EMPLOYMENT TRIBUNALS

Claimant: Mrs D Atwell

Respondent: Taylor Haldane Barlex LLP

Heard at: Bury St Edmunds

On: 19, 20, 22, 23, 26, 27, 28, 29 February
1 March and 2 April 2024 (in chambers)

Before: Employment Judge Graham

Member: Mr A Fryer

Representation
Claimant: In person
Respondent: Mr J McMillan, Counsel

RESERVED JUDGMENT

1. The complaints of harassment related to philosophical belief are dismissed upon withdrawal.

2. The complaints of indirect discrimination related to age and philosophical belief are dismissed upon withdrawal.

3. The complaints of detriments on grounds of having made protected disclosures fail and are dismissed.

4. The complaint of automatic unfair dismissal fails and is dismissed.

REASONS

Introduction and procedural history

1. The Claimant filed her ET1 on 11 August 2022. At that time the Claimant was making complaints of detriment for having made protected disclosures (also known as whistle-blowing), automatic unfair dismissal, indirect discrimination on grounds of age and also philosophical belief, as well as

harassment related to philosophical belief, and victimisation. The Claimant's philosophical belief was expressed to be her belief in ethical moralism.

2. The Respondent filed an ET3 Response on 30 September 2022 denying the claims, the Claimant having objected to the Respondent's application for an extension of time to do so.

3. On 6 October 2022 the Claimant applied for a strike out of the Response.

4. On 14 March 2023 the Respondent prepared a draft list of issues.

5. On 15 March 2023 the matter came before Employment Judge Bloom for a preliminary hearing for case management. At that hearing the Claimant withdrew her complaint of victimisation which was then dismissed upon withdrawal. The Claimant's application for a strike out was brought on the basis of dishonesty on the part of the Respondent, however the Claimant withdrew that application during the preliminary hearing.

6. Employment Judge Bloom considered the draft list of issues and decided that some of them were generally worded, by way of example the allegation that the Respondent had spread hatred about her. The Claimant was directed to provide additional information about her claims within 28 days. On 25 April 2023 the Respondent applied for an Unless Order on the basis that the Claimant had not complied with directions, including the provision of additional information.

7. On 9 November 2023 Employment Judge Laidler responded to the Respondent's application and noted that the Claimant had provided additional information however she recorded that it was of concern that the Claimant's documents were so lengthy. The parties were directed to work together to endeavour to agree a finalised list of issues for use at the final hearing or come to that hearing prepared to have a discussion about them.

The hearing

8. The hearing was conducted in person. The parties were made aware prior to the hearing that the Tribunal had only been able to source one non legal member to sit as part of the panel with the Judge as opposed to the usual two non-legal panel members.

9. At the start of the hearing the parties were asked to confirm if they consented to sitting with one panel member. They were informed that the member, Mr Fryer, had been selected from the panel of persons appointed by the Secretary of State after consultation with organisations or associations of organisations representative of employers in accordance with the Regulations. The parties provided their signed consent and the hearing proceeded.

10. We received a bundle of four witness statements comprising of 263 pages, of that 221 pages were the Claimant's first and second witness statements including her exhibits. We received witness statements for the Respondent from Miss Abiodun (partner), Mr Warren (partner) and Mrs Ali-Kote (practice

manager). We were also provided with a three volume hearing bundle of 1,445 pages.

11. We were provided with one additional document which was one clearer copy of a newspaper article already in the hearing bundle, and we were also shown a document on the screen of Miss Abiodun's laptop which was a psychiatric assessment prepared by a Dr Deo about one the Respondent's clients as the Claimant has made allegations about that document which will be addressed in the judgment below. The laptop screen was shown very briefly to the Claimant on Tuesday 27 February in the hearing room, and upon her request it was shown to her again for 10 – 15 minutes the following day.

12. The first day was spent clarifying some of the issues and then reading the papers for the remainder of that day and the following morning. The hearing recommenced at 1pm on Tuesday 20 February. Whereas the matter had been listed for a ten day hearing, we did not sit on Wednesday 21 February due to lack of a judicial resource. The hearing recommenced on Thursday 22 February.

13. The Claimant gave her evidence first on 20, 22, 23 and 26 February. Miss Abiodun gave her evidence on 27 and 28 February, followed by Mr Warren, and then Mrs Ali-Kote gave evidence on 29 February. Closing submissions from both parties were delivered on 29 February 2024.

14. The panel then met for deliberations on 1 March in person and an additional day was listed for 2 April 2024 via CVP. The Tribunal therefore took place for the full ten days as envisaged.

15. Breaks were provided throughout the hearing and the Judge encouraged the Claimant to have additional breaks when it appeared that she was seeking to withdraw some aspects of her claims. This was done in order that the Claimant could properly reflect rather than acting in haste, and to allow her the opportunity to contact someone who had been providing her with advice.

The Issues

16. The bundle contained a List of Issues, however it was clear at the start of the hearing that some of the Issues were not adequately defined as the allegations were very general. The Claimant explained that the Issues could be understood from the additional information in the hearing bundle that she had provided. It was agreed that that the Tribunal would start to read the documents and then address the Issues afterwards.

17. Having read the documents to which we were referred, it remained the case that some of the Issues suffered from a lack of specificity. It was agreed to address what these meant as the hearing progressed.

18. The Claimant withdrew her harassment complaint in full on Friday 23 February and this was dismissed upon withdrawal. The Claimant also withdrew two of her alleged protected disclosures on that date (2g and 2h). The alleged protected disclosure at 2t was also withdrawn as it contained no detail.

19. On Tuesday 27 February the Claimant withdrew one further alleged protected disclosure (2c), and on Wednesday 28 February the Claimant withdrew her complaints of indirect discrimination, as well as all but three of her alleged protected disclosures (leaving only 2o, 2q and 2r). The Claimant said that this was on the basis of advice she had received, and she also appeared to indicate that she was withdrawing her detriment complaints. The Judge asked the Claimant to go back to the waiting room to reflect and to speak to the person advising her and to confirm if that was what she was intending to do.

20. Upon her return the Claimant confirmed that it was not her intention to withdraw all those alleged detriments, but she wished to withdraw some of them. The Respondent raised the issue that the dates of some of the detriments appeared to pre-date the remaining protected disclosures, and the Claimant agreed that she was withdrawing a large number of the alleged detriments relied on occurring before her first alleged protected disclosure of 20 December 2021. These alleged detriments were Issues 4a, 4b, 4c, 4d, 4f, 4g, 4h, 4i, 4j, 4k, 4m, 4n, 4o, 4p, 4q, 4r, 4s, 4t, and 4v. The alleged detriment at 4e had also already been withdrawn during the Claimant's evidence. The Judge asked the Claimant whether any pressure had been applied to her to withdraw her complaints to which she responded that it had not.

21. During lunchtime on Wednesday 28 February the Respondent indicated that it would apply for a strike out of the claim on the basis that there was no reasonable prospects of the Claimant establishing that any belief that she had that the remaining alleged protected disclosures were in the public interest was reasonably held. That application was not pursued after there was some discussion with the Claimant about the meaning of the alleged protected disclosure dated 20 December 2021 as set out at Issue 2o which overlapped with Issue 2j which had already been withdrawn and dismissed. The Respondent pragmatically withdrew its application.

22. The Claimant withdrew Issue 4bb (an allegation that an email had been fabricated) during her closing submissions.

23. The List of Issues which remained are set out below. The numbers in square brackets refer to pages in the hearing bundle.

Detriment on the grounds of protected disclosures

1. *Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:*

    2. *The Claimant says they made disclosures on these occasions:*

        o. *Her email of 20th December 2021 setting out her formal grievance and describing her unhappiness with the constant criticism; [993]*

        q. *Her email to Miss Abiodun on 1st February 2022 in which she complained of how she had been treated in the telephone call the day before; [935]*

r. Her email to Mr Warren in which she explained that she thought her telephone call with Miss Abiodun had been the cause of her panic attack; [908]

1.1.1 Did the Claimant disclose information?

1.1.2 Did the Claimant believe the disclosure of information was made in the public interest?

1.1.3 Was that belief reasonable?

3. Did the Claimant believe it tended to show that:

i. A criminal offence had been committed, was being committed or was likely to be committed; and/or

ii. A person had failed, was failing or was likely to be failing to comply with a legal obligation; and/or

iii. That the health and safety of any individual had been, was being or was likely to be endangered?

Was that belief reasonable?

4. Was the Claimant subjected to detriments because she had made a protected disclosure? The Claimant relies on the following detriments:

u. Fabricating evidence in relation to client meeting 17th December 2021

w. Email from Miss Abiodun on 20th December 2021 at 18:48 suggesting that C should be dismissed [987-8]

x. Email from Miss Abiodun on 20th December 2021 at 19:41 suggesting that C should be dismissed [984-5]

y. Failing to deal appropriately with C's (alleged) grievance email of 20th December 2021

z. Fabricating the email purportedly from Ms Williams on 23rd December 2021 at 12.01 [970]

aa. Email from Miss Abiodun on 31st December at 17.04 in which she is critical of C [966]

bb. Withdrawn during closing submissions

cc. Telephone call of 31st January 2022 with Miss Abiodun in which C says that she is unfairly criticised

dd. Ms Abiodun's emails on 1st February 2022 at 14.15 [930-932] and 15.58 [928]; and on 2nd February at 14.35 [922] in which she implies

C was dishonest about the incident on the motorway and personally attacks C

ee. Not being given notice of the purpose of the dismissal meeting

ff. Conducting the dismissal meeting with C in her car

gg. Conducting a sham performance procedure including Mr Warren's email of 16th June 2022 at 15.43 which purposely gives the wrong date of the incident on the motorway [894]

hh. Mr Warren belittling the seriousness of C's incident on the motorway during the dismissal meeting on 3rd February 2021

ii. Unnecessary views of C's LinkedIn profile post termination

Automatic Unfair Dismissal

5. What was the reason for the Claimant's dismissal? The Claimant contends that it was because she had made protected disclosures. The Respondent contends that the reason for the dismissal was the Claimant's performance.

6. If the Claimant's dismissal was unfair, did her own conduct, namely her performance, contribute to the dismissal?

24. On 28 February, during one of the discussions about the List of Issues, the Claimant suggested that part of one of the Issues had been removed due to trickery. The implication was that this was done by the Respondent. It should be noted that the Respondent's counsel had helpfully prepared the List of Issues and made the amendments to it which had been agreed in open court. There was no evidence of any trickery at all. It is possible that the Issue had not been understood and required further detail, or it was possible that either some pre-agreed words had dropped off the list when being updated, or the Claimant was using the wrong version of the List of Issues as she had done so on a couple of occasions.

25. The Judge raised with the Claimant that there was no evidence at all of any trickery and that it was not fair to make such allegations especially when the Respondent's counsel had provided her with so much support, as had the Tribunal.

26. The following day the Claimant spoke in open court and withdrew the allegation of trickery and apologised directly to the Respondent's counsel. The Claimant said that she did not always use the right words. Whilst it was to the Claimant's credit that she made this apology of her own volition, it nevertheless did fit in with a picture that had emerged in her evidence of the Claimant using intemperate language.

27. As indicated above, the List of Issues required repeated amendments throughout the hearing either to clarify what was being complained about, or to remove issues which the Claimant had withdrawn. In order to assist the Claimant, the Judge arranged for the Tribunal staff to print the List of Issues which he amended by hand by striking through in pen the Issues

which had been withdrawn. This was done as the Claimant forgot to bring her version some days and was working off of a version on her mobile phone (her laptop having broken down at some point towards the end of the hearing). The Judge amended the List for the Claimant by hand on at least three occasions by striking through in pen those withdrawn complaints. This List was first shown to the Respondent's counsel for the sake of transparency before being handed to the Claimant. The Respondent did not object to the support the Judge offered to the Claimant in this way and the Claimant expressed her gratitude to the Tribunal.

28. A copy of the original List of Issues as it stood at the start of the hearing is included at Annex A. Some names have been redacted where it was not necessary for these people to be named in the judgment.

Findings of fact

29. From the information and evidence before the Tribunal it made the following findings of fact. We made our findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. We do not set out in this judgment all the evidence which we heard but only our principal findings of fact, those necessary to enable us to reach conclusions on the issues to be decided.

30. Where it was necessary to resolve conflicting factual accounts, we have done so by making a judgment about the credibility or otherwise of the witnesses we have heard based upon their overall consistency and the consistency of accounts given on different occasions when set against any contemporaneous documents. We have not referred to every document we read or were directed or taken to in the findings below, but that does not mean they were not considered.

31. As the Claimant withdrew a number of her complaints during the hearing, these findings are limited to the remaining issues.

32. It is unnecessary for us to make any formal findings in relation to the Claimant's belief in ethical moralism as that complaint has been withdrawn.

33. The Respondent is a large established solicitors' practice with various offices including one at Ipswich which is where the background to this claim arises. The Respondent offers various services to clients, including criminal defence. The overall crime department is headed by Mr Michael Warren, an equity partner. Miss Folashade Abiodun is a salaried partner and head of the Respondent's crime department in Ipswich, and the Respondent's practice manager is Mrs Emma Ali-Kote.

34. The criminal defence work is generally funded by legal aid which requires an application to be made to the Legal Aid Agency which will then make a decision on funding, and strict limits are imposed on how much work it is willing to fund. It is fair to say that the sums that may be authorised are modest and may cover taking instructions from the client, instructing counsel and making preparations for hearings or appeals. Some clients are self funding, however this is less common.

35. There have been challenges in recruiting and retaining criminal defence solicitors with many opting to undertake prosecution work instead.

36. The Claimant is a partner in a building business and previously volunteered one day per week at the Respondent's Ipswich office from 21 June 2021 to September 2021 in order to gain some experience. At this time the Claimant was mentored by Miss Abiodun and Ms Carter another criminal defence solicitor. We have heard evidence that Miss Abiodun was a strong advocate for the Claimant and formed the view that she had potential.

37. During June 2021 the Claimant undertook midterm examination for the Graduate Diploma In Law ("GDL"), however there was an IT glitch which meant that she would be unable to complete the exams. The Claimant said that this caused her to suffer a "funny turn" which we understand to be a reaction to stress. The Claimant said that she felt unwell for a couple of days her doctor increased the medication she was taking for high blood pressure. The Claimant says that she made some staff at the Respondent aware of this but not Miss Abiodun. When the Claimant subsequently completed the GDL later in 2021 she was awarded a distinction.

38. The Respondent had need of additional staff in the criminal team in its Ipswich office and the Claimant was offered a role as a full time paralegal following an informal chat with Mr Warren who was impressed with the Claimant's enthusiasm and people skills. Mr Warren commented to the Claimant words to the effect that *"the clients are going to love you."*

39. It was clear that Miss Abiodun's support for the Claimant also played a part in Mr Warren's decision to appoint the Claimant as Mr Warren expressed his full trust in Miss Abiodun's judgement and he gave evidence that as a very experienced and senior criminal practitioner, she had been responsible for helping many staff to become qualified as solicitors over many years, and that these people had gone on to have successful careers.

40. Having heard Miss Abiodun's oral evidence, it was clear that Miss Abiodun has a very busy role both as a criminal lawyer but also in leading the criminal department, and she spoke authoritatively about criminal procedure before the Magistrates Court and Crown Court, as well as conducting criminal litigation generally, attending the Police Station, engaging with clients, counsel, and the Legal Aid Agency.

41. It was also clear that the Claimant relished this opportunity with the Respondent, she said that it had been her goal since she was 15 years old, and her desire was to help people. The Claimant posted messages on her LinkedIn profile confirming how happy she was about this opportunity, and Mr Warren and others congratulated her.

42. The Respondent accepts that it was "gushing" in its praise of the Claimant and noted that she was excellent with clients. The Respondent has not in any way sought to recede from that description of the Claimant in these proceedings. Equally the Claimant was full of praise for the Respondent, she described Mr Warren as previously having been fantastic, she said that she had loved working for the Respondent, and that it was her dream job.

43. Upon appointment the Claimant was line managed by Miss Abiodun although she worked closely with the other two criminal solicitors, Ms Carter and Ms Williams.

44. When the Claimant started work she was given a brief induction by the Respondent. The Respondent's staff handbook is available online. The staff handbook sets out provisions for sickness absence reporting, training, bullying and harassment and how to raise grievances as well as whistleblowing.

45. The Respondent also had a COVID-19 return to work guidance, as well as a Covid office plan for the individual offices including Ipswich. The Respondent had a dedicated senior partner responsible for office plans during the pandemic.

46. The Respondent's COVID-19 return to office guidance was prepared following the announcement of what became known in England as freedom day, that is the date when the Covid-19 restrictions were lifted on 19 July 2021. The Respondent maintained its working from home policy as regards fee earners, however the support staff were required to work in the office although it was open to them to make a request to work from home or to submit a flexible working request. The Respondent's guidance contains numerous measures with respect to hygiene, social distancing where staff were encouraged to remain 2 metres apart or working facing away from each other, face to face contact to be limited to 15 minutes at a time, a preference for remote or virtual meetings, and that client attendance should be only where necessary. The guidance requires that where staff are unwell with a cough, raised temperature, or other cold or flu symptoms they should raise it with a partner immediately.

47. The Respondent produced guidance for each office following the lifting of legal restrictions by the Government. We were referred to the guidance for the Ipswich office which included provision that meetings with clients should be in the large meeting room (also known as the conference room) and that the crime room should be limited to two people at a time, and desks should not be shared. It should be noted that the crime room could seat five staff as there was a bank of four desks with a fifth against the wall.

48. We were not referred to a formal training programme for the Claimant when she joined. Miss Abiodun explained that there was an expectation that learning would be on the job from assisting fee earners with their cases, combined with anything the Claimant had already learned as a volunteer and also the Claimant's legal studies. Miss Abiodun explained that at the material times the Respondent operated paper files and each client file would contain a case plan with the steps that would need to be completed on each case, such as taking instructions / producing a proof of evidence and inputting dates. We were told about a document created by Ms Carter and put onto the flap of each paper file which operated either as a tick box or checklist when running a file. Miss Abiodun also referenced giving the Clamant examples of evidence reviews which she could use to help her in her work although we find that was provided some time after she started work in or around December 2021.

49. The Claimant's second witness statement (pages 26, 27 and 28) also set out that during her voluntary work with the Respondent she had been provided with a s.9 witness statement template, that she had been involved in amending and taking witness statements, and that she had also set herself up on the Legal Aid website and was applying for prior funding for experts.

50. At the time the Claimant started work she was assisting with Crown Court cases. Miss Abiodun said that there was not a particular guide as such for criminal defence case as each case would be different however there would be certain steps that would need to be completed in each case as set out in the case plan to which we have referred. However Miss Abiodun also said that she had provided the Claimant with copies of completed files so that the Claimant could use this as a guide for the matters she was working on as it would show her how to complete documents such as case plans. Miss Abiodun said that she provided the Claimant with these and other documents to use as templates as the Claimant had explained to her that she was a visual person and needed to see for herself how things were done. The Claimant disputed that some of the templates or files were provided to her, however whilst we find that they were not all provided to her at the start of her employment, she received templates during the first three months of her employment and that is by the end of 2021.

