.3 It is unclear whether that form was ever provided to the respondent, and, if so, who in that organisation would have seen it. Extracts from the respondent's computerised system at pages 286 to 291 of the bundle which appear to relate to the claimant (he is not named, but Blackstone Recruitment Ltd is, and his DBS number appears on page 289) simply record that he was "OH cleared" on 8 June 2022. Precisely what information was provided to the respondent about the claimant's health is unclear, but he was clearly passed as fit to work for the respondent.

13.4 Prior to agreeing to work any shifts the claimant had a conversation with Jordan Mullings of Blackstone's agency in which he sought assurances that he would not be required to work on any ward which was "In outbreak", that is, where one or more patient on the ward was suffering from Covid. Jordan Mullings spoke to the respondent, the claimant was told, and he went on to give the claimant that assurance that he would not be placed on wards in the respondent Trust that were in outbreak.

On that basis the claimant was reassured, and undertook his first shift for the respondent at Bolton Hospital on 16 June 2022.

13.5 On 31 August 2022 the claimant first worked on Atherleigh Park Hospital. The location in which he worked was the Priestners Unit (or Ward, the terms are used interchangeably), a Psychiatric Intensive Care Unit (or "ICU"). Kimberley (or Kim) Hall was, on occasion, perhaps not always, the Ward Manager, and the claimant was booked for and worked a number of night shifts, during September and October 2022. He was working around his other employment, and was expecting to be able to offer more availability when he was off work over Christmas.

13.6 The system through which bookings were made is the NHSP (NHS Professionals, a staffing resource) and Kim Hall and the claimant would use this . There was also some liaison between her and Kirsty Chasmer of Blackstone's when there were difficulties.

13.7 On 14 October 2022 the claimant was booked to work on the Priestners Unit , on a night shift. He was not actually on the rota, but was admitted when he attended , and started work. This was not unusual for the claimant and other agency staff.

13.8 A handover was conducted, as is normal practice, and the claimant was informed by a nurse that a patient was about to be received into the Unit, being brought in by the Police. He had previously been a patient on another ward or unit, but had absconded.

13.9 The only record of this patient's admission, and his management on the Unit , is at pages 306 to 308 of the bundle, which is a (being one of 288 such documents) Progress Note completed by Steven Curless at or around 02.45 on 15 October 2022.

13.10 The patient had been apprehended by the Police at 17.00 on 14 October 2022, but the time of his receipt onto the Priestners Unit is not recorded. It appears that he actually arrived around the time that the day shift was ending, and the night shift was starting. He was already in seclusion at the time that the day shift handed over to the night shift. The claimant was informed that this patient was to be placed immediately in seclusion. He was later told that this was a decision made by the day shift Ward Manager, who was Kim Hall.

13.11 The definition of "seclusion" in this context can be found in the extract from the Code of Practice issued under s.118 of the Mental Health Act 1983 at page 297 of the bundle. It is, in essence, a form of confinement for use with patients detained under the Mental Health Act, in specified circumstances. As is provided at para. 26.103 of the Code of Practice (page 297 of the bundle):

"Seclusion refers to the supervised confinement and isolation of a patient, away from other patients, in an area from which the patient is prevented from leaving, where it is of immediate necessity for the purpose of the containment of severe behavioural disturbance which is likely to cause harm to others."

And, at para. 26.107 (same page):

"Seclusion should not be used as a punishment or a threat, or because of a shortage of staff. It should not form part of a treatment programme."

13.12 A Nurse in Charge (a temporary assignment which could be given to any RGN , which the claimant had on occasion been, but was not on this occasion) has the authority to authorise seclusion, and to terminate it, but such a decision would normally be made by a multi-disciplinary team (MDT), and if not authorised by a psychiatrist, a medical review should be undertaken within one hour, nursing reviews should be carried out every two hours, and continuing medical reviews every 4 hours (para. 26.112 , page 299 of the bundle).

13.13 Having been informed of the seclusion, and told that the reason for it was staff shortage, the claimant discussed this with Nurse Barbara Gogoma, who was also an agency registered mental health nurse, and who was the Nurse in Charge at the time.

13.14 At the time of the claimant's shift on 14 October 2022, a Friday, Kim Hall was the day Ward Manager. It is unclear whether she was still present on the Unit. The decision to put the patient in seclusion had been taken by the day staff, under Kim Hall, and the claimant and Nurse Gogoma were presented with it when they took over on the night shift.

13.15 The claimant told Nurse Gogoma that he disagreed with the seclusion of the patient because of staff shortages, and that this was a breach of the Code of Practice, and the patient's rights. She shared his concerns, but did not agree to terminate the patient's seclusion.

13.16 She did raise the claimant's disagreement with the seclusion by asking Dr Imtiaz to review it. He did so, some time between midnight and 2.45 a.m. He had been made aware that the claimant had disagreed with the seclusion of the patient, and had said that if he had been allowed his mobile phone, and possibly other possessions, he would calm down, and the need for seclusion would cease.

13.17 Dr Imtiaz , unusually for him , asked the claimant to accompany him whilst he reviewed the patient in seclusion. They did not enter the seclusion room, but observed the patient from without.

13.18 The claimant did, the Tribunal is satisfied, repeat to Dr Imtiaz the disclosure that he had made to Nurse Gogoma that the seclusion was unjustified because it had been because of staffing levels.

