EMPLOYMENT TRIBUNALS

Claimant: **Mrs Z Noreen Taylor**

Respondent: **City of Bradford Metropolitan District Council**

Heard at: **Leeds**
On: **8-12, 15-18 and 19 (deliberations only) April 2024**

Before: **Employment Judge Maidment**
Members: **Mr D Wilks OBE**
Mr DW Fields

Representation
Claimant: **In person**
Respondent: **Ms B Clayton, Counsel**

RESERVED JUDGMENT

The claimant's claims of whistleblowing detriment, sex discrimination, disability discrimination and unfair dismissal (ordinary and automatic) fail and are dismissed.

REASONS

Issues

1. In the claimant's first tribunal complaint she brought complaints of whistleblowing detriment. Following a lengthy case management process, the following were identified as the protected disclosures relied upon.

    1.1. In January 2021 the claimant telling Zoe Dyson verbally that a cohort from Hope Housing of Eastern European origin had criminal records, had exhibited aggressive behaviour and were suited for building jobs rather than Covid support roles with NHS England and confirming the same in an email to Ms Dyson of 2 February 2021

    1.2. in February 2021 the claimant saying that Mr Scothern did not know what he was doing as regards his duty of care under the Children and Social Work Act 2017 with particular reference to the names and addresses of

young and vulnerable people being openly displayed on an Outlook calendar. The claimant sent an email on 21 February to Mr Hunter in this regard including issues about recruitment and data breaches.

1.3. the claimant sent an email to Mr Hunter 8 March 2021 referring to data breaches by the accessibility of information from the Outlook calendars

1.4. the claimant's grievance of 19 April (as also then expanded on at a grievance meeting) in particular where she raised recruitment irregularities, breach of data protection requirements and raised Ms Cryer's responsibility as a holder of a public office

1.5. the claimant's email to Ms England of 29 April 2021 raising data protection breaches, that there had been a cover-up of wrongdoing and that children were being failed and neglected

1.6. Mr Simon Taylor's (the claimant's husband) email to Ms England of 27 May regarding the covering up of wrongdoing

1.7. email chain on 21 and 23 June 2021 involving Anne Lloyd and Simon Taylor raising data protection failures and the respondent not protecting children

1.8. emails of 13 July 2021 and 4 August 2021 from Simon Taylor to Thomas Atkinson and others regarding evidence from the claimant concerning the perverting of the course of justice and concerns being covered up

1.9. the claimant's 2nd grievance of 7 September 2021, insofar as it referred to data breaches and failure in service delivery where the respondent had a duty to provide support to children under the Education Act

1.10. disclosures in March 2022 made during the hearing of the grievance appeal to Mr Longhurst regarding service delivery failures and misuse of European funding

1.11. the claimant raising concerns with Mr Westlake in January 2022 during an investigation meeting into the claimant's whistleblowing concerns when she raised safeguarding concerns and a lack of appropriate DBS clearance in Safe and Sound

2. The respondent confirmed on the first day of the hearing that it accepted that the provision of information at disclosures 4 – 10 were protected qualifying disclosures. During the course of the claimant's cross-examination, it was also confirmed by the respondent that it accepted that the provision of information at disclosure 11 met the statutory test. The purported provision of information at disclosures 1 – 3 are not accepted to be protected qualifying disclosures.

3. Again, during the case management process, the detriments asserted by the claimant to be because of her protected disclosures were identified as follows, with reference to a list of detriments the claimant had provided by way of further particulars.

3.1. The business team not inviting the claimant to a meeting in February 2021 (detriment 8)

3.2. the claimant being excluded from a meeting with PwC in January 2021 and Expect Distribution meetings in February and March 2021 (detriment 11)

3.3. Jason Scothern subjecting the claimant to "Chimps paradox jokes" in a video meeting on 17 [in fact 19] March 2021

3.4. *[Jenny Cryer emailing the claimant on 27 April 2021 asking her not to report a matter to the police and local MP as she was an employee of the respondent and ignoring her formal grievance (subject to the claimant's payment of a deposit) (detriment 33) - dismissed prior to this hearing on a failure to pay a deposit.]*