51. When the Claimant started work she was located on the first floor of the Ipswich office and shared the room with one member of staff, a family legal secretary. Miss Abiodun worked in an office on the same floor as the Claimant, and Ms Carter and Ms Williams were based in the crime room on the floor below the Claimant.

52. Ms Carter was pregnant at the material times and worked full time but would come in between 40-50% of the week, and even then she might be in court or the police station or at meetings. Ms Carter went on maternity leave from around late November or early December 2021. The other fee earner was Ms Williams who worked two days per week and would come in about 50% of the time, although this could be over two half days per week, and again her time may be spent in court or at meetings or with clients. From 1 November 2021 a new criminal paralegal joined and she was based in the crime room. A receptionist worked on the ground floor.

53. During her employment the Claimant spoke openly in the office about Covid-19. The Claimant says that she recalls when she started work the number of positive Covid infections was rising in Ipswich and a friend who was medically qualified informed her that a "Code Black" had been issued. It is understood that this is a declaration of an emergency in hospitals with respect to new admissions.

54. Very soon after the Claimant started her new role her daughter tested positive for Covid on Saturday 25 September 2021. On 27 September 2021 the Claimant began working from home whilst her daughter was unwell.

55. The Claimant was asked to assist Miss Abiodun with a case which came to be known as the dog lady case. In short, the client had been found guilty of a strict liability offence under the Dangerous Dogs Act. A dog destruction order had been made by the court. The client wished to appeal that order.

The client was challenging as she would require a lot of support and would make long telephone calls. The Legal Aid Agency had granted authority for £300 of expenditure, although Miss Abiodun initially wrongly thought that it was £150 or £180. In any event, whichever figure is correct, neither would have allowed for long or repeated conversations with the client who could not understand that this was a strict liability offence so there was only merit in an appeal against the punishment which was the destruction order.

56. Miss Abiodun was concerned at the amount of time the Claimant was spending on this matter given the modest expenditure approved by the Legal Aid Agency, and moreover because it meant she was not undertaking other work. On 5 October 2021 the Claimant returned to working in the office.

57. On 6 October 2021 Miss Abiodun instructed the Claimant to do no further work on the dog lady file. This decision was on the basis that the Claimant had been spending too long working on the case and was seen to be indulging the client who would keep calling and discussing the same issues. Miss Abiodun's evidence was that she overheard these conversations and recalled hearing the subject matter being discussed previously. It was clear that the Claimant was trying to assist and to placate the client by listening to her concerns but that the Respondent was concerned that this had gone on too long. Miss Abiodun instructed the Claimant to cease working on the matter and said that she would undertake it herself. Around this time Miss Abiodun started to have concerns that the Claimant was spending time undertaking unnecessary work, for example conducting online research for a modern day slavery defence which was not required.

58. On the afternoon of 13 October 2021 the Respondent attempted to move the Claimant from the first floor to the crime room. This was on the basis that she would learn more from sitting with the rest of the crime team when they came in. We find that the removal of the dog lady client file from the Claimant, together with the decision to move her to the crime room, was evidence that Miss Abiodun had some early concerns about the Claimant's performance.

59. There was no prior discussion with the Claimant about this. The Respondent did not conduct a risk assessment first as it considered that none was necessary to move someone from one floor to the next. The Claimant was reluctant to move at that time and wanted to speak to Miss Abiodun about whether it was safe with respect to Covid.

60. The Claimant spoke to Miss Abiodun who informed her that the room was safe but informed her that she could sit at the desk facing the wall rather than at the bank of desks if she wished. The Claimant rejected that as she repeated that she was a visual person and would learn better from observing others.

61. The Claimant instead asked for screens to be installed at her desk. The Claimant was moved downstairs fully by 14 October and Miss Abiodun spoke to Mrs Ali-Kote about obtaining the screens. These screens had been provided at some of the Respondent's other offices however Mrs Ali-Kote informed Miss Abiodun that they may not be fully protective as air could flow above and below them. No further action was taken on the screens.

62. Miss Abioudun says that she spoke to the Claimant about the limited protection they offer and they agreed to wait and see how the Claimant got on and if she wanted them. The Claimant disputes that this conversation ever happened. This is not a dispute of fact that we need to resolve as it does not go to any of the Issues to be decided, however we note that there is no record of the Claimant ever pursuing this with the Respondent at the time therefore it seems likely to us that the matter was left for the Claimant to confirm if she still wanted them and she did not advance it.

63. On 14 October Miss Abiodun came downstairs from her office to the crime room where the Claimant was working with Ms Carter and Ms Williams in there. There is a dispute of fact about this incident which we do not need to resolve as the particular complaint has been withdrawn. In brief the Claimant says that she answered a call from the dog lady client and that the receptionist must have informed Miss Abiodun as she raced down the stairs to the crime room and was visibly angry with the Claimant. The Claimant says that because of the manner in which Miss Abiodun came in to the room she says that it caused Ms Carter to jump up as if to shield the Claimant from Miss Abiodun, whereas the Claimant feared that Miss Abiodun was going to put her hand down on the receiver. The Claimant described this as having shared a traumatic experience with Ms Carter and Ms Williams as if they had all witnessed a car crash. In the Claimant's witness statement she states:

"For a significant time after Ms [sic] *Abiodun had stormed into the Crime Room, Ms Williams, Ms Carter and I were in a state of stunned silence. The whole thing had been so shocking and unexpected, it had a lasting impact on all of us. It felt like we were suffering from a form of shared trauma, as if we had all witnessed the same car crash."*

64. Miss Abiodun says that she did not know the Claimant was even on the telephone before she came downstairs, and that her purpose was to discuss something with Ms Williams that she had seen online about a former colleague. Miss Abiodun says that she had no idea that the Claimant was speaking to the dog lady client until she was in the room, and that afterwards and when she became aware that the Claimant was speaking to the dog lady client she asked her to stop and reminded her that the Respondent was only paid £150 for appeals, although she concedes that this figure was incorrect but that was her belief at the time. Miss Abiodun also says that Ms Carter would not even have been able to jump up as alleged as she was heavily pregnant at the time and needed also to wear a belt for her pregnancy.

65. Whereas this is no longer a dispute of fact that we need to resolve we note that the Claimant did not raise any formal or written complaint about this at the time, she remained at work, and the subsequent emails in the hearing bundle between the Claimant to Miss Abiodun are not indicative that an incident of such a magnitude occurred. The emails between the two at that time appeared to be polite and professional. Accordingly, we prefer the evidence of Miss Abiodun on this issue and we would further note that we also found the description provided by the Claimant as to having witnessed a car crash to be an example of the use of intemperate language.

66. That afternoon a barrister whom Ms Carter was working with attended the office for a meeting on a case they were working on. The barrister had previously been a partner of the Respondent firm. Upon meeting the Claimant and the barrister shook hands which the Claimant subsequently realised was a risk due to Covid and she went off to wash and sanitise her hands.

67. The meeting took place in the crime room which meant that four people worked in the crime room at the same time for a number of hours on the afternoon of 14 October. As per the Respondent's policy, the meeting between Ms Carter and the barrister ought to have taken place in the conference room instead. Miss Abiodun had not been made aware of this at the time. There is no evidence that the Claimant raised concerns about this meeting at the material time and she continued to work at her desk for the rest of the afternoon.

68. Later that evening the barrister tested positive for Covid and informed the Respondent. Ms Carter telephoned the Claimant that evening to inform her and suggested that the Claimant should have a PCR test. Miss Abiodun also telephoned the Claimant and asked how far apart the Claimant and barrister had been. The Claimant expressed concern about catching Covid however when asked by Miss Abiodun if she had close contact with the barrister for more than 20 minutes the Claimant said that she did not. Miss Abiodun informed the Claimant that in that case she would not need to do a PCR test. The Claimant discussed the matter with her husband that evening and they discussed whether she had been two metres away from the barrister. Having been shown what two metres looked like, the Claimant called Miss Abiodun to express concern that she may have been within two metres of the barrister. At this time the Claimant had not mentioned the handshake. Whereas we have been provided with the name of the barrister, his name is not referred to in this judgment as it is not necessary to do so. Similarly, the names of the Claimant's husband and daughter, and the Respondent's receptionist, new criminal paralegal and family legal secretary are not referred to as it was not necessary for them to be referred to by name.

69. The following day on Friday 15 October 2021 Ms Carter and Ms Williams self isolated at home. The Claimant came to work and discussed the handshake with Miss Abiodun who then sent the Claimant home from work to have a PCR test. The subsequent email from Miss Abiodun to the family legal secretary, Ms Carter and the receptionist, expressed frustration about the Claimant having shaken hands with the barrister but not having mentioned it until she came back into work that day. Miss Abiodun was clearly annoyed with the Claimant as she wrote in her email *"what is wrong with this woman????"* and said that she apologised to the staff who had been exposed to the Claimant. Miss Abiodun also said that had the Claimant been more open with her then she would have told her to remain at home.

70. The Claimant did not test positive for Covid at that time and she returned to work the following week. On Tuesday 19 October 2021 the Claimant started to feel unwell but continued to come to work. The Respondent's policy provides that where staff felt unwell or were suffering from Covid symptoms

then they should raise it with a partner immediately. The Claimant did not immediately do so.

71. The Claimant continued to come to work until 25 October at which point Ms Carter sent her home as she was visibly unwell. By this time the Claimant had come to work for in the region of five days with Covid symptoms. In her witness statement the Claimant says that her husband tried to stop her going into work as he felt it was too dangerous, however she said *"I knew I had no choice but to go in as the workload was getting bigger."*

72. The Claimant went on sick leave the following day on 26 October as she was suffering from a cough and loss of appetite. The Claimant continued to take PCR tests which produced a negative Covid result and she sought medical advice via 111 and she says she was advised that she may have a "super cold" that was circulating.

73. The Claimant emailed Miss Abiodun on 26 October before 9am to tell her that she would be off sick and to explain her symptoms. Miss Abiodun responded to the Claimant after 5:30pm that day and her email was supportive and she encouraged her to rest and she asked to keep Mrs Ali-Kote copied in on her sickness absence.

74. In the Claimant's reply she thanked Miss Abiodun for telling her to copy in the Respondent and said that it had been 25 years since she had worked for someone.

75. On 8 November 2021 the Claimant returned to work. Miss Abiodun sent the Claimant a friendly email on her return to work welcoming her back and asking how she felt. The Claimant replied that she was still feeling tender.

76. Ms Carter was due to go on maternity leave at the end of November or early December 2021. On 12 November Ms Carter emailed the Claimant to inform her that she would be given Magistrates Court files to deal with as she would be going on maternity leave. The handover email from Ms Carter contained a step by step introduction into how these cases should be conducted including applying for funding and going to trial. In addition there were brief notes on four of the cases Ms Carter would be handing over to the Claimant. We heard uncontested evidence in the hearing that two of these cases were already prepared for trial and would not have required much work on them.

77. The email was sent in the region of between two to three weeks before Ms Carter was due to go on maternity leave and she finished her email by saying *"any questions let me know."* The Claimant's evidence was that the email from Ms Carter was very detailed and helpful however the handover was inadequate and she did not have training for this work. The Claimant accepted that she had not asked Ms Carter for a meeting to discuss this, however she said that this was on the basis she wanted to try and do some of the work first to see where she needed help. In her oral evidence the Claimant accepted that she did struggle with this type of work and she said that it was a "big ask" as she had only worked for the Respondent for 18 working days by this point. Miss Abiodun said that the work was given to the Claimant as she was struggling with Crown Court cases and whilst

Magistrates' Court cases were quicker, the structure would help focus her attention.

78. The Claimant also told us that there was no-one in the office she could ask for help. We were not provided with any evidence that the Claimant ever asked for help by email. The Claimant told us that her emails had not been disclosed. When asked if she was saying that she had asked for help which was refused the Claimant informed us that the Respondent would never have refused a request for help.

79. We also heard from Miss Abiodun that she had made staff aware that she could always be called if there were any questions, as could Ms Williams and Ms Carter, and staff could also telephone Gavin Burrell, a partner in another one of the Respondent's offices, as he would generally know the answer to most questions or would know how to find out. Miss Abiodun explained that she did not expect new joiners to have all the answers, that people learned on the job and she would reflect with staff after a case had ended on what had gone well and what could be learned for next time. In addition, Miss Abiodun said that she did not have a problem with people not knowing something as long as they learned and showed progress.

80. We understood from the uncontested evidence of Miss Abiodun that the Magistrates Court cases were swapped with the Claimant's Crown Court matters which she took back off her. Miss Abiodun informed us that the Magistrates Court cases were easier to do, and whilst all criminal cases start off in the Magistrates Court, the Ipswich office only had four live Magistrates Court matters at that time – the rest were in the Crown Court.

81. This exchange of cases was, according to Miss Abiodun, intended to assist the Claimant as she was struggling at work and it was hoped that this would make it easier for her. Ms Carter's maternity leave therefore appeared to be an opportune moment to make this change.

82. On 16 November 2021 Miss Abiodun emailed the Claimant to arrange a meeting to catch up on work the following day between the Claimant, Miss Abiodun and Ms Carter. Miss Abiodun said she wanted to discuss with the Claimant how she felt things were going, which areas she required additional support, if she felt she was being properly trained, and any other issues she wished to raise. Miss Abiodun said that she was checking in view of the fact that Ms Carter was due to go on maternity leave in a couple of weeks. The Claimant replied to say it was a great idea and she would make a list of areas where she had gaps in her knowledge to get them filled before Ms Carter goes.

83. The email exchange appeared to be entirely pleasant and there was no indication from the Claimant's reply that she felt that her training had been inadequate or that there were any problems at work.

17 November 2021 meeting

84. The meeting then took place on 17 November 2021. There is a dispute of fact as to what was said. We have been referred to Miss Abiodun's note of the meeting. This appears in an email dated 23 December 2021 to Mrs Ali-Kote. It is therefore not a contemporaneous record and it was not shared

with the Claimant until she received her DSAR documents or disclosure had taken place in this claim.

85. Miss Abiodun's note indicates that the Claimant felt that she had made some progress since she had received a summary trial checklist and she had a better understanding of what needed to be done on files. The email records that the Claimant found the checklist attached to files created by Ms Carter to be helpful, she acknowledged that she needs to be faster and to improve on certain areas of her work, and that she had been told that all work was a priority but it would be left to her to work out which was the most pressing depending upon the deadlines. It was further recorded that additional precedents had been provided and that the Claimant should ask for assistance when struggling and that she should communicate better.

86. The Claimant has disagreed with the contents of Miss Abiodun's emailed note and her witness statement refers to having been invited to a purported informal handover meeting which turned into a formal disciplinary meeting, during which Miss Abiodun told her about everything she was doing wrong. The Claimant also says that Miss Abiodun threatened her with the sack and blamed her poor performance on being off with Covid for too long. The Claimant said that Miss Abiodun told her that she was a slow learner, that she could only do one task at a time, and that she had not updated the IT case system with her work which would be a problem as it would mean that the Respondent would not be paid by the Legal Aid Agency.

87. In her statement the Claimant also says *"…I could not physically do both areas of the work I had to decide between working the case for the clients or updating the administration of the case. I chose helping the clients and this meant getting behind on the administration."*

88. We do not need to resolve precisely what was said, however given the issues in this case it is sufficient for us to find that Miss Abiodun did raise performance concerns with the Claimant at the meeting of 17 November 2021 which was well in advance of the Claimant's subsequent alleged protected disclosure a month later, and that she explicitly informed the Claimant what those performance concerns were. Further we also find that the Claimant, for whatever reason, was finding it a struggle to combine undertaking the case work and updating the case files (which she had described as administration). In her oral evidence before us the Claimant was candid and she accepted that she had struggled on occasion, she said that some of the work was above her level, she was new to the sector, and she also said that there was a lack of training or not enough colleagues in the office to speak to.

89. Having heard the evidence of the Claimant and Miss Abiodun, we find that Miss Abiodun's email was an accurate summary of the discussion albeit not a verbatim one.

90. On 18 November 2021 Ms Carter emailed a colleague about the Claimant taking over Magistrates Court work and she asked the colleague to update the files in order to assist the Claimant.

91. On 8 December 2021 Miss Abiodun responded to an email from Mrs Ali-Kote. The email is heavily redacted but appears to relate to another

potential solicitor for Miss Abiodun, however in her response she stated *"Denise is hard enough work for me to cope with right now."* This is one of the earliest emails which suggests that Miss Abiodun was having concerns about the Claimant's performance and we note that this was prior to 20 December 2021 which is the date of the Claimant's first alleged protected disclosure.

17 December 2021 meeting

92. There was a further meeting between Miss Abiodun and the Claimant on 17 December. The receptionist attended that meeting. The notes of the meeting were very brief and were sent by Miss Abiodun to Mrs Ali-Kote on 23 December 2021. The notes of the meeting record that the Claimant felt better and that things were slotting into place, she was still unsure about legal aid applications especially for those who are self employed. The note records that Miss Abiodun went over what the Claimant would need to do. The note also records that Miss Abiodun told the Claimant that she was concerned about the Claimant's workload and her approach to prioritising cases. We understand the reference to the workload was not a concern about the Claimant having too much to do, rather it was a concern about her being too slow doing it. The Claimant is recorded to have replied that this was due to the additional work being requested by counsel on cases.

93. The note records that Miss Abiodun advised the Claimant to push back on counsel requests and to make use of checklists on her work and to ask questions from the Respondent's staff, including Miss Abiodun, Ms Williams, Mr Burrell and the receptionist rather than counsel. It was recorded that Miss Abiodun wanted to extend the Claimant's probation would by three months. The note also records that the Claimant was a little put out by the previous meeting but felt happy with the extension of probation and with continued support to get completely up to speed and on top of workload, and would push back and ask more questions.

94. Miss Abiodun's notes of the meeting were pasted into an email sent to Mrs Ali-Kote on 23 December 2021. These were not therefore contemporaneous notes, and they were not shared or agreed with the Claimant at the material time.

95. The Claimant's witness evidence was similar to the record produced by Miss Abiodun. The Claimant says that she was told that she had not improved much since the last meeting on 17 November, that Miss Abiodun said she had given the Claimant extra help but the Claimant could still not do more than one thing at a time, and that Miss Abiodun planned to extend the Claimant's probation by an additional three months to help her have more time to learn what she was doing.

96. We therefore find that the notes prepared by Miss Abiodun were generally accurate, they were clearly not verbatim but we are satisfied that during the meeting performance concerns were again raised and discussed with the Claimant.

97. The Claimant's witness statement also says she was told how useless and unsuitable for the job she was, however she accepted during the Tribunal hearing that no one ever told her that she was useless. Nevertheless, later

on in her oral evidence the Claimant again said she was told how useless she was, even though she had previously accepted this was not the case. It appeared to the Tribunal that what the Claimant intended to convey was that she was made to feel that she was useless, but no one had ever used those precise words to her.