13.19 By the time of the review the patient was very agitated , and was making threats. Dr Imtiaz considered that he should remain in seclusion, and the claimant agreed, given his presentation at that time. Dr Imtiaz recorded (or caused them to be, the entry appears to have been made by Steven Curless) his observations and the result of his review at around 2.45 that morning, and he gave directions for the continued management of the patient.

13.20 The claimant continued his work and completed his shift.

13.21 On 14 October 2022 there had been discussion about the staffing requirements, and in an email exchange that day (page 323 of the bundle) between Zara Oxley and Claire Pope , due to be the Ward Manager on Priestners the next day, in which she informed three recipients, including Jessica Burns that on Sunday night (16 October 2022) Priestners were sending an RMN to Golborne.

13.22 In terms of staffing requirements for the 5 Units which comprise Atherleigh Park Hospital , these were discussed in advance of each shift, and would form part of what was discussed in what were termed “Safety Huddles”. One was held on 14 October 2022 (pages 325 to 330 of the bundle). In that document it was recorded that Golborne had no RMN on Sunday night, which was identified as a potential staffing risk.

13.23 Whilst these huddles did not usually take place over a weekend, on 15 October 2022 one was held (see pages174 to 178 of the bundle) . Again reference is made to Golborne having no RMN on Sunday night in the “staffing risks” box. This time the note is added that Priestners were to send a second qualified to Golborne

13.24 There was thus a clear intention that on 16 October 2022, one of three RMNs nurses on Priestners would be surplus to requirements and one of them would be sent to Golborne Ward.

13.25 The claimant’s next shift on Priestners was on 16 October 2022, another night shift, which he due to start at 21.00 . He arrived in good time, but on arrival was admitted only into the “air lock” of the Unit. Priestners Unit, as did the other secure mental health units on site , had a two door entry system. The outer set of doors from the common parts required release from inside, unless the person seeking entry had the necessary security information or equipment to be able to admit themselves, which the claimant did not. Once through that set of doors, admission onto the Unit was gained through a further set of doors, which again had to be opened either from within the Unit, or with the necessary security arrangements. The claimant , therefore, in common with other agency staff, could not let himself onto any secure Unit.

13.26 On the Unit a nurse or support worker would be assigned the security duties, which would involve the admission of persons onto the Unit, and, on occasion, possibly escorting persons without such access into and out of the Unit. This was not a member of security staff, this was simply a task which was allocated to one of the nursing or support staff on a shift.

13.27 On the night of 16 October 2022 the claimant was admitted through the first set of doors on Priestners, but was told by the duty security nurse, that he was not on the rota for that shift. That was not unusual, and on other occasions when this had occurred, the claimant had been admitted and worked a shift.

13.28 On this occasion, however, he was told that he was not on the rota, and was not required. He was instead to present to Golborne Ward, where he was needed. This was conveyed to the claimant by the worker who had admitted him. The claimant was aware that there had been a Covid outbreak on this Ward, and he could not, accordingly work there. Jessica Burns was the Deputy Manager on duty that day on Priestners. There was no Ward Manager on the Unit that night , but from the document produced in the course of the hearing by Ms Burns (page 315 of the bundle) Ian Matthews was the on call Ward Manager that night, having been on site during the day. Jessica Burns was still on the Unit at the time of handover to the night staff. As Deputy Ward Manager Jessica Burns had no authority or involvement in the booking of agency staff, which could only be done by a Ward Manager.

13.35 The claimant asked to see the Deputy Manager, but was told that she was not available. He saw other staff arrive and be admitted whilst he was waiting.

13.36 Whilst it was unclear whether it was she who made the decision that of the three RMNs , it would be the claimant who was sent to Golborne, Jessica Burns probably did. If she did, she did so because there were three RMNs available to work on the Unit, two of whom, Lucia Enerbi and Barbara Gogoma had been working on Priestners for some time, and were more familiar with it. This would be the reason why she would have chosen the claimant as the person to send to Golborne.

13.37 Jessica Burns was not aware of the disclosures that the claimant had made to Barbara Gogoma and Dr Imtiaz on 14 October 2022 when the claimant was sent to Golborne. Kim Hall was not working on 16 October 2022, and Jessica Burns had no contact with her that day.

13.38 The claimant was accordingly escorted , by whom is not clear, to Golborne, the need for this being initially to release him from the Priestners security zone. The claimant had not previously worked on Golborne.

13.36 When the claimant arrived at Golborne, he was admitted through the first set of doors, into the “air lock” between the two sets of doors to the Unit. He informed someone from Golborne who came out to him that he could not work there because of his disability, and the agreement that was in place that he would not be asked to do so.

13.37 Whilst there was an attempt to contact the deputy manager on Golborne , the claimant was left alone in the “air lock” with no way in or out for some 30 minutes. Upon the return of a member of staff the claimant was not asked to come onto the ward, but was then let out, and left. He did not go back to Priestners, but went home.

13.38 The claimant , it is an agreed fact, was paid for the night shift for which he attended on 16 October 2022.

13.39 Thereafter , between 17 October and 20 October 2022 the claimant tried to contact Kim Hall without success. He left messages for her to call him. Whilst she was not working on 17 October 2022, she is recorded (pages 318 to 322 of the bundle) as being on internal training on 18 October 2022, and working as Ward Manager on 19, 20 and 21 October 2022.