3.5. the rejection of discretionary sick pay for the claimant in July and August 2021 (detriment 37)

3.6. Anne Lloyd calling the claimant vexatious, malicious and misconceived in October 2021 in response to a grievance and handpicking what she would investigate as complaints of whistleblowing (detriment 40)

3.7. a delay until late October 2021 in providing a response to the claimant's first grievance (detriment 42)

3.8. Ian Westlake not getting in touch with the claimant after the initial meeting, not sending her minutes of the meeting or investigating her concerns – 12 January 2022 (detriment 45)

3.9. from 17 January 2022 when the respondent's IT system was running slow the claimant was unable to login. Her access to the IT systems was partially blocked because the system wasn't working properly and therefore she wasn't able to access things. From 8 February 2022, her access was completely blocked as her computer would switch on, but her login details were rejected and she received messages saying that the administrator had blocked her access. The claimant was unable to book annual leave as her access to emails had been blocked (detriments 47, 49 and 56)

3.10. the claimant's grievance appeals being delayed until 24 March 2022 when none of the directors had looked at the evidence that was sent to them in July 2021 (detriment 48)

3.11. in March 2022 those involved in the grievance appeals blocking the claimant's personal email from sending further evidence which they requested, thus necessitating the claimant to print out all documents and hand deliver them (detriment 50)

3.12. refusing to consider the claimant's 3rd grievance when she alleged that the respondent had not earlier followed its internal procedures – mid April 2022 (detriment 51)

3.13. not being invited to a virtual meeting regarding a restructure – 24 March 2022 (detriment 52)

3.14. the claimant's work email removed from the respondent's systems in March 2022 (detriment 53)

3.15. Anne Lloyd providing an inaccurate and false explanation for the removal of the claimant's email account (detriment 54)

3.16. the claimant being told that as she was on sick leave her email account would remain removed – August 2022 (detriment 55)

3.17. the claimant being suddenly bombarded by calls and texts and feeling that she was being forced to attend counselling sessions urgently. The claimant says that this was stressful for her and that the urgency seemed to be relate to her tribunal claim - 16 August 2022 and the following few days (detriment 57)

4. The claimant had also claimed that all of the above alleged detrimental treatment was direct race discrimination, the claimant identifying herself as a British Asian of Muslim origin from Kashmir. Whilst initially, when cross-examined on the various detriments, the claimant sought to relate the treatment she had suffered to her race, she ultimately clarified that her complaints had been misunderstood and that the only detriment where she was maintaining that she suffered less favourable treatment because of race was the third one, relating to Mr Scothern's reference to The Chimp Paradox during the video meeting on 19 March 2021. The tribunal noted that the claimant appeared to be withdrawing the remaining complaints of race discrimination, but wished the claimant to take time over a lunch break to clarify in her own mind that that is what she intended to do, on the understanding that, if she did withdraw those claims, they would be dismissed upon her withdrawal and could not be resurrected at a later date. Following the lunch break, the claimant confirmed that she was withdrawing all of the complaints of direct race discrimination with the exception of that arising out of the 19 March 2021 meeting.

5. There is an issue of the tribunal's jurisdiction in terms of applicable time limits in both the complaints of whistleblowing detriment and the separate complaint of race discrimination.

6. The claimant was ultimately dismissed from the respondent's employment following a period of ill-health absence. The respondent maintains that the dismissal was for reason of ill-health capability. This gave rise to the claimant's second tribunal application.

7. The claimant brings a complaint of ordinary unfair dismissal. She also maintains that her dismissal was automatically unfair, the reason or principal reason for dismissal being all of the aforementioned acts of whistleblowing.

8. The claimant also brings a complaint of disability discrimination reliant on the mental health impairment of depression only. The respondent has conceded that the claimant was a disabled person arising out of that impairment from the

date of an occupational health report, on 9 January 2023. The claimant's complaint of a failure to make reasonable adjustments at the point of her dismissal relates to February 2023, but the claimant also maintains that the reasonable adjustments ought to have been made on an earlier return to work in October 2022.