Out of hours meeting / fabrication of documents

98. There is a dispute of fact about what also happened on 17 December 2021. This was the Claimant's last day of work before going on leave for Christmas until her return to work in early January 2022. The Claimant says that she had to attend a meeting out of hours alone with an adult client for him to attend an online pre-sentence meeting with a psychiatrist. We will not refer to the name of the client or his initials in this judgment and he will simply be referred to as the "adult client". The Claimant also says that she made the Respondent aware that she was concerned about having this lone meeting.

99. The Respondent disputes this and states that the meeting to which the Claimant refers was on 14 December 2021 and it relies upon the psychiatric report prepared by the psychiatrist, Dr Deo, which is also dated 14 December 2021 and which confirms that an assessment was conducted on that date. The Respondent accepts that this was a lone meeting out of hours – essentially the client was in person with the Claimant and Dr Deo was online. The client had come in person as he did not have either IT or internet facilities at home.

100. The Claimant alleges that Dr Deo's report has been fabricated, or at least the pages in it which refer to a meeting on 14 December 2021 as she maintains that the meeting with the adult client was on 17 December 2021 and that she did not have two out of hours meetings that week.

101. The Claimant argued that further support for her argument about fabrication can be gleaned from the logo on Dr Deo's report which included a shaded triangle. The Claimant included a report from a different organisation (an intermediary) in the hearing bundle and that logo also contained a shaded triangle. The Claimant's argument appeared to be that this was too coincidental and should lend support to her argument about fabrication.

102. During her evidence Miss Abiodun offered to retrieve her laptop and to show the Tribunal and the Claimant the report which had been uploaded to the Crown Court. We agreed that Miss Abiodun could do so, and the report she showed us contained the same date of the assessment as the one in the hearing bundle – that is 14 December 2021.

103. The Claimant asked to see the report a further time the following day in the Tribunal hearing as she rightly said that she had only seen it very quickly the first time. The parties were given permission to leave the hearing room and to look at the document on Miss Abiodun's laptop (in her presence) for in the region of ten to fifteen minutes. Upon her return to the hearing room the Claimant maintained her position that the date was wrong as the cover sheet formatting looked different to the one in the hearing bundle.

104. The Respondent also relied upon an email from the Claimant dated 25 November 2021 to Ms Carter and the receptionist where she had set up the meeting with the adult client for 14 December and she asks them what to do next. Unfortunately, the copy of the email in the hearing bundle is not a genuine one, it is one that the Claimant recreated in order to show us how an email can be fabricated. She inserted the words *"Jingle Bells, Jingle Bells, Jingle all the way" to* show us how it could be done. The original email was not included in the hearing bundle, this is unfortunate, however a smaller screenshot of it appears in there – it reads the same but without the reference to jingle bells.

105. The Claimant claims that the original email from her was fabricated as she would have started the email with a greeting such as hi or hello. The Claimant relies upon an undated LinkedIn post she made where she encouraged people to use greetings in their emails, and her argument is that she would not have sent the email of 25 November because it did not contain a greeting.

106. The Respondent denies fabrication and disagrees with the Claimant about the date of the meeting. The Respondent says that the meeting on 17 December 2021 was with a youth and his mother and counsel prior to his trial. We will refer to this client as "the youth client." The Respondent accepts that its Grounds of Resistance (paragraph 77) contains an error as it says that the meeting was with the youth client who required a pre-sentence psychiatric assessment. The Respondent maintains that the meeting was with the youth and his mother, and that counsel may have been in person or online, however it was not a pre-sentence assessment as the youth had not been convicted at that time. In interparty correspondence the Respondent said that the confusion may have been due the case-holder leaving the Respondent.

107. The Claimant is therefore arguing that the Respondent has lied about the date of the meeting, that it has fabricated parts of Dr Deo's report, and further that the Respondent has also fabricated an email from the Claimant to Ms Carter and the receptionist where she says she set up the meeting and asks what to do next.

108. The Claimant went on to explain that she had been provided with four different versions from the Respondent about when the meeting took place or who the meeting was with.

109. The Claimant was asked why the Respondent would have done this. We at first understood that the Claimant was alleging that the Respondent had done this in order to try and set her up to fail by alleging that she had not updated the client file after the meeting. However, later in the hearing, the Claimant resiled from this and it remained unclear as to why the Claimant says the Respondent would have done it. We found the Claimant's argument about the Respondent's alleged motivation to be difficult to follow – if a file had not been updated post client meeting then it would not appear to make any difference whether it was on 14 or 17 December 2021.

110. During the Tribunal hearing Miss Abiodun was clear in her evidence that the meeting with the adult client was on 14 December and that the Claimant

had a different meeting on 17 December with the youth client and his mother, therefore she was not alone then. The Respondent has strenuously denied the allegation and maintains that the Claimant is simply wrong about the date of the meeting, that she has misremembered, and that there would be no reason for it to have done something like this. The Respondent points out that if a solicitor is found to have committed such an act that it would potentially be career ending.

111. The bundle contains a considerable amount of correspondence on this matter, and the Claimant's first witness statement and exhibits are directed solely on the issue of fabrication. The Claimant's second witness statement also makes serious allegations about the conduct of the Respondent and she alleges significant amounts of dishonesty, document manipulation and concoction, she says that she had to re-check documents due to authenticity concerns, and she also refers to newly created and falsified documents.

112. The Claimant has also alleged that the redactions applied to the document somehow demonstrates that they had been applied when the document was created, therefore some of it must have been written after the event. The same allegation is made about other documents in the hearing bundle, although some of these allegations were withdrawn during the hearing. The Claimant told us that she had engaged with an IT specialist firm who may have supported her allegations, but she had not obtained a report from them as it would have cost £3,000.

113. Whilst it was not always clear, it appeared to be the case that the Claimant was arguing that neat looking redactions could only be applied electronically and that would be at the time of creating a document. The implication being that documents with neat electronic redactions had either been redacted when originally written or they had been forged after the event. Similarly, the Claimant appeared to be arguing that a document with a slightly messy redaction had been redacted by hand which could be at any time. We do not agree. Lots of PDF software enables redactions to be made to electronic documents, and this includes documents which have been scanned in. The fact that a document has a neat redaction does not mean that it was either redacted at creation or forged after the event.

114. In another example the Claimant alleged that the subject line of an email which had been redacted demonstrated in some way that the email had been fabricated and she attempted to show with a ruler the length of the subject line compared to the text below it. The images provided by the Claimant were of no assistance to us as the zoom or the font on each was different therefore we were not comparing like with like.

115. Fabrication of documents by anyone before the Employment Tribunal is an exceptionally serious matter. If it is found that solicitors have fabricated documents then the repercussions could be serious for those solicitors.

116. The Claimant has not demonstrated to us that the Respondent has fabricated documents, either the section of Dr Deo's report, or the email dated 25 November 2021 from her to her colleagues. We find that it is far more likely the case that the Claimant has simply misremembered. We also query what motive the Respondent would have had to do something so

serious as that. There appeared to be no reason why solicitors would risk destroying their own careers and the professional reputation of the firm by fabricating documents for no apparent purpose. This appeared to be highly improbable.

117. The Claimant explained in the hearing that she was unable to let this issue go. That is very unfortunate. The Claimant's preoccupation with making unsubstantiated allegations of forgery and fabrication have damaged the Claimant's credibility in these proceedings as she appeared unable (as distinct from unwilling) to accept the Respondent's explanation that it had no reason to act as she had alleged.

118. For the avoidance of any doubt, we do not find that any document to which we were referred had been fabricated by the Respondent.

First alleged protected disclosure / grievance - 20 December 2021

119. On 20 December 2021 at 4:02pm the Claimant sent an email to Miss Abiodun following the meeting of 17 December 2020. The Claimant now says that her email was a grievance and that it contains two protected disclosures. It is therefore appropriate to include the precise wording of the email and to highlight the alleged protected disclosures by way of underlining.

"Hi Shade

Further to the follow-up performance meeting we had on Friday, I thought it would be a good idea to put the issues we discussed in writing, not least to ensure I understood the key points. I also thought it important for us going forward that you knew how I felt about the content of the two meetings. I am sorry for the lengthy message but so much has been targeted directly at me recently that I feel it is time to put my point across in a formal way.

Firstly, you said on Friday, you were going to extend my probation by three months. However, as my employment contract does not include a probation period clause, my probation automatically ended today.

Regarding the comments made at the meetings, (to reiterate that everything said to me went in!):

1. *I appreciate you were not around when I first started at THB full time, so would not have been aware what was happening to me. But, as mentioned to you in both review meetings, in the presence of Ellie and then Kate, I received little or no legal training or supervision whatever for the first month, and I got limited help after that. Only in the couple of weeks before Ellie left for maternity leave did the level of guidance increase sufficiently, which saw my knowledge improve greatly, as acknowledged by you.*

2. *It is no secret that I came with no legal experience whatsoever which is why I accepted a pay package which is lower than the minimum the SRA says paralegals should be paid. So, to expect that I be almost proficient at managing fast-moving and high number of*

Magistrates case files after just three months, in the above given circumstances, was a wholly unrealistic expectation from the start.

3. *Added to that, when stating reasons for my 'non-performance', you mentioned Covid. You mentioned how I had to work from home when my daughter got Covid, and how I was off work for a fortnight when I was seriously ill with the disease. This comment was particularly jarring as it was because there was little or no Covid safety precautions in place at work, that* [redacted] *was able to come to the office whilst infected with Covid and give it to me. My family's only holiday for two years was ruined by my sickness which saw me almost hospitalised. It was a very distressing time for all of us.*

4. *Then, when questioning my ability to do the job and learn quickly enough you told me how another THB paralegal had 'got the sack' for not doing the job adequately. Using such a comment as a veiled threat towards me was shocking. Especially when my comments about my lack of support were completely ignored. My recent completion of the GDL, the equivalent of a three-year law degree in twelve months, proves this is not a speed-learning issue.*

I have sacrificed a lot to work for THB and have given so much. That is something I have always been happy to do, so it is extremely disappointing that it is felt to be ok to treat me in this way. What's even more regretful is that, in the process, I have been tainted in the eyes of the other office staff too.

Working flat out doing the job, I am nearly always the first of the support staff to arrive and the last to leave. My commitment to THB is in no doubt. Always wanting to do well, I asked you and Ellie previously which areas of work were priority for me, and you replied "all of them." This is obviously not the case as trying to do every task that comes across my desk is clearly preventing me from doing the tasks that are priority.

However, there was a positive thing to come out of this process. You clarified on Friday that only the tasks connected with Gavin's list, that Ellie recently provided, are priority. Therefore, I can now hand over any other tasks that come in, which are unconnected to the list, and this will free up considerable time for me to manage the case files more effectively.

I know that the pressure is on everyone in the office at the moment, and I want to succeed in the job. But it does no one any good to be continuously criticised both in public and in private, especially by those who are not my manager. So, I feel sure that getting these issues out in the open will help build on the relationship going forward – to the benefit of everyone involved.

Many thanks.

Have a happy Christmas and I will see you for a fresh start in 2022!

Kind regards

Denise"

120. Paragraph 3 is alleged to be one protected disclosure, whereas the paragraphs starting *"Working flat out…"* and *"I know that the pressure…"* are alleged to be a separate protected disclosure when read together.

121. Whilst it was not marked as such at the time, the Claimant argues that this email was a grievance, and we find that it was, albeit an informal one. We of course note that the Claimant used the word formal at the start of her email, however the Claimant had expressed her concerns in writing to her line manager who was the subject matter of that email. The Respondent's Grievance Policy (Staff Handbook chapter 2.11, at paragraphs 5 and 6) provide that an informal grievance should be sent to the line manager, and a formal grievance should be sent to the practice manager. Accordingly, we find that the Claimant was raising her grievance informally in the first instance with Miss Abiodun. This is also consistent with the wording that the Claimant used at the end of the email about the relationship going forward and also a fresh start in 2022.

122. We will address later in this judgment whether this was a protected disclosure or not. However, the contents of the Claimant's email are important as she has argued that following this there was a flurry of activity on the part of the Respondent and that a plan was developed to remove her following "a sham performance process". The Claimant argues that performance concerns had not been raised in writing with her before.

123. Whilst we have not seen performance concerns raised in writing with the Claimant prior to 20 December, the contents of the Claimant's email confirm that performance concerns had been raised with her at two meetings. We know the date of those meetings were 17 November and 17 December, both of which were before the Claimant's email of 20 December. Whilst it may be accurate to say that concerns were not committed to writing before that date, they were, by the Claimant's own admission, raised with her orally on two occasions, the second of which precipitated the Claimant's email.

124. The Claimant says that the sections identified in her email tended to show that a crime had been committed, that there had been a failure to comply with a legal obligation, and that the health and safety of an individual had been endangered.

125. The Claimant's evidence on whether she believed that this was in the public interest was very limited and consisted of her repeating that it was made in the public interest and that it was reasonable in the circumstances. There was no further elaboration on that in evidence. In her closing submissions the Claimant expanded on this very briefly to say that Covid cases were rising in Ipswich at that time and that anyone could catch Covid, therefore what she was saying was in the public interest.

126. In her witness statement the Claimant explains why she sent this email and she stated:

"Part of this email address Miss Abiodun's claim in both meetings that my alleged poor performance was down to me being off so long with Covid. I explained in the email that it was solely because THB had little or no Covid

protections in the office, including the letting in of [the barrister]*, that had led to me catching the virus in the first place."*

127. Miss Abiodun did not reply to the Claimant. At 6:16pm Mr Warren emailed Miss Abiodun. The subject line was "Denise." In the email Mr Warren said *"Just been made aware of performance issues re Denise. I am off today as Mother in law has sadly passed away but can see matters have reached an advanced stage. Can you bring me up to speed please."*

128. How Mr Warren became aware of the Claimant's email of 20 December is a matter of some dispute. The Claimant relies upon the Respondent's Grounds of Resistance which says that Miss Abiodun forwarded the Claimant's email to Mr Warren. There is no such email within the hearing bundle. Miss Abiodun's evidence was that she could not remember or be sure, she may have done so or she may have sent it to Mrs Ali-Kote who then passed it on to Mr Warren. That email is also not in the hearing bundle.

129. Mrs Ali-Kote was also unsure and said that she may have forwarded the email of 20 December on to Mr Warren or she may have spoken to him. Mr Warren said in his statement that it was the Claimant who contacted him on 20 December but he was unable to speak as his mother in law had passed away that day and he agreed to speak to her later. The Claimant invites us to infer that some document has been deliberately withheld from her and the Tribunal. The Claimant disputes speaking to Mr Warren.

130. We do not find that the Claimant's email was forwarded to Mr Warren at that time. The email from Mr Warren has a different subject line than the Claimant's email. Had that email been sent to Mr Warren we find it more likely that he would have either replied to it or forwarded it on to Miss Abiodun. We do not agree with the Claimant that Mr Warren constructed a new email chain in order to hide something or to paint a picture. That appears to us to be improbable. We are satisfied that the Respondent has complied with its disclosure obligations. A failure to do so would be a serious matter for any party, a deliberate decision of lawyers to withhold material would be a serious matter. We do not consider that the Respondent has done so, not least because the Respondent has disclosed a number of emails containing criticisms of the Claimant. Therefore, it would be illogical to release some but not others.

131. We find it more likely that someone spoke to Mr Warren and he was reaching out to Miss Abiodun to find out what had happened. The contents of Mr Warren's email is consistent with someone having spoken to him about the matter. We find that person was not Miss Abiodun as there would be no point in then emailing her if she was the one who had called him. That leaves either Mrs Ali-Kote or the Claimant.

132. Mr Warren says in his statement that it was the Claimant who called him but she denies this in her witness statement. As will be seen below, there is a separate error in the chronology of Mr Warren's witness statement as regards a car incident where Mr Warren's statement accidentally brings forward the date by a few weeks. This causes us to consider whether Mr Warren might also be mistaken about the date he spoke to the Claimant as it is not disputed that he did speak to her on 22 December. The Claimant is clear in her evidence that she did not call Mr Warren. Whilst we have

some reservations about some of the Claimant's evidence, specifically her tendency to use intemperate language, we prefer the Claimant's evidence in this regard given that it has been consistent on this point.

133. We find that it is far more likely that it was Mrs Ali-Kote as practice manager who spoke to Mr Warren and made him aware of the Claimant's email of 20 December. It is understandable that memories are unclear as this incident occurred over two years ago, moreover Mr Warren had just suffered a bereavement at that time.

134. Miss Abiodun replied to Mr Warren's email at 6:48pm and said that there had been a meeting with the Claimant to discuss her performance and she set out some of the support provided to her, such as supplying her with precedents, however this had not helped and the Claimant was reluctant to accept feedback. Miss Abiodun explained that the Claimant's performance was having an impact on other staff, her inability to prioritise work, and that she would do some work without checking if it was needed. Miss Abiodun said that she had looked to extend the Claimant's probation but could not see such a term in her contract, and she expressed concern about retaining the Claimant. Miss Abiodun said that the Claimant had potential, but she was slow and that *"winds me up"* and she does not communicate when she is struggling, and that she was annoyed at not being allowed to work from home but she could not do so as it could not be supervised – Miss Abiodun said that when the Claimant worked from home previously her work was not completed.

135. At 7:36pm Mr Warren asked Miss Abiodun if it was worth giving the Claimant another chance to which she replied at 7:41pm and said "*I think it is worth trying again Mike I really believe in this woman, but she really is hard work. The question I ask myself is whether the extra effort would be worth it in the end? If it doesn't work (I don't know about employment) does that leave the firm in a difficult position as her probation period has ended?"* Miss Abiodun said that the Claimant gave mixed messages and her biggest concern was that the Claimant was not sharing when she was struggling until they had chats and therefore they may need to have weekly catch-ups. Miss Abiodun said that as the Claimant was on leave until January so she hoped that would give the Claimant the opportunity to come back with a clean slate. Mr Warren replied at 7:46pm to advise that the Claimant would not have employment rights until two years had expired and he suggested they work on an email to the Claimant together.

136. The Claimant says that Mr Warren and Miss Abiodun had leapt into action to engineer her exit almost in a panic once her complaints were put in writing. The Claimant also says that Miss Abiodun asked three times for Mr Warren to consider her dismissal. We are not satisfied that is what happened here. Firstly we do not find that Miss Abiodun was asking for the Claimant to be dismissed on this occasion – there is nothing in her emails which can be interpreted as Miss Abiodun asking for the Claimant to be dismissed. At its very highest Miss Abiodun is asking what the risk is to the firm if the Claimant was retained but did not work out.

137. As regards leaping into action to engineer the Claimant's exit, the Claimant has accepted in her oral evidence that due to not having sufficient length of service she could have been dismissed at any time, and the

Respondent did not have to wait. There was no need to engineer a situation whereby the Claimant could be dismissed. The Claimant had already had two meetings which, by her own admission, her performance was discussed and she was told that she was not working quickly enough, not able to juggle matters, and was not updating files. It was unnecessary to go further to engineer an exit as the Claimant has suggested. Having heard the oral evidence of Mr Warren and Miss Abiodun, we do not agree with the Claimant that the emails sent on this date were sent with a view to engineering her exit – we find that to be improbable.