13.40 On 20 October 2022 the claimant sent an email to Tasia Ode of Blackstone Recruitment (page 189 of the bundle). In it he said this:

“There was an issue on the Sunday. I was prevented from entering Priestners as I was told I was not booked.

*I was eventually sent to an (*sic) *ward classified as in outbreak (Covid).*

I informed them that I was not able to work as a ward classified as in outbreak as I visit care homes/vulnerable people in my current role.

I’m not sure if Jordan spoke to them regarding this and being clinically vulnerable myself as he assured me this was agreed.

After waiting outside the ward I was told they were getting the ward manager. Someone came out and said I’ll let you out.

Wasn't quite sure what was happening as I didn't get to speak to anyone else.

I also wasn't sure if this was related to concerns I had raised on the earlier shift."

13.41 The claimant later that day spoke to Amelia Toovey of Blackstone, but the precise details of what he said are unclear. He referred to the "issues" or his "concerns", but the Tribunal as no details of precisely what he said.

13.42 The claimant had not heard back from Kim Hall on 21 October 2022 when she sent an email, at 4.38 p.m.to Tasia Ode of Blackstone. This was in reply to an email she had sent earlier that day email asking that the claimant's shifts for the next week be added so that she could allocate them to him (page 191 of the bundle). This email chain was copied to the claimant . Kim Hall's email says:

"Unfortunately all Marks future shifts will have to be cancelled.

Apologies we have taken a staff member on for a block booking so all shifts are now covered."

13.43 The respondent has produced no documents demonstrating the block booking in question, and the member of staff referred to has not been identified.

13.44 On 21 October 2022 the claimant submitted a complaint to the CQC. He did so online, and has no copy or record of precisely when he did so, or of what he said. It is, the Tribunal considers, more likely than not that the respondent was not notified of the claimant's complaint to the CQC before Kim Hall's email to the claimant and Tasia Ode at 4.38p.m. that day.

13.45 Whilst the claimant has no record of precisely what he reported to the CQC the Tribunal accepts that it contained the information that he had disclosed to Barbara Gogoma and Dr Imtiaz on 14 October 2022 about the inappropriate seclusion of the patient on the Priestners Unit.

13.46 The CQC on 24 October 2022 contacted the respondent (pages 192 and 193 of the bundle) setting out what the claimant had reported to the CQC about the seclusion of a patient on 14 October 2022. In this email Kirsty McKennell of the CQC set out what the claimant had stated as follows:

" – The hand over nurse stated 'we are secluding as we are short staffed and another patient is moving [and] 'we don't have enough PMVA staff'

- The patient was brought in by the Police after a period of AWOL. The ward had no documentation or evidence of the Section 2.

- At the time of his arrival there was no hostility shown, no immediate threat to safety and no other risks highlighted.

- Concerns were raised with the ward staff and the ward manager about the reason for seclusion not being in line with the code of practice but this was ignored."

13.47 The email went on to seek a response from the respondent to three specific questions, which was required by 5.00 p.m. the following day.

13.48 The task of responding to the CQC was allocated to Jeantte Mather, a Matron. She carried out an investigation, but was unable to speak with Barbara Gogoma or Dr Imtiaz. She did speak with Kim Hall, and reviewed the electronic care records of the patient. Whilst she may have taken notes of her conversation with Kim Hall, Jeanette Mather did not retain them.

13.49 From her investigation Jeanette Mather formulated a response to the CQC. This is at pages 196 and 197 of the bundle, and is dated 25 October 2022. In short, she gave the reasons for the seclusion of the patient, which were his presentation and behaviour, and were not , she said, influenced by any staffing ratios.

13.50 The respondent heard no more from the CQC after this response.

13.51 The claimant on 24 October 2022 also raised a grievance at 11.57 (pages 311 and 312 of the bundle). He sent this to the respondent's Customer Care email address. In this document he set out again the disclosures that he had made to Barbara Gogoma and Dr Imtiaz, and to the CQC. He also went on to complain of his treatment on 16 October 2022, and the cancellation on 21 October 2022 of his shifts. He stated that he had been advised by ACAS , would be taking the matter to a Tribunal, and would e seeking compensation for whistleblowing and disability discrimination.

13.52 Jeanette Mather was also assigned to deal with the claimant's grievance. She did not interview him, or anyone else, save that she spoke again with Kim Hall. In particular she asked about whether she was aware of the claimant's health conditions, and she said that she was not. She told Mrs Matther that she was not working on 16 October 2022, and knew nothing about the claimant being sent to the Golborne ward. Kim Hall explained that she had cancelled the claimant's shifts when she found an agency nurse whose availability better met the needs of the ward, whom she booked to cover all of the necessary shifts. Kim Hall said that she was unaware that the claimant had raised whistleblowing concerns until 25 October 2022, when the CQC complaint had been brought to her attention.