9. The claimant maintained that her evidence dealt with the issue of her disability status, but having read into the witness evidence and documentation referred to, the tribunal queried with the claimant whether her impact statement produced in these proceedings was contained within the bundle and any further supporting medical evidence. The claimant confirmed that it was not, but would be provided to the tribunal, the tribunal saying that it would accept this as further relevant evidence. No objection was raised on behalf the respondent. The claimant did subsequently provide the information previously sent to the respondent in response to tribunal orders requiring the disclosure of medical evidence and information about the effects the claimant's condition has had on her ability to carry out normal day-to-day activities.

10. The claimant's description of how her condition affected her was not detailed or specific in its nature and without reference to any timeline. There was reference in the documentation she provided to a doctor's letter of March 2021 confirming the diagnosis of depression. It appeared that this is a communication previously sought by the respondent from the claimant. The tribunal explained to the claimant that whilst it could speculate as to the duration the claimant had suffered from the impairment of depression by January 2023, any determination as to the point at which she was a disabled person had to be evidenced-based and such medical opinion/diagnosis would help it in reaching such determination. This had not, however, been provided to the tribunal by the time closing submissions were made.

11. In an email setting out the claimant's written submissions provided on the final day of the live hearing, the claimant referred to her having made enquiries of medical practitioners so that further evidence of a medical nature might be provided. The tribunal was clear to the claimant that such evidence could at this late stage not be accepted or considered by it.

12. The disability discrimination complaint pursued is one alleging a failure to make reasonable adjustment based on, firstly, a requirement for the claimant to work at Margaret McMillan Tower and, secondly, to work normal hours of 37 over 5 days.

13. In terms of time limit issues, the claimant's first tribunal application was lodged with the tribunal on 18 July 2022 after a period of ACAS early conciliation from 8 June – 13 July 2022. Her second complaint of unfair dismissal and disability discrimination was lodged with the tribunal on 9 August 2023 after a further period of ACAS early conciliation from 30 May – 10 July 2023.

Evidence

14. Shortly prior to this final hearing, a preliminary hearing had been held at which, amongst other things, there had been discussion about the claimant's health and well-being issues including her suffering from dyslexia and depression. A note of that preliminary hearing sets out the claimant's requirements which were adhered to. It had been anticipated that the claimant might wish to join the hearing remotely and arrangements were in place to allow this. The claimant notified the tribunal's administration during the lunch break of her second day of cross-examination that she was feeling unwell and did not wish to continue as scheduled at 14:00 that day. The hearing was adjourned and the claimant subsequently thereafter joined the hearing by CVP videoconferencing. The tribunal adjourned early the subsequent day to allow the claimant to attend a medical appointment. The claimant confirmed the following day and thereafter that she was fit and able to continue.

15. The tribunal saw the claimant and the respondent's representatives on the first day of the hearing to clarify once more the issues and discuss a provisional timetable for hearing the evidence.

16. Having, therefore, met with the parties briefly at the start of day 1, the tribunal spent the rest of the day reading into the witness statements exchanged and relevant documentation. The tribunal had before it a ""principal"" bundle of 989 pages. The claimant relied on a supplemental bundle she had produced which ran from page 990 until 3684. There was then a collection of transcripts of audio recordings the claimant had made and some further additional documents disclosed by the respondent whose relevance was not disputed. The tribunal made it clear to the claimant that the tribunal would not be in a position to read the bundle from its first to final page. She would have to make the tribunal aware of relevant documents and explain what they showed. Obviously, they could be put by her to any of the respondent's witnesses in cross-examination.

17. The claimant gave her own evidence over days 2 – 5. The claimant, within her witness statement, cross-referenced a significant number of documents. When the tribunal had gone to many of those documents, they did not appear to relate to the point in the witness statement which the claimant appeared to be seeking to make. At times, the relevance was unclear. This was explained by the tribunal to the claimant who said that she understood, but had wished the tribunal to be aware of as much relevant background as possible.

18. On behalf of the respondent, the tribunal heard on day 6 from Philip Hunter, strategic manager, employment and skills and Ian Westlake head of procurement until June 2022 prior to his departure from the respondent. On day 7 the tribunal heard from Anne Lloyd, director of HR, followed by Danyel Pedley-McKnight, HR advisory team manager and then Dominic Barnes-Browne, Head of IT. On day 8 evidence was given by Shazia Qureshi, senior employment services manager, Louise Williams, area coordinator in neighbourhoods and community services and, finally, (by CVP) from Councillor Tariq Husain, who chaired the dismissal appeal panel.