138. Later that evening Miss Abiodun sent the Claimant a WhatsApp message in which she asked for the contact details for a youth client. This is the client (and his mother) whom the Respondent says the Claimant met on 17 December whereas the Claimant disagrees and says that the meeting was with an older male and that she was alone with him. The Claimant appears to argue that the purpose of the message was to imply or somehow create a paper trail that the Claimant had failed to update the youth client's file whereas she had chosen not to include the number as there was a marriage dispute between the youth's parents. We do not agree with the Claimant. The message appears to be genuine and innocuous and it was not subsequently relied upon to criticise her. The Claimant says that this was done to create a sham paper trail however we find that to be improbable.

139. The following day Miss Abiodun forwarded the Claimant an email about a scholarship fund. Whereas it appeared that this was simply an attempt to provide support, the Claimant disputes this as states that it was done in order to create a false perception of Miss Abiodun being supportive. We again do not agree with the Claimant as the message appeared to be genuine and well intentioned and this was consistent with Mr Warren's description of Miss Abiodun as someone who was committed to developing people.

140. The Claimant has referred to this period as being the formation of the "THB Triangle" where she suggests that Mr Warren, Miss Abiodun and Mrs Ali-Kote were working in tandem to manufacture reasons for her dismissal.

141. On 21 December 2021 whilst on annual leave, the Claimant emailed Ms Williams where she forwarded on a legal aid query and asked her to organise someone to ask the client for the additional information required. On 23 December Ms Williams emailed Miss Abiodun and asked if she had the Claimant's login for the legal aid portal and asked if the Claimant went through it with her before she left. Ms Williams said that she was slightly in the dark but would try to sort it out.

142. Ms William's email was addressed to Miss Abiodun however she actually sent to it the Claimant who denies receiving it and argues that it is fabricated. The Claimant in her witness statement says that this was a slip up by the Respondent and proves that the document is false. The Claimant did not put this allegation to any of the Respondent's witnesses. There is no evidence before us to substantiate the allegation that this email had been fabricated – it looks like a simple typo by Ms Williams having sent it to the wrong person. We therefore do not find that it had been fabricated.

143. In her witness statement the Claimant says that in her email Ms Williams was making a complaint about her, however we do not find that she was. When the contents of the email from Ms Williams are carefully considered, it is quite clear that she was seeking to deal with the Claimant's request and she was asking Miss Abiodun for information, there was no attempt within that email to blame the Claimant for anything. At the very most Ms Williams was asking Miss Abiodun if the Claimant had discussed the matter with her before she went on leave, there was no explicit or implied complaint anywhere within that email.

144. Mr Warren spoke to the Claimant on 22 December. Mr Warren has pointed out that his witness statement contains an error as he makes reference to what became the "car incident" however the Claimant made him aware of that in early February 2022 and not December 2021.

145. During the conversation Mr Warren listened to the Claimant and discussed the need to complete work in a timely way and that the legal aid funding did not allow for extended conversations. The Claimant said that she was upset about her recent meeting with Miss Abiodun and she described difficulties in her working relationship with her. The Claimant's witness statement records *"So, I went through my email fully with him, and we discussed all the issues."* In her oral evidence the Clamant informed us that Mr Warren's ultimate aim had been to sort things out and that he had said he had taken on board what she had said and would try to resolve things.

146. Later that day the Claimant emailed Mr Warren and stated *"Thanks for your time today. I think it was really helpful. Onwards and upwards for 2022! Here's the invoice I mentioned."* It was clear that the Claimant was content with Mr Warren's handling of her grievance. We therefore find that Mr Warren dealt with the Claimant's concerns in her email of 20 December in an informal way as envisaged under the Respondent's policy, and further these concerns were resolved promptly. The Claimant did not pursue the matter formally and we therefore find that she was content with Mr Warren's informal response. The Respondent was entitled to assume that matters had been resolved.

147. The Respondent then paid £1,399.20 for the Claimant to undertake the Police Station Accreditation Scheme. We find that had the Respondent been intending to dismiss the Claimant in retaliation for perceived whistleblowing on 20 December, then it would have been a very odd decision to have paid almost £1,400 for the Claimant's training. We of course note that the Claimant was dismissed without having done the training, however the mere fact of making the payment is indicative that Mr Warren at that time expected the Claimant's employment to continue.

148. On 23 December 2021 Miss Abiodun forwarded Mrs Ali-Kote notes she made of the meetings on 17 November and 17 December with the Claimant which have been referred to above.

149. On 29 December 2021 Miss Abiodun emailed the crime team in Ipswich to say she had received a call from a client who was unhappy about a lack of updates or progress on his matter. Miss Abiodun asked for someone to call him back as she did not know whose case it was. The uncontested

evidence was that the Respondent did not have an electronic case management system at that time and was using paper files. On 31 January 2021 Ms Williams replied to say that the Claimant had been working on the file and that she (Ms Williams) had presumed that everything was in order but that she would try and look into it. Miss Abiodun replied *"No need to apologise. Everything that woman has touched has been a disaster! I feel like I have been her secretary this entire Christmas break sorting out all the things she was supposed to have done and should have done on her files!"*

150. On 4 January 2022 the Claimant returned to work after the Christmas break.

151. On 17 January 2021 Ms Williams emailed Miss Abiodun to explain that she had asked the Claimant to contact a client to take instructions on some mobile phone evidence in a drugs case, however the Claimant had just asked the client generally rather than taking instructions on specific messages which is what had been required. Ms Williams said that Miss Abiodun may need to explain things further to the Claimant face to face. In her reply Miss Abiodun said that the Claimant told her that she had something else to do on one file which she had left her to do along with a separate matter, and that she (Miss Abiodun) had asked that telephone calls not to be put through to the Claimant as she struggled to do more than one thing at a time, and she had told the Claimant they would need to have a meeting.

152. Ms Williams replied later that evening to express concern about the Claimant's handling of the matter. In brief, the concern was the Claimant had not obtained instructions when asked the week before, she had not obtained them that day on the basis she had not heard back from the client, and that she had instead sent an email at 5:25pm to let Ms Williams and counsel know that she would just have to send them something the next day when she received a reply, which Ms Williams said was the morning of the trial.

153. Ms Williams said that the Claimant did not think to chase the client that afternoon given the urgency of the matter, and instead Ms Williams had to do the chasing that evening. Ms Williams also said that she spent every day she had off the week before trying to sort the matter out and going through what needed to be done and yet she was now having to spend that evening doing this as well. Ms Williams pointed out that it now looked like the client would have to enter a plea the following day and if the Claimant had done as she had asked they would have known this the previous week, and been able to put the Crown and Court on notice. Miss Abiodun forwarded the exchange to Mrs Ali-Kote to put on the Claimant's file.

154. On 19 January Miss Abiodun met with the Claimant. An email from Miss Abiodun to Ms Williams later that day records that the Claimant had said she had done some things wrong on the drugs matter, but when Miss Abiodun attempted to explain where she went wrong the Claimant had spoken over her and said she would speak to Ms Williams so she could tell her exactly what she had done wrong. Miss Abiodun said that she had told the Claimant to communicate more and to chase for instructions to which the Claimant replied she was playing catch-up on other files which Miss Abiodun described as "self inflicted" and that she was not convinced *"that*

even when she is caught up that there will be much of an improvement however, I hope she proves me wrong."

155. On 20 January Mr Warren asked Miss Abiodun how things were going with the Claimant. Miss Abiodun emailed Ms Williams to ask what she should say. Ms Williams replied "badly" and made reference to having to deal with a backlog from things that had gone wrong, struggling to get up to speed, she was unable to cope with more than one thing at a time, she needs to find a way to juggle work, and Mrs Williams told her that she needs to support the lawyers better. Miss Abiodun said that she agreed and said it would be helpful if the Claimant wasn't so defensive and did not speak over people all the time especially when they were trying to help. The Claimant had previously alleged that this email was fabricated however she has since withdrawn that allegation.

156. The response from Miss Abiodun to Mr Warren was that things were going very badly, and it had not been great as they had to deal with the backlog from everything that had gone wrong with the Claimant. Whilst Miss Abiodun said that the Claimant was struggling to get up to speed, Miss Abiodun said *"However it is hoped that we are getting to the stage where she can cope."* Miss Abiodun said that they had a long chat that day where the Claimant had been told she needed to support the solicitors better which she seemed to have taken onboard, but only time would tell. Miss Abiodun said that the problem seemed to be that the Claimant could not cope with dealing with more than one thing at a time but the Claimant disagreed and that she would need to find a way to juggle things. Miss Abiodun said that she would meet with the Claimant again when she returns from leave in February by which time there would not be much for her to do so she should be on top of things by then.

157. Mr Warren responded that it seemed that the Claimant was treating matters as her own caseload, such as the dog case, and he asked if it would be worth him having another chat with the Claimant. Miss Abiodun responded it may help and give the Claimant another push and *"it'll hopefully dawn on her that I am not the only one who is interested in how she is getting on."*

158. Mr Warren then emailed the Claimant on 27 January 2022 to see how things were going. The Claimant responded to advise that things were improving and becoming more enjoyable, and she said that she was getting help to manage files in a professional way. The Claimant added that Miss Abiodun had needed some guidance on managing people after working on her own in the past, and she said that Miss Abiodun had complemented her by stating that a piece of written work was excellent. The Claimant said that things were much better and she thanked Mr Warren for any part he played in that. It was confirmed by Miss Abiodun in her oral evidence that the Claimant had produced a written piece of work which she had said at the time was excellent.

159. Mr Warren responded to the Claimant to say that it remained a constant struggle to organise time no matter how long someone had been doing it, and they must always keep in mind the applicable funding, which was £300 for an appeal from the Magistrates Court to the Crown Court under legal

aid, and that clients must be gently made aware that time and funding constraints apply.

Telephone call of 31 January 2022

160. On 31 January 2022 there was a telephone conversation between Miss Abiodun and the Claimant about performance issues. The conversation centered around Miss Abiodun having undertaken file reviews and having noted that the Claimant had not completed certain work on the files, including not sending out letters following hearings. The Claimant suggested that she had not been told that she needed to send out file closure letters.

161. It was clear that this was a difficult meeting as Miss Abiodun said she went into the meeting under the impression from the receptionist that the Claimant had asked her to tell Miss Abiodun, if asked, that an IT issue she had on the previous Friday had lasted longer than it had. Miss Abiodun felt that this was being used as an excuse for not having completed work. Miss Abiodun said that it had irritated her that the Claimant had asked someone else to lie for her. Miss Abiodun said that she could get over the misrepresentation, but her frustration was about work not getting done and that was her focus during the call.

162. Miss Abiodun said that the Claimant attempted to speak over her but on this occasion she refused to let it happen and that she had not challenged the Claimant in this way before. The meeting ended with Miss Abiodun telling the Claimant to sort out the letters and to send them to her for checking with the files for checking. Miss Abiodun was clear in her evidence that she had not accused the Claimant of not doing the work, she was raising her concerns that the Claimant was not evidencing the work done by recording it on the files.

Second alleged protected disclosure – 1 February 2022

163. On 1 February 2022 the Claimant did not attend work and did not report in. Mrs Ali-Kote attempted to reach her but was unable to do so. At 11:47am the Claimant sent an email which she describes as her second grievance and which she alleges is her second protected disclosure.

164. The email reads as follows:

"Hi Shade

The telephone conversation we had yesterday was unacceptable. Just when I thought I was doing well… You were protected from the others by ringing me at my desk, but it made the situation completely public for me. Both [Redacted] *and* [Redacted] *were forced to listen, in shock and embarrassment, at my efforts to defend and explain myself again and were so worried about me, they spent the whole afternoon trying to help.*

I was so stressed and upset by what had happened that I had a funny turn on the A12 at Colchester on the way home, and had to pull over. [Redacted] *and* [Redacted] *came out and follow* [sic] *me home.*

I have a doctor's appointment this afternoon to get myself checked out.

We will need to have a meeting to sort this out. It is damaging for both of us.

Denise."

165. The Claimant's argument is that the contents of the email tended to show a breach of a legal obligation or that the health and safety of an individual has been endangered. Whereas the Claimant said that it was in the public interest, her evidence on why she believed that to be the case was not developed and consisted of essentially arguing that was her belief. The Claimant in her closing submissions referred to her concern that if she was being treated in this way then colleagues or clients might also be treated in the same way, however this was not something which was given in evidence.

166. Miss Abiodun forwarded this to Mr Warren and Mrs Ali-Kote but did not reply herself as Miss Abiodun said that it was obvious that there had been a breakdown in their relationship. Mr Warren acknowledged receipt and asked Miss Abiodun to provide some context.

167. Miss Abiodun sent a long reply to Mr Warren at 2.15pm that day. The entire contents are not duplicated here, however we note that Miss Abiodun indicated that the Claimant appeared able only to complete one thing at a time, she had not been evidencing work on files (such as printing attendance notes and emails), Miss Abiodun was having to check and return the Claimant's work (including at the weekends) which the Claimant was taking a very long time to complete, and whilst there was some progress it had been extremely slow. Miss Abiodun referenced the Claimant asking the receptionist to tell Miss Abiodun that there had been an IT meltdown which is why she could not complete the work which she said was not the case. Miss Abiodun said that the Claimant told her she did not know what to do with the files which Miss Abiodun said was a blatant lie, and that the Claimant had not been sending closure letters to clients.

168. Miss Abiodun said that the Claimant did not like to be told she was in the wrong, she would speak over her and was too defensive. Miss Abiodun accepted the Claimant would have been taken aback by their conversation on 31 January which was the day before, however Miss Abiodun said that she could not keep spoon feeding her. Miss Abiodun also referenced the earlier email from Ms Williams on the drug case where she had to work on her days off due to the Claimant, and further that the drugs client could potentially have received more credit due to the Claimant's failure to take instructions on matters earlier.

169. Miss Abiodun appeared very frustrated in her email as she said that that she had had enough, the Claimant created more work than was necessary, that Miss Abiodun spent her days dealing with and checking the Claimant's work before doing her own, that the Claimant appeared unable to take initiative and that she expected to be told "chapter and verse" how to do things and even then she would ask for examples and would still get the work wrong. Miss Abiodun said that she still had to assist the Claimant with effectively case-working a file and making lists for her, despite there being

a summary trial checklist on the file and having been provided with a printed copy.

170. Mr Warren responded and said he had no doubt that Miss Abiodun had given very clear instructions and that it was her call, but he was free to attend a further review meeting. Mr Warren added that he knew it was exasperating and hugely frustrating "but may need to call it early." Miss Abiodun replied that she was done with the Claimant and that she thought that it was time to call it a day. In her oral evidence Miss Abiodun informed us that she felt that she had been flogging a dead horse, she had given her all and gone beyond all reasonable efforts with the Claimant.

171. There was also some discussion between Miss Abiodun and Mrs Ali-Kote with Mr Warren about the Claimant not having attended work and when she might return. Mr Warren responded with some general employment law advice he had obtained about employment rights and the two year qualifying period for unfair dismissal protection, and he said that if matters came to an end he would want to make sure that all calculations were correct for notice and other payments and that he still had concerns that they were doing things exactly by the book.

172. Miss Abiodun replied at 2:45pm that day to advise that she could not work with the Claimant much longer, that she would be content to wait longer if that protected the firm, and that she could not see the Claimant improving at all. Miss Abiodun also stated *"I am wounded by it because I championed her the entire way thought to getting the job but I just have to accept that whilst she might be enthusiastic the enthusiasm isn't reflected in the quality of her work."*

173. On or around this time Mr Warren spoke to some of the Respondent's equity partners and the decision was reached to terminate the Claimant's employment.

174. The Claimant returned to work on 2 February 2022. That afternoon Mrs Ali-Kote emailed the Claimant to ask her to have a chat with her and Mr Warren via Teams. The Claimant asked to speak the next day which was agreed and the Claimant said this would give her time to jot down a few things. The Claimant said she did not know how and where to be able to be to do the meeting as she had no laptop in the office other than a colleague's PC. The Claimant suggested she could do it in her car. Mrs Ali-Kote suggested that the Claimant download Teams on her phone and she could then go to her car or find an empty room. The Claimant then sent an email in which she said it was obvious that they would be talking about her, she wanted to know if Mrs Ali-Kote and Mr Warren had seen the email to Miss Abiodun after the first probation meeting. Mr Warren said that the Claimant should send across what she wanted and that *"quite clearly we want to speak with you about how things have progressed…"*

175. The Claimant then forwarded Mr Warren and Mrs Ali-Kote copies of emails she had sent to Miss Abiodun following earlier meetings with her.

176. The Claimant says in her witness statement that *"I agreed to do this on my phone and in my car as I did not want anyone else in the office to know what the meeting was about. I was under the impression this was over what*

had happened in my car." It was therefore clear that it was the Claimant who had made this offer to conduct the meeting in her car and it was because she did not want anyone else in the office to know what it was about.

Third alleged protected disclosure – 2 February 2022

177. The Claimant then sent an email to Mr Warren at 4:41pm on 2 February 2021 in which she provided an explanation for her absence the day before. The Claimant says that this is her third protected disclosure:

"Hi Mike

Thanks for the reply.

Please see below the email that followed the probationary meetings.

Also, as an explanation of yesterday's absence: on the way home on Monday night, I was almost killed on the A12. I had, what I thought at the time was a heart attack in the fast lane at 75mph – blurred vision, chest pain, difficulty breathing. I missed hitting the central barrier by centimetres. I managed to make it to the next layby and called [Redacted] *who came over to Colchester with* [Redacted] *and followed me home. I was in a terrible state the next morning and managed to get an emergency GP appointment. After many tests, they said it was likely a panic attack brought on by severe stress or shock – something I have never experienced in my life before.*

The cause of this was a phone call from [Redacted] *at my desk, in front of the others earlier that afternoon… It was horrendous and heart breaking after how much ground I have made up.* [Redacted] *and* [Redacted] *were doing everything they could think of to help me all afternoon as they were so shocked and embarrassed about what they had heard and witnessed. They knew the call had a significant impact on me.* [Redacted] *even messaged me that night to see if I was ok.*

It's so hard when everyone else is so nice. I am the only person in the whole office being treated in this way – to say I am baffled as to why is an understatement.

Clearly my positive reply to you just a few days earlier jinxed things…

Kind regards"

178. The Claimant has argued that this tended to show a breach of a legal obligation and that the health and safety of an individual had been endangered. As indicated above, the Claimant's evidence on whether she believed that this was in the public interest was very limited and consisted of asserting that it was she believed and that it had been reasonable for her to have done so. During closing submissions the Claimant made her argument (already addressed above) that if she was being treated in this way, then she was concerned about how colleagues and clients might be treated, however this point had not been addressed in evidence.

179. Mr Warren replied very quickly to say that he was sorry to hear about the incident, he could not comment on some of the assertions directed at Miss Abiodun, and that he looked forward to speaking to the Claimant the following day.

Dismissal meeting of 3 February 2022

180. On 3 February 2022 Mr Warren conducted the pre-arranged meeting with the Claimant. Mrs Ali-Kote was also in attendance. The meeting was conducted via Teams. Whereas the Respondent told the Claimant she should use a private meeting room in the office, the Claimant took part in her car.