13.53 Jeanette Mather wrote to the claimant on 19 December 2022, described as the "complaint outcome letter" (pages 205 to 208 of the bundle). In it she repeated much of what had been said in her response to the CQC. Whilst assuring the claimant that staffing was not the reason for the seclusion, which she agreed would not be in line with the code of practice, she appeared to accept that the claimant had raised concerns with Babara Gogoma, as she went on to say how her response in escalating the issue to the junior doctor would meet the Trust's expectations. She did not, however, specifically address the claimant's assertion that he raised his concerns with the junior doctor, but instead dealt with the reasons for the patient's continued seclusion.

13.54 Jeanette Mather went on to address the claimant's complaints about his treatment on 16 October 2022. She apologised for the poor experience that the claimant had, but denied that the Trust (she used the term "we") was aware of any disability or vulnerability. Had it been, alternative options as reasonable adjustments would have been explored. She refuted any suggestion that the claimant's treatment had been because he had made any concerns , as the ward manager was not aware that he had done so until some time later.

13.55 After explaining and apologising for the lack of response by Kim Hall to the claimant's attempts to speak to her, Jeanette Mather went on to address the reasons why the claimant's shifts were cancelled on 21 October 2022.

13.56 She set out Kim Hall's reasons for doing so, referring again to an unidentified staff member being offered regular shifts. In relation to the cancelling of the claimant's shifts in October and November , she stated that only one booked shift, on 11 November 2022 , had actually been cancelled. She cited as the reason for the cancellation of other bookings a reduction in the need for two registered nurses on the night shift, after the staffing needs had been reviewed.

13.57 Jeanette Mather made no reference to any future shifts, or the possibility of the claimant being able to return to work for the respondent in the future. Whilst she invited the claimant to contact her if she could assist him further with any matters, the claimant was offered no right of appeal.

14. Those then are the relevant facts. There has not been much dispute on the facts, and it has not been suggested that the claimant has been in any way less than truthful in his evidence, and the Tribunal is quite satisfied that he has been. The main issue has been whether the claimant made the same disclosure to Dr Imtiaz as he did to Barbara Gogoma, basically that the seclusion of the patient had been justified by the Ward Manager on the grounds of staff shortage. Whilst the claimant maintained that this was so, Dr Imtiaz said that it was not.

15. The Tribunal prefers the evidence of the claimant on this point. Firstly, the claimant has made this assertion from a very early stage. He made it in his grievance on 24 October 2022, and in his claim form , which he submitted on 23 November 2022. He made it in the preliminary hearing on 28 February 2023.

16. By contrast, it sems unlikely that Dr Imtiaz was specifically asked about this claim for some time. Jeanette Mather did not speak to him for either of her investigations. It was not until the amended response , after the preliminary hearing, filed on 31 May 2023 that this issue was actually addressed. Further, given that the only involvement of Dr Imtiaz was to review the seclusion, and decide whether it should continue, he was, the Tribunal considers, less concerned with the original decision to put the patient in seclusion than the more pressing issue of whether he should remain there. Any discussion between the claimant and him was likely to have been short, and his focus would understandably be upon the current condition of the patient. The Tribunal has no reason not to accept the claimant's account, which is consistent with what he had already disclosed to Barbara Gogoma, and it is, we consider most unlikely that he would not have repeated the same concerns to Dr Itmiaz. That it remained his account, repeated shortly after the event, and consistently ever since, reinforces our conclusion.

The Submissions.

17. Both parties made submissions in writing, the respondent going first on 10 April 2024. After time to consider those submissions, the claimant prepared his own and they were submitted to the Tribunal on the afternoon of 11 April 2024. It is not proposed to rehearse the submissions again here, they can be read if required. The parties' respective submissions on particular issues will be apparent from the discussion of the issues below.

18. The Tribunal convened in Chambers to deliberate on 11 April 2024, and has reached this unanimous judgment, which it now promulgates.

The Law.

19. The relevant statutory provisions are set out in the Annex to this judgment. Mr Proffitt cited the relevant caselaw on various issues in his submissions, and to the extent that these represent a fair summary of the legal principles to be applied, the Tribunal adopts them. They will be specifically considered when the issues are examined further below.

The protected disclosures.

20. The first issue for the Tribunal to determine is whether the claimant made any protected disclosures. The statutory tests for what amounts to a protected disclosure are set out in sections 43B and 43F of the Employment Rights Act 1996 ("ERA"), as appear in the Annex.

21. For the purposes of s.43B a protected disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of six specified matters, which include at s.43B(1)(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject.

22. Section 43C specifies how a worker makes a protected disclosure if he makes such a disclosure to his employer.

23. If, however, the worker makes such a disclosure to a person other than his employer, for example, to a regulatory body, the provisions of s.43F apply, which require that the worker must also show that they had a reasonable belief that the information disclosed , and any allegation contained in it, are substantially true. That is, it will be appreciated a more stringent test than applies to s.43B disclosures, which the worker need only show he reasonably believed his disclosure tended to show one of the prescribed matters.

PD1.

24. The claimant's first protected disclosure that he relies upon is one that he made to Barbara Gogoma on 14 October 2022. This was purely oral, and was to the effect that the seclusion of a patient on Priestners Unit had been justified on the grounds of short staffing, which would be a breach of the Code of Practice issued under the Mental Health Act 1983.