19. On day 9 the tribunal received Ms Clayton's written submissions. Time was given for the tribunal and claimant to privately consider those before Ms Clayton supplemented her submissions orally. The claimant responded to those submissions and, after a brief adjournment requested by her, continued with her own oral submissions supplementing an email sent to the tribunal and considered at the same time as Ms Clayton's written submissions.

20. As already referred to, this matter has been through extensive case management. It has not always been easy to understand the claims which the claimant was articulating, but the tribunal was clear from the outset, as it had been explained at the preliminary hearing the week before the final hearing commenced, that the tribunal could only, in particular, determine the detriments listed in the tribunal's case management summaries and with reference only to the claimant's pleaded protected disclosures. The respondent had come prepared to respond to an identified set of allegations and had prepared witness evidence accordingly. As the claimant by this stage must have appreciated, the tribunal could not engage, for instance, with a bare assertion that the claimant had raised complaints of wrongdoing repeatedly from the outset of her employment with the respondent. In terms of protected disclosures relied upon, there needed to be an identification of what the disclosure actually was i.e. what was said by the claimant to whom and when. The tribunal had registered during the case management process its own dissatisfaction with a state of affairs where at times the claimant referred to disclosures in a particular document, but without being able to identify any particular words within the document which were said to amount to a protected qualifying disclosure. The claimant's position has been that "it was all a protected disclosure". Saying that, it had been highlighted during the case management process that there were significant references in documents to, for instance, concerns about safeguarding, misuse of public funds and breach of data protection regulations. Ultimately, at this hearing, the respondent has felt able to take a pragmatic view and accepted that the majority of the disclosures relied upon by the claimant were indeed protected qualifying disclosures affording protection to her as a whistleblower.

21. Regardless of that concession, the tribunal has been mindful to ensure that it has been fully aware of the nature of the claimant's expressions of concern.

22. It has also been repeatedly highlighted to the claimant, including during this hearing, that to be a whistleblower an individual need only have a reasonable belief in there having been, for instance, a breach of a legal obligation. A claimant does not have to prove that he or she was correct in their assertion. Indeed, they may have been wholly incorrect, yet still would be protected as a whistleblower. Including in such circumstances, it is not therefore the tribunal's function, even if it had the capacity to do so, to determine whether the respondent has breached any legal obligation. Unfortunately, it has been evident up to and including the point of submissions that the claimant has not recognised the limit of the tribunal's jurisdiction. Certainly, the claimant is passionate in her assertion that the respondent is guilty of a misuse of its powers and a failure to carry out statutory functions, with particular reference to the care of children and vulnerable adults. She has made such assertions

throughout the hearing in her own evidence, when questioning the respondent's witnesses and in submissions.

23. The tribunal has again explained to the claimant that its findings would be limited to, in the context of the whistleblowing detriment complaints, a consideration of the causative effect of pleaded disclosures on her suffering from alleged mistreatment by the respondent. The tribunal's factual findings do not, therefore, cover every aspect of the evidence aired and arguments raised, albeit that evidence has certainly been heard and its relevance considered.

24. In evaluating the claimant's evidence, the tribunal has been mindful of the claimant's impairments, including dyslexia. It reminds itself of the Equal Treatment Benchbook's guidance on litigants with dyslexia. Time was required periodically for the claimant to write down questions to enable her to process them. The tribunal has proceeded only when confident that the claimant has understood what was being asked of her. The claimant has had a full and detailed grasp of the evidence and events during her employment. She was able to respond quickly to most questions. However, at times her mind was fixed on what she thought the respondent had done wrong in terms of its responsibilities to vulnerable persons. She has at times preferred to make that point rather than directly answer a question to her.