181. We have been referred to notes of the meeting prepared by Mrs Ali-Kote. These were not verbatim minutes and they were not agreed with the Claimant at the material time. Having heard the oral evidence of the Claimant and the Respondent's witnesses, we find that the minutes were accurate as they were not contested by the Claimant to any degree when she questioned the Respondent's witnesses during the hearing.

182. The notes record that Mr Warren set out that legal aid work was subject to certain parameters in terms of funding and allocation of time and that there needed to be a balance and some performance issues had been raised with the Claimant before Christmas. The Claimant replied that she had improved and she referred to her email of 22 December 2021, however Mr Warren explained that he did not think that the references to Miss Abiodun's managerial skillset was really appropriate and that there were staffing issues across the criminal defence sector. Mr Warren explained to the Claimant that there was a need to "keep business heads on" and to work efficiently and that his concerns had been whether the Claimant could fulfil the requirements of the Respondent and the team, and he was not sure that the Claimant had understood that. The Claimant said that she had not been trained to which Mr Warren disagreed and suggested that some of the work had been very basic (such as evidence reviews). The Claimant then said that it had not helped that she had not sat in the crime room at first and that she was only just up to speed and had no support.

183. The notes record that Mr Warren said to the Claimant that her assertions about the A12 incident were odd and were serious assertions and he asked the Claimant if she was seriously stating that she nearly had a road traffic accident because of things that Miss Abiodun had said to her.

184. The Claimant has argued that Mr Warren belittled the car incident and accused her of being overly dramatic about the incident. Mr Warren denies this. We are not satisfied that Mr Warren did belittle the incident nor are we satisfied that he accused the Claimant of being overly dramatic. It is a case of Mr Warren's word against the Claimant's. Whereas we have found that Mr Warren misremembered a date of the car incident in correspondence, we have also treated some of the Claimant's evidence with caution given her predilection for intemperate language, some of which we witnessed in the hearing when she accused the Respondent of trickery, and her continued use of the word useless to describe her, having admitted that it was never said to her. We make it clear that we do not find that the Claimant has lied on this matter, we simply prefer the evidence of Mr Warren as to

what was specifically said. We of course note that this would have been a very upsetting meeting for the Claimant which may have impacted her recollection, but perhaps less so for Mr Warren.

185. Mr Warren discussed the Claimant's failure to update files and clients to which the Claimant said she had not been trained. Mr Warren informed the Claimant that it had been a further month on since their last discussion however the Claimant was not fitting in with legal aid parameters.

186. Mr Warren informed the Claimant that the decision had been made to terminate her employment due to performance concerns. After the Claimant was informed of the decision she said words to the effect that the decision was for the best as she did not think that it was a healthy situation for her to be in, she also said that she had not been given the proper opportunity to succeed. The Claimant was not required to work her notice and she was informed that she would be paid her notice and her accrued annual leave entitlement.

187. We found the Claimant's evidence with regards to the dismissal meeting to be slightly contradictory. The Claimant informed us that she had been required to conduct the meeting from her car, however the emails show that it was the Claimant who raised the possibility of doing so. Moreover the Claimant told us she had gone into her car in order to conduct the meeting in private, however she then complained in her evidence that after her dismissal there was no-one in the office for her to say goodbye to, although she then clarified that she had been worried that Miss Abiodun might return to the office and overhear the conversation which is why she said she conducted it in her car.

188. We accept that the Claimant wanted privacy for that meeting, and we also accept that she genuinely did not wish to be overheard by Miss Abiodun. Nevertheless it was clear that the decision to conduct the meeting in her car was the Claimant's alone and that there would have been somewhere within the Respondent's Ipswich office with various floors to conduct the meeting.

189. There was some post termination discussion about the correct expiry date for the Claimant's notice, however that was resolved by the parties and it is not an Issue before us.

190. Following the Claimant's termination the Claimant says that Miss Abiodun looked at the Claimant's LinkedIn profile on two occasions. This profile is something which the Claimant had set up and made available to the public. The Claimant provided an undated document which appeared to show that there had been views of her profile by Miss Abiodun and another unnamed member of the Respondent's staff on unspecified dates. The Claimant referred to this as sinister and akin to being stalked by someone waiting outside in their car as none of the Respondent's staff, with the possible exception of Mr Warren when she joined, ever showed any interest in her profile during her employment. However, the Claimant did not put this allegation to any of the Respondent's witnesses when she questioned them. A similar allegation was made by the Claimant about the Respondent looking at her profile during the Christmas party in December

which she did not attend. That allegation was withdrawn by the Claimant so we do not need to make a finding about it.

191. Following the decision to terminate the Claimant's employment, the Claimant engaged in pre-action correspondence with the Respondent including relating to her DSAR. In one email Mr Warren responded to the Claimant and part of his letter made reference to the motorway incident. The date of the incident was 31 January 2022, however Mr Warren's email referred to that incident having been towards the end of December 2021. The Claimant says that Mr Warren purposely gave the wrong date, whereas the Respondent says that it was an error as Mr Warren had two discussions with the Claimant, one in December and one in February 2022 just after the incident. It was clear that this was an unintentional error on the part of Mr Warren, we saw no possible ulterior motive on his part.

192. Both parties addressed us on the issue of time. We heard evidence from the Claimant she did not bring her claim sooner because she was waiting for the response to her DSAR and that she was still recovering from the effects of her dismissal and also the events which had led up to it. The Claimant confirmed that following the termination of her employment she continued to work on the family business, although she said that this did not involve much, and she also started to volunteer with the Citizen's Advice Bureau the following week after her termination.

193. We wish to make an observation about the Claimant's evidence in these proceedings. We have found that the Claimant has a propensity to use intemperate language. We have already made reference to the Clamant accusing the Respondent of using trickery with respect to the List of Issues during the hearing. There was no basis for such an allegation and the Claimant, to her credit, unilaterally withdrew that allegation on the final day of the hearing.

194. The Claimant described Miss Abiodun coming down the stairs and allegedly telling her off, and the Claimant compared this to the staff suffering a shared trauma like watching a car crash. We felt that the choice of language was excessive.

195. Similarly on a number of occasions in her oral evidence, and in her witness statement, the Claimant said that she had been told that she was useless. The Claimant later accepted that she had not been told that by the Respondent but she then used the expression one further time in the hearing. The Respondent had not said anything like that to the Claimant, and we noted that the Respondent's witnesses described the Claimant's relationship with clients as either good or excellent. We were concerned that the Claimant continued to use the word useless even when this had been pointed out to her during the hearing and she had previously accepted that it had not been used.

196. We also noted the contents of the Claimant's email to Mr Warren in which she said that Miss Abiodun was the cause of her nearly having a road traffic accident, although the notes also record that the Claimant withdrew that remark.

197. When the Claimant's choice of language was raised with her during the hearing she said that if she used words that were not strong then people would say that she was underplaying things, and then if she used them and they were too strong then people would say that she was exaggerating.

198. We therefore formed the view that some caution should be exercised when considering the Claimant's evidence as there was a risk that some of her language might be used for dramatic effect. That does not mean that we find that the Claimant has deliberately lied in her evidence – we do not make such a finding – however we simply record we have treated some of her descriptions with a degree of caution. Within this judgment we have indicated those occasions where we have preferred the evidence of one witness over another and we have explained why.

Submissions

199. Submissions were delivered by the Respondent on Thursday 29 February after the evidence of Mrs Ali-Kote. We received written submissions from the Respondent of 22 pages which were supplemented with oral submissions.

200. In short the Respondent argues that there were perceived to be genuine concerns about the Claimant's performance which necessitated various meetings and discussions, and that there was some acceptance from the Claimant that she had struggled. The Respondent says that it wanted the Claimant's employment to succeed and provided her with sufficient support and training.

201. The Respondent has addressed each of the remaining three alleged protected disclosures. Whereas the Respondent accepts that some of them may contain some information, and some of them may tend to show some of the matters under s. 43B(1) Employment Rights Act 1996, it did not accept that all of the alleged disclosures contained information or that all of them tended to show one of those matters. The Respondent disputes that it was reasonable for the Claimant to have believed that her disclosures were in the public interest.

202. The Respondent has dealt with each alleged detriment in turn, setting out whether the factual premise for allegation is made out, whether some are detriments at all, and it also disputes causation. The Respondent argues that none of the Respondent's witnesses knew that the Claimant was seeking to make a protected disclosure, rather their actions related to dealing with concerns about the Claimant's performance and were not in any way influenced by any protected disclosure. The Respondent also argues that anything allegedly occurring before 1 March 2022 is prima facie out of time and that it was reasonably practicable for the Claimant to have brought her claim in time.

203. We granted the Claimant a number of hours for her to deal with Mrs Ali-Kote's evidence and the Respondent's submissions. The Claimant's submissions were delivered orally. Put simply the Claimant maintained that she had made protected disclosures and suffered the detriments relied upon, and that she had been automatically unfairly dismissed for making these disclosures. The Claimant argued that her disclosures were in the

public interest, although her reasoning was not developed to any extent other than simply stating that they were in the public interest and it was reasonable for her to have believed that they were.

204. As to causation, the Claimant repeated her earlier evidence that the Respondent could have dismissed her at any time for her performance so she invited us to consider why the Respondent had chosen to do so soon after she had raised her concerns starting on 20 December 2021. The Claimant said that email caused a flurry of activity on the part of the Respondent, and she maintained that there had been a "THB Triangle" comprised of Miss Abiodun, Mrs Ali-Kote and Mr Warren, who had worked together to manufacture her dismissal and the performance process was a sham.

205. The Claimant also repeated her earlier arguments that we should look closely at the Respondent's correspondence as there was an absence of niceness or humanity in them, that there was no care or compassion shown towards her, in particular after she caught Covid which she blames on the Respondent. The Claimant referred to the correspondence and said that there was no feeling in there and that no one thought to ask how she was.

206. During her submissions the Claimant withdrew one more of the alleged detriments relied upon, namely the alleged fabrication of an email from Ms Williams. The Claimant maintained her position that other documents had been forged or fabricated.

Law

Protected disclosures / whistleblowing

207. The Employment Rights Act 1996 provides:

S. 43B(1) 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) …

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

(e) …

(f) …

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

…

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, …

208. A qualifying disclosure becomes a protected disclosure when it is made to the worker's employer or in accordance with the requirements made to external bodies or the press under s.43C-H.

209. In ***Williams v Michelle Brown AM*** **UKEAT0044/19/00**, HHJ Auerbach set out the test for identifying whether a qualifying disclosure has been made:

"It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.

Unless all five conditions are satisfied there will be not be a qualifying disclosure. In a given case any one or more of them may be in dispute, but in every case, it is a good idea for the Tribunal to work through all five. That is for two reasons. First, it will identify to the reader unambiguously which, if any, of the five conditions are accepted as having been fulfilled in the given case, and which of them are in dispute. Secondly, it may assist the Tribunal to ensure, and to demonstrate, that it has not confused or elided any of the elements, by addressing each in turn, setting out in turn out its reasoning and conclusions in relation to those which are in dispute." [9 and 10]

210. There must be a disclosure of information. In ***Cavendish Munro Professional Risks Management Ltd v Geduld*** **[2010] IRLR 38**, the EAT held that to be protected, a disclosure must involve giving information and must contain facts, and not simply voice a concern or raise an allegation:

"The ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around". Contrasted with that

would be a statement that "You are not complying with Health and Safety requirements". In our view this would be an allegation not information." [24]

211. However, in ***Kilraine v London Borough of Wandsworth*** **[2018] ICR 1850** the Court of Appeal held that:

"…the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. Langstaff J made the same point in the judgment below [2016] IRLR 422, para 30, set out above, and I would respectfully endorse what he says there. Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other. …

On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute "information" and amount to a qualifying disclosure within section 43B(1) , not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision." [30 and 31].

…

"The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase, "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). The statements in the solicitors' letter in the Cavendish Munro case did not meet that standard.

Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in Chesterton Global Ltd v Nurmohamed [2018] ICR 731 , para 8, this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he 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 belief will be a reasonable belief." [35 and 36].

…

"It is true that whether a particular disclosure satisfies the test in section 43B(1) should be assessed in the light of the particular context in which it is

made. If, to adapt the example given in the Cavendish Munro case [2010] ICR 325, para 24, the worker brings his manager down to a particular ward in a hospital, gestures to sharps left lying around and says "You are not complying with health and safety requirements", the statement would derive force from the context in which it was made and taken in combination with that context would constitute a qualifying disclosure. The oral statement then would plainly be made with reference to the factual matters being indicated by the worker at the time that it was made. If such a disclosure was to be relied upon for the purposes of a whistleblowing claim under the protected disclosures regime in Part IVA of the 1996 Act, the meaning of the statement to be derived from its context should be explained in the claim form and in the evidence of the claimant so that it is clear on what basis the worker alleges that he has a claim under that regime. The employer would then have a fair opportunity to dispute the context relied upon, or whether the oral statement could really be said to incorporate by reference any part of the factual background in this manner" [41].

212. A communication asking for information or making an inquiry is unlikely of itself to be constitute conveying information.

213. It is possible for several communications together to cumulatively amount to a qualifying disclosure even where each communication is not a qualifying disclosure on its own - ***Simpson v Cantor Fitzgerald Europe* [2020] EWCA Civ 1601.** Here the Court of Appeal agreed with the approach of the EAT in ***Norbrook Laboratories (GB) Ltd v Shaw* UKEAT/0150/13** where it was held that three emails taken together amounted to a qualifying disclosure even where the last email did not have the same recipients as the first two, as the former emails had been embedded in the final email. It will be a question of fact for the tribunal to decide whether two or more communications read together may be aggregated to constitute a qualifying disclosure on a cumulative basis.

214. As regards the Claimant's belief about the information disclosed, the question is whether the Claimant believed **at the time** of the alleged disclosure that the disclosed information tended to show one or more of the matters specified in section 43B(1). Beliefs the Claimant has come to hold **after** the alleged disclosure are irrelevant. Whether at the time of the alleged disclosure the Claimant held the belief that the information tended to show one or more of the matters specified in s.43B(1) and, if so, which of those matters, is a subjective question to be decided on the evidence as to the Claimant's beliefs. It is important for a tribunal to identify which of the specified matters are relevant, as this will affect the reasonableness question.

215. Account should be taken of the worker's individual circumstances and the focus is on the worker making the disclosure and not on a hypothetical reasonable worker. Workers with a professional or inside knowledge may be held to a higher standard than lay persons in terms of what it is reasonable for them to believe.

216. Whereas the test for reasonable belief is a low threshold, it must still be based upon some evidence. Unfounded suspicions, rumours and uncorroborated allegations are insufficient to establish reasonable belief.

217. The belief must be as to what the information **tends** to show, which is a lower hurdle than having to believe that it **does** show one or more of the specified matters. There is no rule that there must be a reference in the disclosure to a specific legal obligation or a statement of the relevant obligations nor is there a requirement that an implied reference to legal obligations must be obvious. However, the fact that the disclosure itself does not need to contain an express or even an obvious implied reference to a legal obligation does not dilute the requirement that the Claimant must prove that he had in mind a legal obligation of sufficient specificity at the time he made the disclosure - ***Twist DX and others v Armes and others*** **UKEAT/0030/30/JOJ**.

218. In ***Darnton v University of Surrey*** **[2003] IRLR 133** it was held by HHJ Serota that:

"In our opinion, it is essential to keep the words of the statute firmly in mind; a qualifying disclosure is defined, as we have noted on a number of occasions, as meaning any disclosure of information which in the reasonable belief of the worker making the disclosure tends to show a relevant failure. It is not helpful if these simple words become encrusted with a great deal of authority…" [28] and

"We agree with the learned authors that, for there to be a qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and that it tends to show a relevant failure, even if the worker was wrong, but reasonably mistaken." [32].

219. The issue of reasonable belief was considered by the EAT in ***Korashi v Abertawe Bro Morgannwg University Local Health Board*** **[2012] IRLR 4** where the following example was provided by way of illustration:

"To take a simple example: a healthy young man who is taken into hospital for an orthopaedic athletic injury should not die on the operating table. A whistleblower who says that that tends to show a breach of duty is required to demonstrate that such belief is reasonable. On the other hand, a surgeon who knows the risk of such procedure and possibly the results of meta-analysis of such procedure is in a good position to evaluate whether there has been such a breach. While it might be reasonable for our lay observer to believe that such death from a simple procedure was the product of a breach of duty, an experienced surgeon might take an entirely different view of what was reasonable given what further information he or she knows about what happened at the table. So in our judgment what is reasonable in s.43B 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. It works both ways. Our lay observer must expect to be tested on the reasonableness of his belief that some surgical procedure has gone wrong is a breach of duty. Our consultant surgeon is entitled to respect for his view, knowing what he does from his experience and training, but is expected to look at all the material including the records before making such a disclosure. To bring this back to our own case, many whistleblowers are insiders. That means that they are so much more informed about the goings-on of the organisation of which they make complaint than outsiders, and that that insight entitles their views to respect.

Since the test is their 'reasonable' belief, that belief must be subject to what a person in their position would reasonably believe to be wrong-doing." [62]

220. When considering the question of the Claimant's reasonable belief, it must be remembered that motive is not the same as belief - ***Ibrahim v HCA International Limited*** **[2020] IRLR 224**. However, whilst a worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it.

221. As regards the public interest, the Court of Appeal in ***Chesterton Global Ltd v Nurmohamed*** **[2017] EWCA Civ 979**, identified the following principles:

i. There is a subjective element - the Tribunal must ask, did the worker believe, at the time he was making it, that the making of the disclosure was in the public interest?

ii. There is then an objective element - was that belief reasonable? That exercise requires that the Tribunal recognise that there may be more than one reasonable view as to whether a particular disclosure was in the public interest.

iii. The necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. As per Underhill LJ:

"That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable." [29]

iv. The reference to public interest involves a distinction between disclosures which serve only the private or personal interest of the worker making the disclosure, and those that serve a wider interest.

v. It is still possible that the disclosure of a breach of the Claimant's own contract may satisfy the public interest test, if a sufficiently large number of other employees share the same interest. In such a case it will be necessary to consider the nature of the wrongdoing and the interests affected, and also the identity of the alleged wrongdoer. These are also referred to as the four factors in ***Chesterton***.

222. It is not for the Tribunal to determine if the disclosure was in the public interest. Rather the question is:

i. whether the worker considered the disclosure to be in the public interest;
ii. whether the worker believed the disclosure served that interest; and
iii. whether that belief was reasonably held.