25. Barbara Gogoma is also an agency nurse, but was on 14 October 2022 designated as the Nurse in Charge on Priestners. As there was no Ward Manager or Deputy Manager present on the Unit that night (although there was one on call) she was the most senior member of staff on duty, and had the authority, for example, to instigate, or terminate , the seclusion of the patient.

26. Whilst the Act does not specify what the term "employer" means in s.43C, and the Employment Judge did raise the issue as to whether disclosure to Barbara Gogoma in

these circumstances would amount to disclosure to the employer, Mr Proffitt did not argue that disclosure to her would not be disclosure to "the employer" for these purposes. He did so by reference to s.43K , and the extended definition of worker in that section, and the purposive approach that Tribunals are to take in protected disclosure cases.

27. The Tribunal agrees, and is satisfied that disclosure to Barbara Gogoma was disclosure to the employer for these purposes.

28. The respondent has not challenged that the other elements of s.43B in terms of the claimant's reasonable belief that this disclosure tended to show that the respondent had failed to comply with a legal obligation, and that it was in the public interest to make it , are not satisfied. The Tribunal accordingly finds that PD1 was a protected disclosure.

PD2.

29. This disclosure was, of course, to Dr Imtiaz. The Tribunal has found as a fact that it was made. In terms of whether it was made to the employer, whilst Dr Imtiaz was a locum, he was clearly in a senior position, and the Tribunal is equally satisfied that disclosure to him was a disclosure to the employer.

30. As the same information, in essence, was conveyed to Dr Imtiaz, the Tribunal is equally satisfied that the claimant reasonably believed that it tended to show that the respondent had failed to comply with a legal obligation, and that it was in the public interest to make it. This too, therefore, was a protected disclosure.

PD3.

31. This was a disclosure that the claimant made not to the respondent, but to Blackstone Recruitment, the agency through which his services were supplied to the respondent. That agency was indeed the claimant's employer, but the claimant relies upon a conversation between himself and Amelia Toovey on 20 October 2022, following his email to Tasia Ode that day (page 189 of the bundle). In the email he only referred to "his concerns" , and the Tribunal has been provided with no real detail of his discussion with Amelia Toovey. Without details of what information was conveyed to her, the Tribunal cannot be satisfied that this satisfies the test for disclosure under s.43B.

PD4.

32. The final disclosure relied upon is the complaint to the CQC that the claimant made on 21 October 2022. Here the Tribunal must apply the more stringent s.43F tests.

33. Whilst the claimant does not have a copy of the information that he provided to the CQC, as he did so online, from the response of the CQC and its email to the respondent of 24 October 2022 (pages 192 and 193 of the bundle) the Tribunal is satisfied that the claimant conveyed the information set out in the CQC's email. It thus included the information that the seclusion had been because of staff shortages, and was in breach of the Code of Practice.

34. The Tribunal is quite satisfied that the claimant had the necessary reasonable belief in the substantial truth of that information because the first piece of that information is what he had been told, as had Barbara Gogoma, and the second is clearly correct , as the Code of Practice clearly states that this would be a breach.

35. The Tribunal is thus satisfied that this disclosure too was a protected disclosure.

The detriment claims.

36. Having determined that the claimant made three protected disclosures, the next issue is whether he was subjected to any detriment for having done so.

37. There are, after the amendment, and the withdrawal of the claim relating to the interview on 16 November 2022, two detriments which the claimant alleges were the result of his having made a protected disclosure or disclosures.

38. The first, Detriment (1), added by way of amendment, is his treatment on 16 October 2022 when he was not allowed onto Priestners , and sent to Golborne, where he could not work because of its Covid status. The second , Detriment (2), is the cancellation, by Kim Hall's email of 21 October 2022, of his future shifts. The Tribunal will take them in that order.

39. Before doing so, the Tribunal will set out the law on the burden of proof in these circumstances. it is to be found in s.48(2) of the ERA which provides:

48 Complaints to employment tribunals

(1) An employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 43M, [44(1), 45, 46, 47, 47A, 47C(1), 47E, 47F or 47G].

(1) N/a

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

40. That is, in effect, a reversal of the burden of proof. Mr Proffitt, however, invites the Tribunal to consider the caselaw on this issue, and how it is not necessarily the case that if the employer fails to explain why the worker was subjected to a detriment that it will always fail to discharge this burden.

41. He referred to ***Ibekwe v Sussex Partnership NHS Foundation Trust [2014] 11 WLUK 593,*** where HHJ Peter Clark confirmed that the burden of proof for establishing a whistleblowing detriment under s48(2) ERA operated within the evidential confines of the Tribunal's findings of fact. A claimant does not win by default even if the respondent fails to establish the reason for a detriment. The Tribunal must still find evidence that the detriment was on the ground of the protected disclosure.

42. In ***International Petroleum Ltd and ors v Osipov [2017] 7 WLUK 692***, at §115 Simler P set out the proper approach to the burden of proof and drawing inferences in a case of whistleblowing detriment as follows, saying at para. 84 of the judgment:

"Under s.48(2) ERA 1996 where a claim under s.47B is made, "it is for the employer to show the ground on which the act or deliberate failure to act was done". In the absence of a satisfactory explanation from the employer which discharges that burden, tribunals may, but are not required to, draw an adverse inference: see by analogy ***Kuzel v. Roche Products Ltd*** *[2008] IRLR 530 at paragraph 59 dealing with a claim under s.103A ERA 1996 relating to dismissal for making a protected disclosure."*

That is the test we shall apply.