25. Having considered all relevant evidence, the tribunal makes the factual findings set out below.

Facts

26. The claimant was employed by the respondent from 9 November 2020 as a temporary employment hub coach in the SkillsHouse team in the education and skills, children's services directorate. Initially, her fixed-term employment was due to end on 30 June 2022, but, by letter of 10 March 2021, it was extended until 31 March 2024. The claimant's contract of employment referred her to the respondent's various policies including those relating to grievances and sickness. This was a full-time role working 37 hours each week. The claimant had also been employed as a casual control room operator in part of the respondent's adult services known as Safe and Sound. This involved her working typically a number of hours on alternative weekends whenever she wished.

27. In her full-time role as an employment hub coach, she had to support local small businesses including those who had applied for Kickstart grants since early 2020 – an initiative designed to help local businesses support young people to get back into work. In addition, the claimant's role involved engaging with young people, many of whom were care leavers or early education leavers already on benefits to provide mentoring and support in assisting them into work. Significant funding for the claimant's work derived from the EU's social fund. The backdrop to the claimant's employment was the coronavirus pandemic and periodic restrictions on activities arising from it.

28. The claimant reported to Jason Scothern until March 2021, who in turn reported to the SkillsHouse manager, Zoe Dyson. She reported in turn to Philip Hunter,

who reported to Jenny Cryer, assistant director. The claimant worked with her colleagues, Roxanne and Rachel, in the business team.

29. The claimant says that she told Ms Dyson verbally that a cohort of job seekers from Hope Housing of Eastern European origin had criminal records, had exhibited aggressive behaviours and were unsuitable for Covid support roles within NHS England. The tribunal has seen evidence that at least 1 such individual was recorded within the respondent's system as being aggressive and having criminal convictions.

30. The claimant alleges that she was excluded from a meeting with PwC in January 2021, but this is not referred to in her witness statement evidence. She did say that Ms Dyson dismissed her concerns and "told" business team members and managers not to involve her in work.

31. In evidence she believed that she should have been invited to a meeting on 13 January 2021, which she accepted predated her protected disclosures. She provided a screenshot of 2 meetings on that day organised respectively by Tina Lafferty, programme director for health and social care economic partnership and Ms Dyson. One showed Roxanne being invited by Ms Lafferty to a "quick chat" about the Covid vaccine recruitment campaign. The claimant said that that is a meeting she would have expected to attend also. While she accepted that she could not necessarily be party to every meeting within the team she complained that "all the work was thrown at Roxanne".

32. The claimant had a fit note for bereavement running from 26 January – 1 February and was absent due to sickness with a cold from 25 to 29 January 2021.

33. The claimant had access to her colleagues' and managers' electronic Outlook calendars. She accessed and screenshot Rachel's calendar which included a reference to a zoom meeting with or about PwC at 10:00-11:00 on Tuesday 2 February 2021 to involve Rachel and Roxanne. The claimant's evidence was that she took screenshots of others' calendars as it was in the public interest for her to do so. The tribunal has no evidence as to the purpose of this meeting or how it was arranged. The only other PwC related meeting during the claimant's employment which has been evidenced is one from a screenshot the claimant took of Mr Scothern's calendar – an entry in it for 17 December 2020 which the claimant agreed predated the protected disclosures she was relying upon. This meeting appears to have been organised by an employee of PwC. A screenshot of Jenny Cryer's calendar showed that a catch up "on PwC" occurred on 30 July 2020 before the claimant's employment. The claimant had disclosed a calendar entry from a head of service, Dominic Barnes-Browne (IT), noting a PwC related meeting on 1 April 2021, but it was not her case that she would have expected to have been included in that.

34. On 2 February 2021 (at 11:11) the claimant sent an email **(PID 1)** including to Ms Dyson listing types of support provided to the Hope Housing group and identifying barriers, including language barriers and them having no fixed abode. It was recommended that other agencies were involved to better develop support networks and reduce those barriers to employment. This did not refer to the risk factor of them having criminal convictions or to working in

the NHS. The claimant accepted in evidence that this email did not disclose any breach of a legal obligation.

35. An email from Ms Dyson to the claimant of 10 February referred to 3 individuals having Covid support worker role interviews that day. Ms Dyson responded thanking her for the update. There is reference in communications with the claimant on 23 February to this cohort having been fully handed over to Ms Dyson and another employee, with Sarah Napier reacting positively to the news and referring to the claimant being able to fully dedicate her time to moving the Kickstart project forward with her.