Criminal offences

223. As regards criminal offences, it does not matter if the worker is mistaken as to the existence of a criminal offence - ***Babula v Waltham Forest College [2007] ICR 1026***. It is sufficient if the worker reasonably believes that an offence exists, and there is nothing within s. 43B(1) which requires the worker to be right. This less restrictive interpretation is reinforced by strong public policy considerations as to the purpose of the statute which is to encourage responsible whistleblowing. The Court of Appeal held:

"…if a whistleblower reasonably believes that a criminal offence has been committed, is being committed or is likely to be committed. Provided his belief (which is inevitably subjective) is held by the tribunal to be objectively reasonable, neither (1) the fact that the belief turns out to be wrong-nor (2) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence-is, in my judgment, sufficient, of itself, to render the belief unreasonable and thus deprive the whistleblower of the protection afforded by the statute." [75]

And

"…what remains relevant is the whistleblower's reasonable belief, and not whether or not it turns out to be wrong. The use in the statute of the word "likely" does not, in my judgment, import an implication that the whistleblower must be right, or that, objectively, the facts must disclose a likely criminal offence or an identified legal obligation." [77]

Breach of a legal obligation

224. As regards legal obligation, in ***Boulding v Land Securities Trillium (Media Services)*** **Ltd (2006) UKEAT/0023/06** HHJ McMullen QC held the following:

"The legal principles appear to us to be as follow. The approach in ALM v Bladon is one to be followed in whistle-blowing cases. That is, there is a certain generosity in the construction of the statute and in the treatment of the facts. Whistle-blowing is a form of discrimination claim (see Lucas v Chichester UKEAT/0713/04). As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following:

(a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.

(b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

"Likely" is concisely summarised in the headnote to Kraus v Penna plc [2004] IRLR 260, EAT Cox J and members:

"In this respect 'likely/ requires more than a possibility or risk that the employer (or other person) might fail to comply with a relevant obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable, or more probable than not that the employer (or other person) will fail to comply with the relevant legal obligation. If the Claimant's belief is limited to the possibility or risk of a breach of relevant legislation, this would not meet the statutory test of likely to fail to comply."" [24 and 25].

225. In ***Eiger Securities LLP v Korshunova*** **[2017] ICR 561**, Slade J held:

"In order to fall within ERA s.43B(1)(b)… the ET should have identified the source of the legal obligations to which the claimant believed Mr Ashton or the respondent were subject and how they had failed to comply with it. The identification of the obligation does not have to be detailed or precise but it must be more than a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation…

The decision of the ET as to the nature of the legal obligation the claimant believed to have been breached is a necessary precursor to the decision as to the reasonableness of the claimant's belief that a legal obligation has not been complied with" [46 and 47].

226. Accordingly, whilst the identification of the legal obligation does not need to be precise or detailed, it has to be more than a belief that what was being done was wrong.

Endangerment of health and safety

227. As regards endangerment of health and safety, the term "health and safety" is a generally well understood phrase and it will usually be clear whether the subject matter of a disclosure could fall within its scope. It was confirmed in the case of ***Hibbins v Hesters Way Neighbourhood Project*** **[2009] ICR 319**, that the health and safety matter does not necessarily have to fall under the direct control of the employer in order for protection to apply.

228. A disclosure of this nature will require sufficient detail of the perceived risk to health and safety. In ***Fincham v HM Prison Service*** **EAT 0925/01** the worker was subjected to a campaign of racial harassment and informed the employer that "I feel under constant pressure and stress awaiting the next incident." The Employment Appeal Tribunal concluded that this was sufficient to amount to a qualifying disclosure:

"We found it impossible to see how a statement that says in terms "I am under pressure and stress" is anything other than a statement that her health and safety is being or at least is likely to be endangered. It seems to us, therefore, that it is not a matter which can take its gloss from the particular context in which the statement is made. It may well be that it was relatively minor matter drawn to the attention of the employers in the course of a much more significant letter. We know not. But nonetheless it does seem to us that this was a disclosure tending to show that her own health and safety was likely to endangered..." [30]

Detriment

229. The Employment Rights Act 1996 provides:

S. 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.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

(a) from doing that thing, or

(b) from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and

(b)it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).

230. Detriment has the same meaning as in discrimination law, meaning that someone is put to a disadvantage – ***Ministry of Defence v Jeremiah* [1980] ICR 13 CA**.

231. Further assistance as to the meaning of detriment can be found in the discrimination context from the case of ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** **[2003] IRLR 285,** whilst noting that an unjustified sense of grievance cannot amount to a detriment (following the decision in *Barclays Bank plc v Kapur and others (No.2)* [1995] IRLR 87) the court held:

"As May LJ put it in De Souza v Automobile Association [1986] IRLR 103, 107, 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 had thereby been disadvantaged in the circumstances in which he had thereafter to work." [34].

232. More recently in ***Jesudason v Alder Hey Children's NHS Foundation Trust*** **[2020] EWCA Civ 73** further clarification of the term "detriment" was provided by Elias LJ who held:

"In order to bring a claim under section 47B, the worker must have suffered a detriment. It is now well established that the concept of detriment is very broad and must be judged from the view point of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment. The concept is well established in discrimination law and it has the same meaning in whistle-blowing cases…" [27]

And

"Some workers may not consider that particular treatment amounts to a detriment; they may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way. But if a reasonable worker might do so, and the claimant genuinely does so, that is enough to amount to a detriment. The test is not, therefore, wholly subjective." [28].

Causation

233. As per Linden J in ***Twist DX and others v Armes and others*** **UKEAT/0030/30/JOJ**:

"..the five requirements of section 43B(1) are evidentially exacting for the claimant, who has the burden of proof in relation to this issue. ETs, in my view, can be relied upon to use their common sense and awareness of the aims of the legislation to separate the genuine public interest disclosure cases from claims which are constructed. Moreover, even where the worker has made a qualifying disclosure which is protected, they will not succeed unless the ET concludes that the disclosure of the qualifying information was a, or the, reason for the treatment complained of…" [105].

234. As to the issue of causation the court in ***Jesudason*** summarised the relevant authorities including ***Manchester NHS Trust v Fecitt*** **[2011] EWCA 1190; [2012] ICR 372** where it was held that:

"In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower." [45].

235. In ***Jesudason*** the Court endorsed a reason why test as opposed to a but for test for detriment claims and held:

"Liability is not, therefore, established by the claimant showing that but for the protected disclosure, the employer would not have committed the relevant act which gives rise to a detriment. If the employer can show that the reason he took the action which caused the detriment had nothing to do with the making of the protected disclosures, or that this was only a trivial factor in his reasoning, he will not be liable under section 47B." [31].

236. In ***Harrow LBC v Knight*** **[2003] IRLR 140** the Court held that satisfying the *"but for"* test is not sufficient, the Tribunal must assess the conscious and unconscious motivation of the people involved:

"It is thus necessary in a claim under s. 47B to show that the fact that the protected disclosure had been made caused or influenced the employer to act (or not act) in the way complained of: merely to show that "but for" the disclosure the act or omission would not have occurred is not enough (see Khan). In our view, the phrase "related to" imports a different and much looser test than that required by the statute: it merely connotes some connection (not even necessarily causative) between the act done and the disclosure." [16]

237. As regards motivation, it was further held in ***Croydon Health Services NHS Trust v Beatt*** **[2017] ICR 1240** that the motivation of the employer does not have to be malicious in order to amount to a detriment. In that case a factually accurate press release was found to have amounted to a detriment in those specific circumstances.

238. In ***Kong v Gulf International Bank (UK) Ltd (Protect (the Whistleblowing Charity) intervening)*** **[2022] IRLR 854**, the court examined the process for determining the reason for impugned treatment. Simler LJ made reference to the "separability principle" whereby it is possible to distinguish between the protected disclosure of information on the one hand, and conduct associated with or consequent on the making of the disclosure on the other. It is possible to distinguish between engaging in protected conduct and a reason connected to that conduct, but was not because the worker had engaged in the protected conduct. It is necessary to separate out a feature (or features) of the conduct relied on by the decision-maker that is genuinely separate from the making of the protected disclosure itself. It is possible that the protected disclosure is the context for the impugned treatment, but it is not the reason itself. It was held:

"The statutory question to be determined in these cases is what motivated a particular decision-maker; in other words, what reason did he or she have for dismissing or treating the complainant in an adverse way. This factual question is easy to state; but it can be and frequently is difficult to decide because human motivation can be complex, difficult to discern and subtle distinctions might have to be considered. In a proper case, even where the conduct of the whistle-blower is found not to be unreasonable, a tribunal may be entitled to conclude that there is a separate feature of the claimant's conduct that is distinct from the protected disclosure and is the real reason for impugned treatment.

All that said, if a whistle-blower's conduct is blameless, or does not go beyond ordinary unreasonableness, it is less likely that it will be found to be the real reason for an employer's detrimental treatment of the whistle-blower. The detrimental treatment of an innocent whistle-blower will be a powerful basis for particularly close scrutiny of an argument that the real reason for adverse treatment was not the protected disclosure. It will 'cry out' for an explanation from the employer, as Elias LJ observed in Fecitt, and tribunals will need to examine such explanations with particular care." [59-60].

Burden of proof in whistle-blowing detriment claims

239. Section 48(2) Employment Rights Act 1996 provides that it is for the employer to show the ground on which any act, or deliberate failure to act was done. The Employment Appeal Tribunal in ***Chatterjee v Newcastle Upon Tyne Hospitals NHS Trust*** **UKEAT/0047/19/BA** held:

"…Firstly, it will not necessarily follow, from findings that a complainant has made a protected disclosure, and that they have been subjected to a detriment, alone, that these must by themselves lead to a shifting of the burden under Section 48(2) . The Tribunal needs to be satisfied that there is a sufficient prima facie case, such that the conduct calls for an explanation.

Secondly, if the burden does shift in that way, it will fall to the employer to advance an explanation, but, if the Tribunal is not persuaded of its particular explanation, that does not mean that it must necessarily or automatically lose. If the Tribunal is not persuaded of the employer's explanation, that may lead the Tribunal to draw an inference against it, that the conduct was on the ground of the protected disclosure. But in a given case the Tribunal may still feel able to draw inferences, from all of the facts found, that there was an innocent explanation for the conduct (though not the one advanced by the employer), and that the protected disclosure was not a material influence on the conduct in the requisite sense." [33 and 34]

The Tribunal's approach

240. The Employment Appeal Tribunal in ***Blackbay Ventures Ltd v Gahir*** **[2014] ICR 747** has provided guidance as to the approach to be taken by Tribunals:

"It may be helpful if we suggest the approach that should be taken by employment tribunals considering claims by employees for victimisation for having made protected disclosures.

1. Each disclosure should be identified by reference to date and content.

2. The alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered or as the case may be should be identified.

3. The basis on which the disclosure is said to be protected and qualifying should be addressed.

4. Each failure or likely failure should be separately identified.

5. Save in obvious cases, if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the employment tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a check list of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the employment tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered. If the tribunal adopts a rolled up approach it may not be possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest of act or deliberate failure to act relied on and it will not be possible for the appeal tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an employment tribunal to have regard to the cumulative effect of a number of complaints providing always they have been identified as protected disclosures.

6. The tribunal should then determine whether or not the claimant had the reasonable belief referred to in section 43B(1) and under the "old" law whether each disclosure was made in good faith; and under the "new" law whether it was made in the public interest.

7. Where it is alleged that the claimant has suffered a detriment, short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied on by the claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence the failure of the respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act.

8. The tribunal under the "old" law should then determine whether or not the claimant acted in good faith and under the "new" law whether the disclosure was made in the public interest." [98]

Automatic unfair dismissal

241. Section 103A of the Employment Rights Act 1996 provides:

"A*n employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason or, if more than one, the principal reason for the dismissal is that the employee made a protected disclosure."*

242. As set out above, the statutory question is what motivated a particular decision maker to act as they did – ***Kong***.

243. The reason or principal reason for the dismissal means the employer's reason. This can be the reason of the dismissing officer, but it may be necessary to look beyond that decision. In ***Royal Mail v Jhuti*** **[2019] UKSC 55** (at paragraph 60), the Supreme Court held that where the reason for

dismissal is hidden from the decision maker behind an invented reason, it is for the Tribunal to look behind the invention rather than to allow it to infect its decision, and provided the invented reason belongs to a person placed in the hierarchy of responsibility above the employee, there is no difficultly attributing that person's state of mind to the employer, rather than that of the decision maker.

244. As regards the burden of proof, in ***Kuzel v Roche Products Limited*** **[2008] IRLR 530**, the Court held:

"The tribunal must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the tribunal that the reason was what he asserted it was, it is open to the tribunal to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the tribunal must find that, if the reason was not that asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so.

As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case advanced by the employee on the basis of an automatically unfair dismissal on the basis of a different reason." [59 and 60]

245. A case of whistleblowing dismissal is not made out simply by a "coincidence of timing" between the making of disclosures and the termination of employment - ***Parsons v Airplus International Ltd*** **[2017] UKEAT/0111/17** [43].

Time

246. Section 48 Employment Rights Act 1996 provides:

Complaints to employment tribunals

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

…

(1) 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.

…

(3) 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.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and…

247. The Employment Rights Act 1996 provides:

S. 111 Complaints to employment tribunal

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal —

(a) before the end of the period of three months beginning with the effective date of termination, 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.

Conclusions and analysis

248. We will deal with each of the protected disclosures in turn.

Issue 2o - Claimant's email of 20 December 2021

249. The Claimant has informed us that two sections of the email are alleged to be protected disclosures. We have already set out the whole of the email in this judgment. The first alleged protected disclosure is contained in the paragraphs where the Claimant says that *"I have sacrificed a lot to work for THB…"* and *"I know the pressure is on everyone in the office at the moment…"*.

250. Having reviewed this part of the Claimant's email we do not find that this was a disclosure of information at all, and we agree with the Respondent that it amounted to what might be described as a "generalised gripe" about her own employment position.

251. If we are wrong about this not being a disclosure of information, we will go on to consider whether the Claimant believed that this tended to show a relevant failure under s. 43B(1)(a), (b) or (d). Whereas the Claimant suggests that is what she believed, her evidence was not developed on her reasons why. Even if we accept that is what the Claimant believed at the

time, we find that such a belief was not a reasonable one as the contents of the first part of the email falls far short of tending to show any of those relevant failures. There is no suggested connection with any breach of a legal obligation, crime, or endangerment of health and safety.

252. Again, if we are wrong on any of the above, we will examine whether the Claimant believed that this was a disclosure in the public interest, and whether it was reasonable for her to have done so. We note of course that there is no statutory definition of the public interest for the purposes of whistleblowing. We are not required to decide whether something was in the public interest. We make it clear that we put out of our minds the issue of motivation or good faith. These are matters which may be relevant to the issue of compensation. Our task is different – our focus is on what the Claimant believed and whether that was reasonable. In approaching our decision, we also make it clear that the public interest is different to what might be interesting to the public.

253. The Claimant's own evidence on this was very brief and consisted of asserting that it was in the public interest, but there was a lack of anything to justify that belief. The two passages relied upon in that email relate solely to the Claimant's own personal circumstances, and as such we do not find that at the time of writing it the Claimant believed that she was disclosing something in the public interest.

254. If we are wrong on that, and the Claimant did believe at the time that this was a disclosure in the public interest, we will now consider whether that belief was reasonable by considering the four factors identified in ***Chesterton***.

255. We have considered the number of people whose interests the disclosure served. We have already found that there was not a disclosure of information, but in any event the paragraphs relied upon would appear only to serve the Claimant's interests. We have reviewed the nature of the interests affected, and again it is limited to the Claimant's own employment situation. As regards the nature of the wrongdoing disclosed, the two passages in question do not identify any specific form of wrongdoing. Finally, we note that the identity of the Respondent is a limited liability partnership, that is a private business, however that business is a firm of solicitors. It is of course uncontroversial to note that the public interest might be advanced if there is a disclosure of information relating to whether a firm of solicitors is complying with regulatory standards or requirements.

256. We have already found that the sections of the email relied upon do not disclose any information, and the contents are limited to the Claimant's personal circumstances. As such we do not find that the Claimant believed that this disclosure was in the public interest at the time, and even if she did, that belief was not reasonable.

257. We therefore do not find that the first part of the Claimant's email of 20 December 2021 was a protected disclosure.

258. We will now consider the second part of that same email, specifically the Claimant's comment that *"It was because there was little or no Covid safety*

precautions in place at work, that [the barrister] *was able to come into the office whilst infected with Covid and give it to me."*

259. We have looked closely at this sentence and listened carefully to what the Claimant has said in her evidence. The comment that that there was little or no Covid safety precautions in place at work would appear to be analogous to the example provided by the EAT in in ***Cavendish Munro***, that is *"You are not complying with Health and Safety requirements".* The Court held that was an allegation and not information, however in ***Kilraine*** the Court of Appeal urged against falling into a rigid dichotomy between allegations on the one hand and information on the other.

260. The task for the Tribunal, as set out in ***Kilraine,*** is to decide whether that sentence has sufficient factual content and specificity such as is capable of tending to show one of the matters listed in s. 43B(1). We must look at the particular context in which the statement was made.

261. The comment that that there as little or no Covid safety precautions in place was very general. There was a lack of specificity. We find that this specific comment about *"little or no Covid safety precautions"* was not conveying of information.

262. We have looked at the other elements of the sentence relied upon. The Respondent accepts that the reference to the barrister coming into the office whilst infected with Covid was a disclosure of information. We agree that it was as it contained sufficient factual content and specificity. As regards the third part of the sentence, the allegation that the Claimant contracted Covid from the barrister (because of little or no Covid safety precautions) was not information, at best it was conjecture.

263. The context of this email was that the Claimant had attended a meeting with Miss Abiodun on 17 December where she raised her concerns about the Claimant's performance with her. The Claimant was clearly very upset by this and took issue with Miss Abiodun having referenced Covid as having an impact upon the Claimant's performance – specifically having had to work at home when her daughter caught Covid, and then the Claimant was off sick for two weeks with Covid. The Claimant said that this comment was *"particularly jarring as it was because there was little or no Covid safety precautions in place at work, that* [the barrister] *was able to come into the office whilst infected with Covid and give it to me. My family's only holiday for two years was ruined by my sickness which saw me almost hospitalised. It was a very distressing time for all of us."*

264. Having considered the totality of the sentence, together with the context in which it was made, it appears to the Tribunal that the only disclosure of information was that the Claimant was saying that the barrister had come into the Respondent's office whilst infected with Covid.

265. As to whether the Claimant believed that it tended to show one of the matters under s. 43B(1), we find that she did believe that based upon what she has told us in her oral evidence. The Claimant has referred to the health and safety legislation in her evidence, and we find that she had in mind matters about health and safety and legal obligations at the material time.

266. The Claimant now says in her closing submissions that she had in mind that a crime had been committed. This was on the basis that in her opinion a breach of health and safety law is a crime. We do not find that at the time of the disclosure the Claimant believed that a criminal offence had been committed as she made no reference to it at that time. Had the Claimant intended to express that a crime had been committed we would have expected her to have been more explicit about that. Whilst we accept that is what the Claimant believes now, we do not find that is what she believed at the time.

267. As to whether the Claimant's belief that this tended to show a relevant failure was a reasonable one, we find that it was not. No information was conveyed about the specific alleged failure to provide protective measures or precautions. The Claimant's email falls far short of that. There is no indication of what is being referred to. Given that the Respondent had a general business wide Covid policy, and a policy about returning to work in the Ipswich office, it did not appear to the Tribunal that the Claimant's belief that her email tended to show a relevant failure, was a reasonable one in these specific circumstances.