Detriment (1)

43. In determining whether the claimant was subjected to this detriment on the ground that (the wording of s.47B) he had made a protected disclosure the Tribunal has had regard to who took the decision complained of on 16 October 2022 , and what has to be shown to establish the causal link between the making of the disclosure and the detriment.

44. In terms of the first issue, the evidence leads us to the conclusion , on the balance of probabilities, that it was Jessica Burns who made the decision. The need to send one RMN from Priestner to Golborne that night had already been flagged up in the huddles and emails on 14 and 15 October 2022. The crucial decision of which complaint is made is that it was the claimant , who had make two disclosures by then, and not either of the other two RMNs , who was sent to Golborne.

45. Jessica Burns was unsure about this, probably , in part ,because she was not asked about this in any detail at the time, or shortly afterward. The likely explanation for her decision, however, was that the other two RMNs had more experience on Priestners, and she preferred to keep them, so sent the claimant to Golborne.

46. Of importance, however, is who did not make that decision. Neither Barbara Gogoma nor Dr Imtiaz, to whom the disclosures had been made, made it, nor did, we are quite satisfied , Kim Hall, about whom the disclosures had been made.

47. In terms of what degree of knowledge the alleged perpetrator of a protected disclosure detriment must have, Mr Proffitt referred us to the very recent case of ***Nicol v World Travel and Tourism Council & ors [2024] EAT 42***, in which Sheldon J. addressed this issue.

48. At para. 80 of his judgment he says this:

80. Ms Greenley [counsel for the appellant] *contended on behalf of the claimant that the judgment of Underhill LJ in* ***Beatt [i.e Beatt v Croydon Health Services NHS Trust [2017] IRLR 748***] *stood for the proposition that a dismissal is automatically unfair under section 103A of the ERA if the reason for dismissal is that a disclosure has been made, and that disclosure is a protected one, even where the decision-maker does not know the content of the disclosure. I do not accept that contention. In* ***Beatt****, Underhill LJ was not considering the question of what knowledge the employer*

has to have of the content of the disclosure: on the facts of the case, it was clear that the employer knew about the content. The issue for the Court of Appeal was whether the employer needed to know that the disclosure was "protected", and Underhill LJ decided that issue in the negative: whether or not the disclosure was "protected" was an objective matter. I do not consider, therefore that the decision in ***Beatt*** *is of any real assistance in determining the question raised in this appeal.*

And at para 82.:

82. ……. The premise of Ms Greenley's arguments would be that the content of the disclosure is entirely irrelevant to the decision-maker; the only question is whether a disclosure has been made. It does not matter to the decision-maker if the disclosure was a qualifying or protected disclosure or not. It seems to me that this interpretation involves a purely mechanistic application of the statutory wording, without properly appreciating that whistleblowers are intended to be protected because they have raised something of substance which Parliament has decided merits protection. For employers to be fixed with liability, therefore, they ought to know at least something about the substance of what has been made: that is, they ought to have some knowledge of what the employee is complaining or expressing concerns about.

49. As there is no evidence that Jessica Burns was aware that the claimant had made any disclosure to Barbara Gogoma or Dr Imtiaz on 14 October 2022, still less what any such disclosure contained, that cannot have been a factor in her decision to send the claimant to Golborne. If it was not her decision, but someone else's , and it was none of the other three persons who knew of the disclosures or to whom they related , there can be no causal connection between the disclosure and this detriment. This claim therefore fails.

Detriment (2)

50. This is the cancellation of the claimant's shifts by Kim Hall on 21 October 2022. The respondent invites the Tribunal to find that , notwithstanding s.48(2), the respondent has shown that there was no causal link between this detriment and the making of the disclosures.

51. Before going any further, we should make it clear that we consider that the only possible relevant disclosures are PD1 and PD2. PD4, we consider was not made until the very same day as this detriment, and it seems, as the claimant recognises, unlikely that the CQC would have contacted the respondent so that Kim Hall knew by 16.38 when she sent her email to the claimant and Blackstone that the claimant had gone to the CQC and with what information. Further, we cannot see that PD2 has any relevance, and there is no evidence at all that Dr Imtiaz repeated the disclosure that had been made to him to anyone else.

52. The Tribunal takes Mr Proffitt's point that the Tribunal should not slavishly follow the provisions of s.48(2), and that the claimant , particularly in the absence of any direct evidence from Kim Hall, is bound to succeed. The Tribunal accordingly does look at all the facts.

53. The first of these is that Kim Hall was the Ward Manager about whom the claimant made his disclosures. The second is that having been sent to the Golborne ward, and

then home on 16 October 2022, the claimant made efforts to contact Kim Hall, who failed to get back to him. That was for the whole of the week commencing 17 October 2022. Whilst she may not have been in work on the Unit for the whole of that week, she was working, and was fulfilling a ward manager role for the last three days of that week.