36. The claimant's evidence to the tribunal was that she had told Ms Dyson in telephone conversations that the Hope Housing cohort all had criminal records and were not fit to perform Covid support work. The claimant had suggested that they might do labouring or warehouse work. Despite this, the claimant said that someone was given an unsuitable job.

37. On 8 February 2021 the claimant emailed team members following a chat with Ms Dyson about some suggestions which the claimant had put forward. She included a section on what was working and what was not, with suggestions on how the team could be best supported. She received positive feedback from some individuals. Ms Dyson responded on 9 February asking her to park this for now and for them to discuss the matters over the next few team meetings as agenda items.

38. The claimant told the tribunal that it was clear to her that Mr Scothern and another manager, Priya Anand, were appointed in an irregular recruitment process in September 2020 with interviews taking place only when they were already in post. The claimant clearly doubted their abilities as managers. The tribunal has seen an announcement of their appointment which does pre-date a calendar entry which suggests a job interview. Mr Hunter was unable to explain the sequence of events the claimant suggested, but said that due process had been followed in their recruitment and that they had not been given the jobs prior to being interviewed for them.

39. The claimant told the tribunal that she said (without any specifics given) that Mr Scothern did not know what he was doing as regards his duty of care under the Children and Social Work Act 2017.

40. She says that she sent an email to Mr Philip Hunter, strategic manager, employment and skills in this regard on 21 February 2021 **(PID 2)** which included issues she had regarding recruitment and data breaches. There is no evidence of the existence of that communication. The tribunal cannot accept that it was sent.

41. The claimant says that she was not invited to a meeting in February 2021. The specific meeting in question has not, however, been identified.

42. The tribunal has seen email correspondence from Jasmine Green of Leeds City Region Enterprise Partnership where Roxanne was included in the invitation to a meeting by her to take place on 4 February. On 1 February Ms Green asked that the invitation be forwarded to the claimant as she did not have her email. Ms Green subsequently contacted the claimant directly asking if she could

attend and then, after the claimant confirmed that she could, saying that she had asked Roxanne to extend the invitation to her as she didn't have the claimant's email.

43. The claimant complains about not being invited two business team meetings in February 2021. The tribunal cannot make any factual finding of a failure to invite given a lack of specific evidence.

44. The claimant alleges that she was excluded from meetings with Expect Distribution in February/March 2021. Again, the exact meetings had not been identified. A screenshot from Roxanne's calendar shows a meeting arranged involving Ms Dyson and Ms Metcalfe of Expect Distribution on 15 March 2021. Expect Distribution were involved in road haulage and the claimant thought that she should have been there because it had been, she said, her idea to seek to place jobseekers in that industry and to up skill HGV drivers. The claimant said that she knew in advance of the meeting that she was not going to be there, but could not recall if she had asked Ms Dyson if she could attend. The claimant confirmed that this was the only Expect Distribution meeting she was referring to from which, she said, she was excluded.

45. The claimant had emailed Mr Hunter on 5 March bringing to his attention "several disclosures". These included questions over the interview and selection of Mr Scothern. She gave some negative feedback on his performance and absence from the workplace. She referred to Ms Dyson as having, despite this, "awarded and celebrated" him. She referred to Ms Dyson having casually excluded 3 non-white staff members from taking up learning opportunities. She questioned Ms Dyson's lack of qualifications and experience.

46. Mr Hunter responded on 8 March recognising that the claimant had some serious concerns about aspects of the management of SkillsHouse, its ways of working and the recent recruitment process. He said that he was seeking HR advice and would revert to her.

47. The claimant sent a further email on 8 March **(PID 3)** in reply to Mr Hunter referring to concerns which she said had been raised on numerous occasions both internally and externally. She said these were the concerns of many people. She set out the salary costs of the 4 members of senior and middle management. She criticised some aspects of their performance, knowledge and experience. She said that there were serious issues about how the recruitment process for 3 out of the 4 managers occurred and an investigation is needed to take place internally. The claimant accepted that, in contrast to the way in which this was pleaded as a protected disclosure, there was nothing in the communication referring to data breaches, whether due to the accessibility of personal information from Outlook calendars or otherwise.