268. Nevertheless, if we are wrong on that we will go on to consider whether the Claimant believed that this disclosure was in the public interest, and whether that belief was reasonable. We have already noted that there is no statutory definition of public interest. We have also noted that motivation and good faith are not matters we need to concern ourselves with at this stage. Our focus is on what the Claimant believed, and whether that was reasonable. We also remind ourselves that whilst the Respondent is a private business, it is a firm of solicitors which is regulated.

269. Regrettably the Claimant's own evidence on the issue of public interest was very brief and consisted of her informing the Tribunal that she believed that it was in the public interest, but there was very little beyond that. During her closing submissions the Claimant said that the disclosure had been in the public interest as anyone could catch Covid, that Ipswich had highest rise in Covid cases at that time, and that a breach of health and safety law was a crime, and that she caught Covid from the barrister who attended the office and she had been sick for several days.

270. We will address the four factors identified in ***Chesterton***. The Claimant was not talking about the Respondent's other staff, nor members of the public who might come in for meetings. The pool of people whose interests were referenced was limited to three – the Claimant, her husband, and their daughter. The nature of the interests affected related to the family's enjoyment of their holiday, and the Claimant's health as she was clear that she blamed the Respondent for her catching Covid. The nature of the alleged wrongdoing lacked any detail. The Claimant said that there were little or no Covid safety precautions in place, but she did not go further to say what they were. The identity of the alleged wrongdoer, as we have already indicated is a private business as her employer, albeit a firm of solicitors which is regulated.

271. Taking all the above into account, we were not satisfied that the Claimant believed that this was a disclosure in the public interest at the time as the context of that email was to defend herself from criticism about her

perceived poor performance at work. The Claimant was complaining that Miss Abiodun had mentioned Covid as a reason for her poor performance which the Claimant said was "jarring" as her family's holiday had been ruined. The context was purely about the Claimant's own situation and that of her family. There was an absence of anything said at the time by the Claimant to indicate that she had the public interest in mind when she made that disclosure of information.

272. Even if we are wrong on that, and the Claimant did believe that this disclosure was made in the public interest, we find that any belief that the disclosure was in the public interest was not reasonable. The interests identified are limited to that of the Claimant and her health, as well her husband and daughter's ruined holiday.

273. Whereas disclosures about inadequate precautions against catching or spreading Covid could amount to protected disclosures in some circumstances, however context is relevant. In the context of what was disclosed in this case, we find that it would not have been reasonable for the Claimant to believe that this disclosure was in the public interest as she was complaining that Miss Abiodun had referred to Covid as a reason for her underperformance.

274. For the reasons set out above, we also find that the second part of the Claimant's email of 20 December 2021 was not a protected disclosure. We were not invited by the Claimant to read these paragraphs together so as to amount to a cumulative protected disclosure, however having read those passages it remains our finding that there was a lack of disclosure of information, and secondly any belief that this was a disclosure in the public interest was not a reasonable one.

Issue 2q - Claimant's email of 1 February 2022 to Miss Abiodun at 11:47am

275. The Claimant relies upon the part of her email where she says that she had a funny turn on the A12 at Colchester on the way home, and had to pull over, and her husband came out to follow her home. The Respondent concedes that this was a disclosure of information, so we need not address that aspect in any detail.

276. As to whether the Claimant believed that this tended to show one of the matters under s. 43B(1), it was not set out specifically by the Claimant but it was clear that she had in mind the endangerment of health and safety of any person. The Respondent also says that it is willing to accept that the Claimant subjectively believed that her conversation with Miss Abiodun on 31 January 2022 would form the basis of a relevant failure. We again need not consider that matter any further and will move on to consider whether the Claimant's belief that it tended to show one of those matters was reasonable.

277. The conversation between the Claimant and Miss Abiodun on 31 January was clearly a stern one as Miss Abiodun accepts that it was, and moreover the content and tone of her emails from around that time demonstrate that her patience with the Claimant was exhausted. Miss

Abiodun also accepted that it was the first time that she had to speak to the Claimant like that.

278. The Respondent argues that a stern conversation about an employee's performance could not possibly form the basis of a reasonable belief that there has been a health and safety failure. The view of the Tribunal is that context is relevant. The Respondent had been on notice that the Claimant had once before had a "funny turn" when she suffered an IT failure whilst undertaking her GDL exams. The Claimant had spoken about her fear of catching Covid, and we note she had told some colleagues that she had high blood pressure. There was no evidence that the Claimant had any medical condition which would place her at risk when having performance discussions. The Claimant's grievance email of 20 December did not allude to any such condition. Accordingly, we consider that in the specific circumstances of this case, the Claimant's belief that the information disclosed tended to show that health and safety had been endangered, was not reasonable. Even if we wrong on that, we will go on to consider the issue of the public interest.

279. The Claimant again suggests that she believed that it was in the public interest, however her evidence was not particularly clear or developed on this point. We do not find that that the Claimant believed at the time that this disclosure was in the public interest as the content of her email was about the effect upon her of the conversation she had with Miss Abiodun. There is no explicit or implicit reference to the interests of anyone else in that email.

280. In her closing submissions the Claimant informed us that she believed that the disclosure was in the public interest because if Miss Abiodun treated the Claimant in this way, then she could do so to other colleagues or clients.

281. We will address the four factors identified in ***Chesterton***. The number of people whose interests might be affected was limited to one – the Claimant. Whereas the Claimant now refers to other colleagues or clients, this is not something which had been raised in her evidence, and there was no suggestion that at the time of her email the Claimant believed that she was speaking about anyone else's situation.

282. The nature of the interests affected was the Claimant's own employment situation and her health and safety. The nature of the wrongdoing related to alleged mistreatment at work, and the identity of the alleged wrongdoer is a firm of solicitors which is a private business but also a regulated one.

283. It did not appear to the Tribunal that the Claimant believed at the material time that the disclosure was in the public interest given that the contents related to her own situation. We found that the alleged concern about how Miss Abiodun might treat other colleagues or clients was not something which the Claimant believed at the time as there was no direct or indirect reference to other people in her email. The content and tone were entirely about the Claimant's situation.

284. Leaving that aside, even if the Claimant did believe that this disclosure of information was in the public interest, we find that belief was not reasonable. This is again because of the contents of that email and the

wider context. The content and tone of the Claimant's email was to remonstrate with Miss Abiodun about what she said was the effect of their conversation upon her, there was no suggestion at all that this concerned anyone other than the Claimant.

285. The only connection with the wider public interest was that the Claimant had the funny turn or reaction to stress whilst driving on a public road – and we note that the Claimant has not even made that argument herself. The Claimant has not sought to argue that the public interest related to other road users. The fact that the funny turn occurred in a public place is not sufficient in our view to find that the Claimant's belief was a reasonable one.

286. Accordingly, we find that the Claimant's email of 2 February 2022 to Miss Abiodun was not a protected disclosure.

Issue 2r - Claimant's email to Mr Warren of 2 February 2022 at 4:41pm

287. The first part of the Claimant's email to Mr Warren contains a disclosure of information. Here the Claimant is saying that she nearly had a crash in her car the night before on the A12 road, that her husband had to come out to follow her home, and having seen her GP the following day she was informed it was likely a panic attack brought on by severe stress or shock. The wider context for this email was to explain the Claimant's absence from work the day before.

288. The remainder of the email is not a disclosure of information, it consisted of conjecture as to the cause, as well as a description of the Claimant's feelings as well as assertions without any factual content or specificity.

289. As to whether the Claimant believed that this tended to show one of the matters under s. 43B(1), again it was not set out specifically by the Claimant but it was clear that she had in mind the endangerment of health and safety of any person. In her closing submissions the Claimant also said that this tended to show a regulatory failure. The Respondent accepted that the Claimant subjectively believed that her conversation with Miss Abiodun on 31 January 2021 would form the basis of a relevant failure, and as such we again need not consider that matter any further and will instead move on to consider whether the Claimant's belief that it tended to show one of those matters was reasonable.

290. As we have already indicated, the conversation between the Claimant and Miss Abiodun on 31 January was clearly a stern one, Miss Abiodun accepts that it was, and this is supported by the content and tone of her emails from around that time. Miss Abiodun also accepted that it was the first time that she had to speak to the Claimant like that.

291. We have also already indicated that in the specific circumstances of this case, the stern conversation about the Claimant's performance did not form the basis of a reasonable belief that there has been a health and safety failure. As such we find that the Claimant's belief that the information disclosed tended to show that health and safety had been endangered, was not reasonable. We rely upon the reasons we have given above in relation to Issue 2q.

292. If we are wrong on the Claimant's belief in what the disclosure tended to show, we will now consider the issue of the public interest. The Claimant again suggests that she believed that it was in the public interest, however her evidence was not particularly clear on this point. By the time of the Claimant's closing submissions her argument was that she was complaining about the abuse of power and targeting of one employee, it had been witnessed by other employees who may be subject to the same treatment, and that Miss Abiodun had a propensity to treat others in the same way, including clients.

293. We do not find that this is what the Claimant genuinely believed at the time as the content of her email was an explanation to Mr Warren of the reason for her absence the day before, before then going on to talk about the effect of the conversation she had with Miss Abiodun upon her. However, if we are also wrong on that, and the Claimant did believe that it was in the public interest at the time, we will go on to consider whether that belief was reasonable.

294. We will address the four factors identified in ***Chesterton***. The Claimant was explaining her absence from work the day before, she was explaining the impact upon her of the conversation with Miss Abiodun, and it was entirely about her own personal position. There was no express or implied reference in the email to the wider public interest. The Claimant did of course mention the A12 road, but we do not find that the mere fact that the funny turn or panic attack occurred in a public place, is of itself, sufficient for us to find that the Claimant reasonably believed that her disclosure was in the public interest.

295. The nature of the interests affected was the Claimant's employment or more specifically her treatment at work and her health safety. The nature of the wrongdoing alleged related to mistreatment at work, and the identity of the employer as we have already identified is a firm of solicitors operating as an LLP which is a private business. Looking at all the matters together it is clear that the Claimant's disclosure of information was about her alleged treatment and her employment situation and her health and safety. It did not appear reasonable to us for the Claimant to believe that her disclosure was in the wider public interest. Accordingly, we find that the Claimant's email to Mr Warren of 2 February 2022 was not a protected disclosure.

296. Having found that the three disclosures relied upon were not protected disclosures, this inevitably means that the claims for detriment and automatic unfair dismissal must fail. Nevertheless, if we are wrong on any of the above findings with respect to the alleged three protected disclosures, we will go on to explain why these claims would have failed in any event. We will again deal with each one in turn.

Issue 4u - Fabricating evidence in relation to a client meeting on 17 December 2021

297. We have already made a finding that the Claimant has not persuaded us that any of the documents to which we have been referred have been fabricated. There was no evidence to support such an assertion. This includes the contents of the report prepared by Dr Deo and the email dated

25 November 2021 from the Claimant to Ms Carter and the receptionist where she set up the meeting with the adult client for 14 December 2021.

298. Even if we had found that the documents had been fabricated, it did not appear that there had been any detriment to the Claimant. The Claimant has not satisfactorily explained to us why it would be a detriment to her if the Respondent had fabricated documents about the date of the meeting with the adult client.

299. Accordingly, the factual premise has not been made out and we dismiss the allegation. We do not therefore propose to look at the issue of causation in any detail save to note that the meeting occurred prior to the first alleged protected disclosure on 20 December 2021, therefore the Claimant would have had to explain to us roughly when she says that it occurred however she was unable to do so.

Issue 4w - Email from Miss Abiodun on 20 December 2021 at 6:48pm suggesting that the Claimant should be dismissed

300. The factual premise of this allegation has not been made out. Miss Abiodun did not suggest that the Claimant should be dismissed. Rather Mr Warren had asked Miss Abiodun for an update on the Claimant's performance, to which she explains the difficulties but also states she saw the potential in the Claimant and also that she wanted to give the Claimant the opportunity to develop and to grow into the role.

301. There was discussion in the chain about the Claimant's employment rights, and it was agreed that Mr Warren would speak to the Claimant, and we have seen evidence in the hearing bundle where the Claimant thanked Mr Warren for doing so.

302. We therefore dismiss this allegation as the factual premise has not been made out.

Issue 4x - Email from Miss Abiodun on 20 December 2021 at 7:41pm suggesting that the Claimant should be dismissed

303. The factual premise of this allegation has not been made out. Miss Abiodun did not suggest that the Claimant should be dismissed. Rather Mr Warren asked whether it was worth trying again to which Miss Abiodun stated that it was worth trying again and that she really did believe in the Claimant.

304. We therefore dismiss this allegation as the factual premise has not been made out.

Issue 4y - Failing to deal appropriately with the Claimant's (alleged) grievance email of 20 December 2021

305. We find that the Claimant's email of 20 December 2021 was an informal grievance. This was addressed very promptly by Mr Warren who spoke to the Claimant on 22 December 2021 and discussed her concerns and then explained the need to work within funding requirements. We find that the Claimant was clearly satisfied with the manner in which the informal

grievance was handled as she emailed Mr Warren the same day to thank him for being helpful and she replied *"onwards and upwards"*. It was entirely reasonable to draw a conclusion that the Claimant was content with the handling and that the issue was resolved given the contents of her email to Mr Warren. We were not shown any evidence or correspondence during the remainder of the Claimant's employment whereby she sought to argue that her grievance had not been dealt with. We find that the matter was dealt with appropriately by Mr Warren and in accordance with the Respondent's own staff handbook.

306. We therefore dismiss this allegation as the factual premise has not been made out.

Issue 4z – Fabricating the email purportedly from Ms Williams dated 23 December 2021 at 12:01pm

307. The email is purportedly sent by Ms Williams to Miss Abiodun after the Claimant had sent her an email whilst on leave in which she asked for someone to obtain additional information from a client following a request from the Legal Aid Agency. The disputed email is from Ms Williams to Miss Abiodun in which she asks if she has the Claimant's login details, and asks if she went through the matter with Miss Abiodun before going on leave, and whilst she was slightly in the dark, she would try to sort it out later. The email was addressed to Miss Abiodun but was accidentally sent to the Claimant who denies receipt.

308. The Respondent did not call Ms Williams as a witness. We do not draw a negative inference from that. It is for the Claimant to prove her case, however she did not put the allegation to any of the Respondent's witnesses that the email had been fabricated. We do not therefore find that the email was fabricated, it appeared to the Tribunal that the email was entirely genuine and innocuous.

309. The factual premise of the allegation is not made out and there was no apparent detriment to the Claimant in any event.

310. The allegation is therefore dismissed.

Issue 4aa - Email from Miss Abiodun on 31 December 2021 at 5:04pm in which she is critical of the Claimant

311. The contents of this email are clearly a detriment to the Claimant as Miss Abiodun tells Ms Williams that everything that the Claimant had touched was a disaster, that she felt like she had been her secretary all Christmas break sorting out her files.

312. The issue is one of causation. The only alleged protected disclosure occurring before this date was the Claimant's email of 20 December 2021. Even if the Claimant's email of 20 December was a protected disclosure, we do not find that this materially influenced Miss Abiodun to send her email at 5:04pm on 31 December.

313. It is clear from the contemporaneous documents that Miss Abiodun said she had received a call from a client on 29 December who was unhappy

about the handling of his case, Miss Abiodun then relayed the message to the team and said that she did not know whose case it was, following which Ms Williams said that the Claimant had been working on the matter and she assumed it was in order. Miss Abiodun's email was sent in response to the email from Ms Williams and she was clearly expressing frustration at having had to work over Christmas dealing with issues on the Claimant's cases which she had not completed.

314. By this time Miss Abiodun had two discussions with the Claimant about her performance, the first on 17 November and the second on 17 December. Miss Abiodun had clearly become very frustrated with the Claimant's performance, and this was the reason she sent an email in which she was critical of the Claimant.

315. There was no connection between Miss Abiodun's email of 31 December and the Claimant's email of 20 December 2021. Even if the latter had been a protected disclosure, it did not act as a material influence upon Miss Abiodun when she sent her email. The reason for sending that email was clearly due to frustrations about the Respondent's perception of the Claimant's performance. We do not find that the Claimant's email of 20 December influenced Miss Abiodun when she sent her email on 31 December.

316. The allegation is dismissed.

Issue 4cc – Telephone call of 31 January 2022 between Miss Abiodun and the Claimant in which the Claimant says she was unfairly criticised

317. The factual premise of this allegation has been partially made out as the Respondent accepted that there was a telephone conversation about the Claimant's performance and that Miss Abiodun was stern in it. The dispute is whether the Claimant was unfairly criticised, and also the cause. By this time the only alleged protected disclosure was the Claimant's email of 20 December, the other two alleged protected disclosures had yet to occur.

318. We have been referred to numerous pieces of correspondence in the hearing bundle either from or between Miss Abiodun and Ms Williams where they express concern about the Claimant's performance. The concerns raised from things not being done or files updated, letters not having been sent out, client's not been kept up to date, and the time spent by the Claimant and specifically whether she was too slow or was unable to juggle matters, and that she was only able to work on one thing at a time.

319. It would have been difficult for the Claimant to have listened to criticisms like that, but that does not of itself make those criticisms unfair. Having reviewed the contemporaneous documents and having listened to Miss Abiodun's oral evidence which we have found to be clear, consistent and compelling, we find that Miss Abiodun did have a genuine belief that the Claimant was not performing to the standards which she or the Respondent required. As such it was entirely legitimate to have had a conversation of this nature with the Claimant, having previously had less stern conversations on 17 November and 17 December. It was clear to the Tribunal that by January 2022 Miss Abiodun's patience had worn out and

by this time she was deeply frustrated and that this was the reason for the criticisms made of the Claimant in the conversation of 31 January 2022.

320. We do not find that the Claimant's email of 20 December 2021 was a material influence on Miss Abiodun's criticisms of the Claimant. The allegation is therefore dismissed.

Issue 4dd – Miss Abiodun's emails on 1 February 2022 at 2:15pm and 3:58pm, and also 2 February 2022 at 2:35pm in which she implies that the Claimant was dishonest about the incident on the motorway and personally attacks the Claimant.

321. The Respondent accepts that the emails are detriments as they are critical of the Claimant although it denies that they are personal attacks, and it says that there was no attempt to imply that the Claimant was dishonest about the incident on the A12.

322. We do not therefore need to determine whether these are detriments as that has been conceded, although we record that we do not find that Miss Abiodun implied that the Claimant had been dishonest about the A12 incident. We also do not find that these emails were personal attacks as alleged, rather these were criticisms about the Claimant's performance. Irrespective of what label is applied to them, they were detriments. The issue is therefore one of causation.