54. The third is the explanation for the sudden cancellation of the claimant's shifts. This has not been consistent, initially being said (on 21 October 2022) to have been because a staff member had been taken on for a block booking, but then , in Mrs Mather's outcome letter (pages 207 and 208) it was said that on review there was no longer a requirement to allocate two registered nurses on a night shift so some shifts needed to be cancelled. The reason thus changes from the shifts have been filled due to a block booking to the shifts have been cancelled because the requirement for two registered nurses has diminished. Further, to the extent that the block booking of shifts by anyone was the reason, or part of the reason, for the claimant's shifts being cancelled, no evidence whatsoever has been produced of this alleged block booking, nor has any person been identified as providing this availability.

55. Added to this , of course, is also the lack of any direct evidence from Kim Hall. Whilst the respondent has sought to explain this, with respect, the explanation is irrelevant. The respondent is left with the second hand evidence from Mrs Mather's investigation. That was, with respect , a less than thorough exercise, and she has retained no notes of her discussions with Kim Hall. Even without Kim Hall, the respondent , the Tribunal would expect, could have provided rather more documentary evidence to support Kim Hall's explanations , even if she was not available to give that evidence directly. It has failed to do so.

56. Finally, we note the terse nature of the email of 21 October 2022, and the absence from both that and Mrs Mather's outcome letter of any invitation to the claimant to return to the Unit if and when there was availability in the future. The firm impression is that the claimant was not going to get any more shifts, and that must make the Tribunal question why that would be.

57. Inferences have to be drawn, and we do draw the inference that by 21 October 2022 Kim Hall was aware that the claimant had made disclosures which questioned her decision making in relation to the patient received onto Priestners on 14 October 2022 directly into seclusion. Whilst we accept she did not , on 21 October 2022, know of the CQC disclosure in terms, we consider she was likely to have been sufficiently aware on the ***Nicol*** test of the substance of the claimant's disclosures on 14 October 2022 to give rise to a rebuttable inference, that under s.48(2) the respondent must rebut, and which it has failed to do. This claim accordingly succeeds.

The disability discrimination claim. : failure to make reasonable adjustments.

a)The respondent's knowledge, and whether the duty to make reasonable adjustments arose.

58. That leaves the disability discrimination claim arising out of the events of 16 October 2022. Disability, of course, was conceded, and the only claim is of failing to make reasonable adjustments in relation to sending the claimant to work on Golborne when his disability meant he could not do so .

59. The first issue is whether the respondent was under a duty to make reasonable adjustments at all. The respondent submits that it was not under that duty because it did not know, or could not reasonably have been expected to know , that the claimant had a disability and was likely to be placed at the relevant disadvantage, pursuant to the specific defence provided in para.20 of Schedule 8 to the Equality Act 2010.

60. The evidence as to the respondent's knowledge is that the claimant having disclosed in his new starter form for Blackstone (pages 283 to 285 of the bundle) his two medical conditions, discussed with Jordan Mullings of Blackstone their effect upon his ability to work on any wards where there had been a Covid outbreak. We accept that the claimant was told by Jordan Mullings that he had discussed this with the respondent, probably at ward manager level, and it had been agreed that he would not be required to work on such wards.

61. Whilst it is unclear whether the respondent was ever provided with the new starter form as such, it is clear from page 288 of the bundle that some form of occupational health check was carried out before the claimant was accepted as a potential agency worker by the respondent. Had the respondent been provided with the new starter form, of course, that would not, of itself, have made it clear the claimant was unable to work on any Covid outbreak wards, but it would have started a line of enquiry.

62. The relevant evidence, rather, is that there had been this discussion between Jordan Mullings and someone at least at ward manager level to this effect.

63. That may not be enough to impute actual knowledge to the respondent, but given the nature of the respondent's undertaking as a major healthcare provider, the fact that some health screening was clearly carried out before the claimant was accepted as an agency worker, and the evidence of some discussion between Jordan Mullings and someone , probably involved in the agency worker booking process, from the respondent, we find that the respondent indeed could reasonably have been expected to have known of the claimant's disability and the disadvantage to which it put him in being unable to work on Covid outbreak wards. The defence of lack of knowledge accordingly fails, and the respondent was under a duty to make reasonable adjustments.

b.The PCP

64. That being so, the next issue is did any PCP of the respondent put the claimant at a substantial (i.e more than trivial) disadvantage in relation to a relevant matter in comparison with persons who are not disabled ?

65. The PCP was identified in the List of issues as requiring the claimant to work on a ward classified as "In outbreak" (by reference to a presence of Covid 19 on the ward).

66. The Tribunal did consider whether this amounted to a PCP, given that this was a single occasion (considering the case of ***Ishola v Transport for London 2020 EWCA Civ 112***) but, given that there was a practice of sending agency (and perhaps permanent) staff between Wards to meet staffing levels as and when required, we consider that this was indeed a practice, and not a "one – off" instance.

67. The claimant has identified in the List of issues two reasonable adjustments, namely :

a. Allowing him to stay on the original ward to which he had been assigned for the shift;

b. Moving him to work on a ward that was not "In outbreak"

68. Those, however, are not the only reasonable adjustments that could have been made, and an employer is entitled to make reasonable adjustments other than the ones specified by the worker, provided that they are reasonable adjustments..

69. It seems to us that it is important to focus upon the PCP and the disadvantage to which it put the claimant. Whilst the claimant was sent to Golborne Ward, he was not actually required to work on it. His concerns were noted and acted on, and he was sent home. He was then paid.