48. Mr Hunter emailed the claimant on 9 March recognising that she had raised a grievance and attaching the respondent's grievance policy. He noted that they had had a discussion and had agreed to meet to discuss her areas of concern.

49. The claimant responded on 11 March saying that she would complete the grievance form by the end of that day. She also said that she did not believe any of Ms Dyson's actions related to any race-related issues. She believed Ms

Dyson had good intentions, but would benefit from training and support on elements of her role.

50. The tribunal notes that the respondent's grievance procedure allows for grievances to be dealt with informally at stage I of the procedure. The claimant recognised that, but, before the tribunal, said that she thought that the grievance ought to have been taken immediately to the formal stage.

51. The claimant took part in a video meeting of her team together with Roxanne, Rachel and Mr Scothern on 19 March 2021. The tribunal has been presented with a transcript of relevant passages from that meeting taken from a recording the claimant made of it. It has also listened to the relevant segment lasting just over 9 minutes. The passage listened to by the tribunal is illustrative of a jovial get together rather than a business meeting (as was the reason for the meeting). It is suggestive of the claimant not knowing those present as well as they knew each other. The claimant nevertheless participates in the discussion with no audible indication of any distress or upset. Insofar as Mr Scothern was trying to address anything work-related, this was focused on staff welfare, a recognition that, in the new working environment where employees were working remotely during the pandemic, people missed out on friendly chatter. He conveyed that he was always available for a chat. He also provided an update on IT developments.

52. It was in that general context that he referred to a behavioural psychology book called "The Chimp Paradox" written by a Stephen Peters. He referred to having mentioned it "about a thousand times" before which produced much laughter amongst Roxanne and Rachel and asked if he had mentioned to everyone and whether he had bored the claimant with it as well. The claimant said he had not. Roxanne referred to the claimant as being in for a treat upon which Mr Scothern told them to be quiet and listen once again. Roxanne and Rachel expressed some exasperation at having heard it all before. The tribunal could not hear any suggestion by either of them not to involve/tell the claimant. Mr Scothern explained what the book was and praised its contents referring to it having been used by elite sportsmen. He asked Roxanne and Rachel whether they wanted to explain the key concept to the claimant. Roxanne sought to summarise the concept that everyone has an "inner chimp" which can take over a person's mind and control the way they acted when they did not want it to. Mr Scothern elaborated about the brain being in 3 parts repeating that it was a fantastic book and had been of value to him. He also referred to recent TV programmes dealing effectively with mental health issues.

53. The claimant, in cross-examination, accepted that The Chimp Paradox was a book and was referred to in a respectful way. However, the context, she said, was that she was the only one in the meeting who was of Asian ethnicity and she was specifically referred to the book.

54. The claimant accepts that later on in the meeting she became upset, something which was picked up upon by those in attendance. The claimant herself referred to a taped conversation she had had with Rachel after the meeting where Rachel recognised that the claimant had looked sad towards the end of the meeting.

55. At 12:01 on 19 March, shortly after the video meeting which concluded at around 10:00, Mr Scothern emailed Ms Dyson saying that the team were concerned about how the claimant came across at the meeting, saying that she did not seem to be herself and appeared flat and demotivated. He said that the claimant had opened up about two examples of work placements she was having difficulty with where he said that the team tried to talk through some potential solutions. He said that he had followed up the meeting with an email to confirm how she might deal with the two difficult scenarios and also offered support through a phone call after the meeting which the claimant had not picked up. He referred to having spoken to HR and the suggestion that there should be an informal discussion to express concern for how the claimant was and their eagerness to support her. He recognised that it was obviously up to the claimant whether she was receptive to such help.

56. As part of the investigation into the claimant's grievances, Mr Thomas Atkinson interviewed Rachel on 17 August 2021. She was asked a very open question about the term "Chimp Paradox" to which she responded that Mr Scothern "never stopped talking about it" and referred to in virtually every meeting. She explained what she understood it to mean and said that they would take the Mickey out of him for talking about it all of the time. Mr Atkinson then attempted to play the claimant's recording of the March meeting, but, that having failed, explained that the claimant said that the March meeting was the first time it had happened and that it had racial connotations. When asked for her view, Rachel replied: "No, not at all. No, no one ever even thought about it in that respect… No. I never took it as a racial indication." When asked if she had seen the claimant become upset by the reference, she said that she had not. She said that the claimant used to confide in her, but had never suggested "a racism context".