323. The Claimant had sent her email of 1 February 2022 a 11:47am in which she said that the conversation with Miss Abiodun the day before had been unacceptable and that she was so stressed an upset by it she had a funny turn on the A12 on her way home after work. Miss Abiodun forwarded this to Mr Warren who asked for some context, and Miss Abiodun then set out in detail the performance concerns she had about the Claimant in her email at 2.15pm. We have already referenced these above in this judgment, and in short, they deal with the amount of support offered to the Claimant, the time taken to complete work, the inability to juggle tasks and that she could only work on one thing at a time, work not being completed and clients not being updated. Miss Abiodun made specific reference to the impact that this was having upon her as she said she had to spend her time checking the Claimant's work before getting on with her own. Miss Abiodun also made reference to the comments from Ms Williams and she gave the example of a client who could potentially have received more credit had the Claimant taken instructions earlier.

324. At 3:58pm Miss Abiodun said that she believed that it was time to call it a day after Mr Warren had suggested a further meeting between them. In her email at 2:35pm on 2 February 2022 Miss Abiodun said that she could not work with the Claimant much longer, she was content to wait if that would protect the firm, and that she wounded as she had championed the Claimant, but her enthusiasm wasn't reflected in the quality of her work.

325. We do not find that the Claimant's alleged protected disclosures materially influenced Miss Abiodun when she sent those emails. We find that Miss Abiodun had a genuine belief in the contents of those emails and that it was her view that the Claimant's performance was not at the required level and that it was unlikely to improve, and that it was having an impact

upon the Respondent and the service to clients. There was a pattern or a history to Miss Abiodun's concerns about the Claimant's performance set out in the contemporaneous documents, and moreover this was shared by Ms Williams as we have seen at least one email where she set out her concerns.

326. We do not find that Miss Abiodun was influenced by anything other than her own concerns about the Claimant's performance. We dismiss this allegation.

Issue 4ee – Not being given notice of the purpose of the dismissal meeting

327. The Claimant was not informed specifically what this meeting was about, therefore the factual premise of the allegation is made out. There was no specific requirement for the Claimant to be informed as the reason for the meeting as she was someone with less than two years' qualifying service, although the Respondent could have done so but chose not to.

328. However, it was clear that the Claimant knew that that this meeting would be about her employment, she asked for the meeting to take place a day later which was granted and which enabled her to prepare, and the Claimant was able to send documents to Mr Warren that she wished to refer to.

329. We did not find that there was any detriment to the Claimant, however even if we are wrong on the issue of detriment, we do not find that the decision was materially influenced by the Claimants' email of 20 December 2021 or 1 February 2022.

330. We therefore dismiss this allegation.

Issue 4ff – Conducting the dismissal meeting with the Claimant in her car

331. This was a remote meeting as Mr Warren was not based in the Ipswich office. We have already found that it was the Claimant who chose to conduct the meeting in her car after Mrs Ali-Kote asked the Claimant to find a room to conduct the meeting in via Teams. It was the Claimant's own decision to sit in her car to conduct that meeting even though, according to her evidence that there was no-one in the office that day. We did not find that the Respondent had caused the Claimant any detriment.

332. We therefore dismiss this allegation.

Issue 4gg – Conducting a sham performance procedure including Mr Warren's email of 16 June 2022 at 3:43pm which purposely gives the wrong date of the incident on the motorway

333. The factual basis of this allegation has not been made out. The decision to terminate the Claimant's employment was taken following concerns raised about the Claimant's performance raised in the main by Miss Abiodun.

334. We have been referred to emails between Ms Williams and Miss Abiodun where concerns were raised about the Claimant's performance, and there were discussions with the Claimant about her performance on 17 November and 17 December, both of which pre-date the Claimant's first alleged protected disclosure on 20 December 2021. It is clear from the Claimant's email of 20 December 2021, and her witness statement, that performance concerns had already been raised with her twice before.

335. As regards the incorrect date of the motorway incident in Mr Warren's email of 16 June 2022, we have already found that this was no more than a simple error on the part of Mr Warren and the Claimant suffered no detriment in any event.

336. We therefore dismiss the allegation.

Issue 4hh – Mr Warren belittling the seriousness of the Claimant's incident on the motorway during the dismissal meeting on 3 February 2022

337. The factual premise of this allegation has not been made out. We note that the words used in the Claimant's email of 2 February 2022 to Mr Warren was that she had almost been killed on the A12 and later in the email she said that the cause of this was the phone call from Miss Abiodun. The Tribunal did not consider that it was belittling for Mr Warren to have raised the seriousness of this allegation with the Claimant and to verify that this is what she was alleging.

338. We have not been provided with any evidence that Mr Warren belittled the Claimant's motorway incident. At the very most Mr Warren expressed to the Claimant on 3 February that it was an odd or a serious allegation. We found Mr Warren's oral evidence to be convincing.

339. We therefore dismiss this allegation.

Issue 4ii – Unnecessary views of the Claimant's LinkedIn profile post termination

340. The factual premise of this allegation has not been made out.

341. It was the Claimant who chose to have a public profile on this website, and it is inevitable that people may look at it. The Claimant has provided one document which shows that some of the Respondent's staff had looked at her profile, including Miss Abiodun, however the dates were unclear. The Claimant did not put the allegation to the Respondent's witnesses, in particular to Miss Abiodun, therefore we did not hear from her as to why she may have looked at the profile or when. As the Claimant did not advance this allegation, we were unable to make any findings as to whether Miss Abiodun or others had done so or when.

342. In any event, we do not find that there was any detriment to the Claimant. This was a public profile which meant that it was open to other people to view it at any time they chose. The Claimant has complained that this felt like she was being stalked or having someone sat outside her house in their car, however the Tribunal formed the view that was an unusual reaction

given that it was the Claimant who had put this material into a public forum in the first place. We did not therefore find that the Claimant suffered any detriment, and even if there was a detriment no connection between this and the alleged protected disclosures was advanced by the Claimant.

343. We dismiss this allegation.

Automatic unfair dismissal

344. As regards the complaint of automatic unfair dismissal, we have already found that the Claimant's emails did not amount to protected disclosures. The burden was on the Claimant to satisfy us that that the reason, or the principal reason for her dismissal (if more than one) was because she had made protected disclosures. It follows, having found that the Claimant had not made a protected disclosure, the claim of automatic unfair dismissal should also fail.

345. We would add, that having considered all the material to which we were referred, and the oral evidence we have heard, we find that Mr Warren had a genuine belief that the Claimant was not meeting the performance standards required of her when he made the decision to terminate the Claimant's employment. We note the decision of the Supreme Court in ***Jhuti*** however we do not find that Mr Warren adopted a reason invented by Miss Abiodun. On the contrary, we find that there were performance concerns raised well in advance of the Claimant's first alleged protected disclosure on 20 December 2021, and these were discussed with the Claimant on 17 November and 17 December. It was the contents of the discussion on 17 December which the Claimant says prompted her email of 20 December. We also heard evidence from the Claimant that she had struggled with the work on occasion. We find that the reason for terminating the Claimant's employment was due solely to the perceived performance issues and had nothing whatsoever to do with any protected disclosures.

346. We therefore dismiss the complaint of automatic unfair dismissal.

Time limits

347. In the end, it was not necessary to consider time limits in any detail given the findings and decisions made above. As it was, the detriment and automatic unfair dismissal complaints failed, and no further consideration was required. Nevertheless, we have found that a number of matters complained of were brought out of time and it may assist if we explain how we have reached that decision.

348. The date of receipt of the ACAS Early Conciliation notification was 31 May 2022 and the date of issue of the Certificate was 11 July 2022. The Claimant's ET1 was received on 11 August 2022. As such, anything allegedly occurring before 1 March 2022 would likely have been out of time.

349. The effective date of termination was 3 March 2022 therefore that complaint is in time, as it Issue 4ii (reviewing the Claimant's LinkedIn profile). Issue 4u was also potentially in time, save that the Claimant did

not indicate when it is she alleges that the material was fabricated. All remaining complaints would appear to have been brought out of time.

350. We did not find that there was a sham performance process as alleged, and we note that the alleged perpetrators are said to be either Miss Abiodun, Mrs Ali-Kote or Mr Warren - described by the Claimant as the "THB Triangle." Having heard all the witness evidence, and having reviewed all of the matters complained about, it did not appear to the Tribunal that there was a series of similar acts or failures.

351. The reasons given by the Claimant for not bringing her complaints earlier were said to be due to her awaiting the outcome of her DSAR and recovering from her termination of employment. However, we also noted that the Claimant continued to work for the family business immediately after her dismissal, and that she returned to working for the Citizens Advice Bureau the following week.

352. Accordingly, we found that it would have been reasonably practicable for the Claimant to have brought her complaints in time, and as such there was no jurisdiction to consider those matters which had been brought out of time. Only the complaint of automatic unfair dismissal and Issue 4ii had been brought in time, the remainder of those complaints had been brought of time in any event.

353. It is the unanimous decision of the Tribunal that all the Claimant's complaints fail and are dismissed.

_____

Employment Judge **Graham**

_____

Date 16 April 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 1 May 2024

FOR EMPLOYMENT TRIBUNALS

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

ANNEX A – ORIGINAL LIST OF ISSUES

INTRODUCTION

1. The claims before the Tribunal are:

   a. Detriments on the grounds of protected disclosures in breach of s. 47B Employment Rights Act 1996 ("ERA");

   b. Indirect discrimination in relation to age as defined by s.19 of the Equality Act 2010 ("EqA");

   c. Indirect discrimination in relation to belief as defined by s. 19 EqA;

   d. Harassment related to belief as defined by s. 26 EqA; and

   e. Automatic unfair dismissal on the grounds of protected disclosures pursuant to s103A ERA.

   f. Victimisation as defined by s.27 EqA *[TBC at the PH whether there is a pleaded claim]*

   g. "Detrimental treatment over harassment and/or victimisation on the basis of philosophical belief" *[TBC at the PH whether this is actually a claim]*

DETRIMENTS ON THE GROUNDS OF PROTECTED DISCLOSURES

2. Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:
3. The Claimant says they made disclosures on these occasions:

   a. On or around 20th September 2021, telling Ms Abiodun about the Code Black Hospital status and the need to have and enforce a Covid policy to prevent the spread of the disease in light of the rising case numbers;

   b. On 14th October 2021, telling Ms Abiodun that the Crime Room had not been made Covid safe with 4 people sitting in there and the Claimant being high risk;

   c. On 14th October 2021, telling Ms Abiodun that the desks in the Crime Room were not 2 metres apart (within the context of [the barrister] having contracted Covid);

   d. On 15th October 2021, telling Ms Abiodun that the office was not Covid safe, that [the barrister] had been allowed to sit across from her for hours, and that the desks were not 2 metres apart;

   e. On 8th November 2021, telling staff that nothing had changed in relation to Covid safety and that she therefore needed to wear a mask;

   f. On 17th November 2021, implying that the Respondent was responsible for her contracting Covid;

   g. On 8th December 2021, telling Ms Abiodun that she was terrified of working in the office with no protections;

h. On 9th December 2021, telling Ms Abiodun, in response to the administrative staff being told to work in the office, that some people were more vulnerable than others and that they should be consulted;

i. Emailing Ms Abiodun on 10th and 13th December 2021 to ask when the new Covid policy for the Ipswich office would be circulated;

j. Emailing Ms Abiodun on 20th December 2021 complaining that she had been punished for being absent from work for so long because of Covid and yet it was because there was little or no protections in the office to protect me, including the letting in of [the barrister] that led to me catching the virus;

k. Telling Mr Warren on 22nd December 2021 about the lack of Covid protections in the office and telling him that [the barrister] had been permitted to sit in the office for an extended period without precautionary measures;

l. Disclosures to Ms Williams and Ms Carter on XX about XX *[the Claimant to insert specifics including times, dates and places – see para 252.a.xiii. of the Particulars of Claim].*

m. On or around 16th October 2021, telling Ms Abiodun that she was really upset that Ms Abiodun was so angry with her so soon into the job;

n. On or around 20th October 2021, telling Ms Abiodun that she was very upset with the way the second incident with *"the dog lady"* had been handled;

o. Her email of 20th December 2021 setting out her formal grievance and describing her unhappiness with the constant criticism;

p. Her verbal complaint to Mr Warren on 21st December 2021 about the treatment that she had received from Ms Abiodun;

q. Her email to Ms Abiodun on 2nd February 2022 in which she complained of how she had been treated in the telephone call the same day;

r. Her email to Mr Warren in which she explained that she thought her telephone call with Ms Abiodun had been the cause of her panic attack;

s. Telling Ms Abiodun on 17th December 2021 that she was not happy about being with a client alone after hours that same evening;

t. In or around November 2021 mentioning to Ms Abiodun in the company of Ms Carter, Ms Williams and [the new criminal paralegal] that she thought smoking was no longer allowed on the office premises.

1.1.4 Did the Claimant disclose information?

1.1.5 Did the Claimant believe the disclosure of information was made in the public interest?

1.1.6 Was that belief reasonable?

1.1.7 Did the Claimant believe it tended to show that:

4.

i. A criminal offence had been committed, was being committed or was likely to be committed; and/or

ii. A person had failed, was failing or was likely to be failing to comply with a legal obligation; and/or

iii. That the health and safety of any individual had been, was being or was likely to be endangered?

b. Was that belief reasonable?

5. Was the Claimant subjected to detriments because she had made a protected disclosure? The Claimant relies on the following detriments:

a. Email from Ms Abiodun on 15th October 2021 at 10:50 am in which C says she is unfairly blamed for [the barrister] incident [1051-2]

b. Email from Ms Abidun on 26th October 2021 at 20:20 in which C says she is unfairly for not having an email address [1042]

c. Email from Ms Abiodun on 26th October 2021 at 09:52 in which she says that C will hopefully be in by Friday [1048]

d. Email from Ms Abiodun on 29th October 2021 at 13.02 in which C is unfairly blamed for contracting Covid [1033 & 1036]

e. Email from Ms Abiodun on 29th October 2021 at 13:10 in which she suggests C should be working during her absence [1029]

f. Email from Ms Abiodun on 29th October 2021 at 13:36 in which C says that she is referred to in derogatory terms [1040]

g. Email from Ms Abiodun on 29th October 2021 at 13:40 in which C says that she is made out to be dishonest [1032]

h. Email from Ms Abiodun on 29th October 2021 at 13:50 in which C says it is suggested that you are unwilling to work / lying about the severity of her Covid [1026]

i. Email from Ms Abiodun on 2nd November at 18:41 in which C is requested to email every day of her sick leave [1022]

j. Moving C to Magistrates Court work without training and support in mid-November 2021

k. Continually overloading C with work to try to make her resign

l. Ms Abiodun's veiled threat to dismiss C by referring to another paralegal who had previously been dismissed during the meeting on 17th November 2021

m. Ms Abiodun saying during the meeting on 17th November 2021 that C had time off for Covid and that was the reason for poor performance

n. Ms Abiodun saying C should go to work for the police in meeting of 17th November 2021

o. Email from Ms Abiodun on 8th December 2021 at 18:48 in which she says that C *"is hard enough work for me to cope with right now"* [999]

p. Being told by Ms Abiodun on 8th December that she was not permitted to work from home

q. Email from Ms Abiodun on 9th December at 16:57 in which she said that C's face *"was like thunder"* [998]

r. Ms Abiodun saying C should go to work for the CPS in 17th December 2021 meeting

s. Ms Abiodun extending C's probation on 17th December 2021

t. Failing to do a risk assessment re client meeting on 17th December 2021

u. Fabricating evidence in relation to client meeting 17th December 2021

v. Turning other staff members against C as evidenced by email exchange between [the family legal secretary] and [the receptionist] on 17th December 2021 [996] and email exchange between Ms Carter and [the receptionist] on 13th October 2021

w. Email from Ms Abiodun on 20th December 2021 at 18:48 suggesting that C should be dismissed [987-8]

x. Email from Ms Abiodun on 20th December 2021 at 19:41 suggesting that C should be dismissed [984-5]

y. Failing to deal appropriately with C's (alleged) grievance email of 20th December 2021

z. Fabricating the email purportedly from Ms Williams on 23rd December 2021 at 12.01 [970]

aa. Email from Ms Abiodun on 31st December at 17.04 in which she is critical of C [966]

bb. Fabricating the email purportedly from Ms Williams dated 20th January 2022 at 14.59 [948]

cc. Telephone call of 31st January 2022 with Ms Abiodun in which C says that she is unfairly criticised

dd. Ms Abiodun's emails on 1st February 2022 at 14.15 [930-932] and 15.58 [928]; and on 2nd February at 14.35 [922] in which she implies C was dishonest about the incident on the motorway and personally attacks C

ee. Not being given notice of the purpose of the dismissal meeting

ff. Conducting the dismissal meeting with C in her car

gg. Conducting a sham performance procedure including Mr Warren's email of 16th June 2022 at 15.43 which purposely gives the wrong date of the incident on the motorway [894]

hh. Mr Warren belittling the seriousness of C's incident on the motorway during the dismissal meeting on 3rd February 2021

ii. Unnecessary views of C's LinkedIn profile post termination

INDIRECT DISCRIMINATION IN RELATION TO AGE

6. Did the Respondent apply a provision, criterion or practice ("PCP") to the Claimant and others not sharing her characteristic? The Claimant relies on the requirement for all members of the crime team to sit in the same room.

7. Did any PCP put or would it put people who shared the Claimant's characteristic of age at a particular disadvantage? The Claimant relies on being exposed to an increased risk of Covid related complications as the particular disadvantage. The Claimant relies on XX as a pool of people for comparison.

8. Did any PCP put the Claimant at that particular disadvantage?

9. Was any PCP a proportionate way of achieving a legitimate aim? The Respondent relies on the aim of fostering a team atmosphere, and the training and development of its staff by working alongside other colleagues. It relies on the following in respect of proportionality:

   a. Any increased risk of complications faced by the Claimant as a consequent of her age of 48/49 was likely to have been very modest;

   b. The Claimant was double vaccinated and so the risk of serious illness was in any event low;

   c. The Claimant did not inform the Respondent that she had a particular vulnerability because of her age; and

   d. More than two members of staff were rarely in the crime room together.

INDIRECT DISCRIMINATION IN RELATON TO BELIEF

10. Was the Claimant an adherent to ethical moralism?

11. Is ethical moralism a protected belief?

12. Did the Respondent apply a provision, criterion or practice ("PCP") to the Claimant and others not sharing her characteristic? The Claimant relies on:

    a. The Respondent operating the business in pursuit of greater profit over client service; and

    b. Permitting Ms Abiodun to run the Ipswich office in an unethical and immoral manner.

13. Did any PCP or would it put people who shared the Claimant's belief at a particular disadvantage?

14. Did any PCP put the Claimant at a particular disadvantage?

15. Was any PCP a proportionate way of achieving a legitimate aim? The Respondent relies on the legitimate aim of running a commercially viable law firm.

AUTOMATIC UNFAIR DISMISSAL

16. What was the reason for the Claimant's dismissal? The Claimant contends that it was because she had made protected disclosures. The Respondent contends that the reason for the dismissal was the Claimant's performance.

17. If the Claimant's dismissal was unfair, did her own conduct, namely her performance, contribute to the dismissal?

JURISDICTION

18. Were the claims brought in time?

19. Did any discriminatory acts constitute conduct extending over a period?

20. Would it be just and equitable to extend time under s. 123 of EqA?

REMEDY

21. The Claimant seeks damages in line with her Schedule of Loss