70. The potential disadvantage to which the claimant was put was not solely that he was required to work that ward, but was also that if he did not, he would suffer financial loss. To the extent that the claimant was not penalised for not working on that ward , and was not forced to do so, means that he was not put at that disadvantage.

71. in assessing what would be a reasonable adjustment the Tribunal need not be satisfied that the proposed adjustment would have the effect of preventing the disadvantage, and that it would be enough if it had the prospect of at least reducing it, applying ***Romec v Rudham [2007] All ER (D) 206 (Jul)***, and ***Cumbria Probation Board v Collingwood [2008] All ER (D) 04 (Sep)*** **as approved in** ***Leeds Teaching Hospital NHS Trust v Foster*** **UKEAT/0552/10,** ***[2011] EqLR 1075***).

72. Further, in ***Southampton City College v Randall [2006] IRLR 18*** the EAT held that a Tribunal may find a particular step to be a reasonable adjustment even in the absence of evidence that the claimant had asked for this at the time. Similarly, the employer might satisfy the duty in relation to reasonable adjustments even though its proposals are not to the satisfaction of the employee: in ***Garrett v Lidl Ltd [2010] All ER (D) 07 (Feb***), the EAT confirmed that it was not unreasonable for employers to conclude that adjustments could best be achieved by moving the claimant to a different place of work, even though the claimant did not want to move (in circumstances where there was a mobility clause in her contract). Those cases demonstrate that there can be more than one reasonable adjustment.

73. In other words in sending the claimant home, and then paying him, the respondent took such steps as it was reasonable to have to take to avoid the disadvantage to which the PCP put the claimant. The respondent thereby did make reasonable adjustments for the claimant's disability, albeit not the ones that the claimant contends for, but nonetheless satisfying its duty to do so.

74. Finally, we have also considered, as it is clearly a significant feature of the treatment of the claimant on 16 October 2022, his wait in the "air lock" leading onto Golborne. That was unfortunate, but it is not the failure to make reasonable adjustments complained of. It was a consequence of being sent to Golborne, but it was not a consequence of being required to work on that ward, because the claimant

never was actually so required. The claimant was no more disadvantaged by having to wait in that situation because of his disability than any other person without his disability would have been who had been sent to that ward for any other reason and had to await admission . Thus we cannot consider (and the claim has not been advanced on this basis) that this discrete aspect alone can be considered as a failure to make reasonable adjustments.

75. This head of claim accordingly fails and is dismissed.

Conclusion.

76. The claimant is accordingly entitled to a remedy for the detriment claim that has succeeded, and the Tribunal will proceed to that stage of the hearing.

77. Whilst the parties have been in discussion, with a view to settling the remedy to which the claimant is entitled, or narrowing the issues, full agreement has not been possible.

78. To the extent that the claimant was now seeking to be compensated for not having the chance to work more shifts than those set out in his schedule of loss, it was explained how he would need to update this document. He was not, however, seeking to recover losses beyond the 12 week period set out in his schedule, but was seeking more shifts per week in that period.

79. The Tribunal will need the figures upon which to base its award of compensation for the financial losses sustained by the claimant. To that end it will need the gross and net earnings that would have been paid on each of the lost shifts. The Tribunal would hope that this could be agreed.

80. The claimant needs also to set out his case on the injury to feelings award. He needs to make a witness statement setting out how he was affected by the detriment of his shifts being cancelled. To the extent that he is relying upon any health issues as entitling him to an increased award , or any separate award for personal injury, he needs to establish an evidential basis for this.

81. Any further documents relevant to remedy should also be disclosed by the respondent, who has permission also to serve a counter – schedule , and any necessary further witness evidence.

82. Whilst not mentioned in the hearing (and therefore open to any application for revocation or variation under rule 29) the respondent is to prepare the remedy bundle, as provided at para. 11 of the orders above.

83. A further hearing can then be held, if required, and a date for it has been obtained. In the meantime the parties are encouraged to try to resolve remedy , either by direct negotiation , or with the assistance of ACAS.

Employment Judge Holmes

DATE: 12 April 2024

JUDGMENT AND ORDERS SENT TO THE PARTIES ON 25 APRIL 2024

FOR THE TRIBUNAL OFFICE

ANNEX

The relevant statutory provisions.

Employment Rights Act 1996

43B Disclosures qualifying for protection.

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

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

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

(c)that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d)that the health or safety of any individual has been, is being or is likely to be endangered,

(e)that the environment has been, is being or is likely to be damaged, or

(f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

43C Disclosure to employer or other responsible person

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure …—

(a) to his employer, or
(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—

(i) the conduct of a person other than his employer, or
(ii) any other matter for which a person other than his employer has legal responsibility,

to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.

43F Disclosure to prescribed person.

(1)A qualifying disclosure is made in accordance with this section if the worker—

(a)makes the disclosure to a person prescribed by an order made by the Secretary of State for the purposes of this section, and

(b)reasonably believes—

(i)that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and

(ii)that the information disclosed, and any allegation contained in it, are substantially true.

47B Protected disclosures.

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

Equality Act 2010

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

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

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person

Schedule 8 to the Equality Act 2020

20. Lack of knowledge of disability, etc

(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

- *(a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;*

- *(b) [in any case referred to in Part 2 of this Schedule], that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.*