57. Roxanne was interviewed 1 September by Mr Atkinson and asked questions in a similar way. She responded that the Chimp Paradox was something which Mr Scothern used to go on about all of the time. They used to roll their eyes at him raising it he was something of a stuck record. When asked if he had ever used it in a derogatory manner or if it had racial connotations she said: "Absolutely not.… He was not a racist… He only wanted to make people happy… It's because he was really passionate about this book." She did not feel that anyone had become upset by the comment.

58. The ultimate grievance outcome dated 11 October 2021 was that the reference to the "widely recognised book" did not have any racial connotations and the claimant had "inferred this without sufficient reasoning. Particularly due to the fact that other employees have confirmed this was a regular reference used in virtually every meeting."

59. The claimant told the tribunal that she believed that Mr Scothern had made the reference to the Chimp Paradox also because of her protected disclosures on 2 February and 8 March in circumstances where she believed that Mr Hunter would have told Mr Scothern about her complaints relating to his recruitment and management skills.

60. Mr Scothern emailed the claimant on 22 March saying that he hoped that she had had a nice weekend and was keen to catch up, though "no pressure" and he was free any time after 11:00. He ended the email with a smiley face emoji.

The claimant responded thanking him for his message and giving advance apologies for her absence from the business team catch up and another meeting to take place on the Friday. She continued: "I'm trying to manage my inner chimp, so it does not overreact before I can think." She asked Mr Scothern not to refer to her as "Kick Start Queen", saying that she had little involvement with Kickstart.

61. The claimant met Mr Hunter on 24 March to discuss her grievances raised in emails from 25 February 2021. Ms Pedley-McKnight had opened a case file on the HR system for the claimant's grievance on 8 March 2021. Mr Hunter had not discussed these with Mr Scothern. He saw the claimants concerns as grievances – he gave no thought to them being acts of whistleblowing. As referred to already, these included concerns about her management team including their capabilities and recruitment. The claimant was subsequently provided with minutes of the meeting on 24 March. The claimant did not accept that these were entirely accurate. She said that Mr Hunter wouldn't accept that there had been recruitment irregularities and that a reference she made to breached of Covid regulations was not contained within the minutes.

62. He emailed her on 26 March saying that he took her concerns very seriously. He said that their meeting was a first stage meeting of the grievance procedure where he had hoped, not only to discuss her grievances, but to find an amicable solution to resolve them. The respondent's grievance procedure urged employees to resolve their concerns through informal means if possible. He noted that they were not able to find that solution. He asked her nevertheless to continue to give thought to how they might resolve those grievances informally. He noted that she had indicated at the meeting that she was considering raising a formal grievance. He attached the grievance procedure and the form she needed to complete. He said that, if she decided to proceed with a formal grievance, as was her right to do so, he wanted her to think carefully about the evidence she raised in support of it as the procedure was driven by the balance of evidence available to substantiate any allegations made. He also raised the possibility of her participating in a mediation process with Ms Dyson and Mr Scothern. Whilst he said he could understand that she was upset, he asked her to be mindful of the way in which she expressed herself in future communications and adhered to the respondent's behavioural framework, a copy of which he also attached. He said that the language she had used to convey her grievances was below the required standard. He also noted that he had been informed that she had sent a communication on 25 March 2021 to a local primary school expressing her views on the effectiveness of the respondent's services. He said that he wanted to reiterate again the importance of the way she expressed herself so as to ensure that the content of communications could not be interpreted as bringing the respondent into disrepute.

63. The claimant accepted that she did not respond to Mr Hunter's letter, but proceeded, as referred to below, to raise a formal grievance with Ms Cryer.

64. Mr Scothern emailed the claimant on 6 April saying that he was sorry that she had not been able to attend the last team meeting and asked if there were any reasons. He said that the meetings were becoming more valuable as they learned together as a team and what their priorities were. He said that the meetings were to discuss day-to-day operations and not any wider topics she

might be discussing, referring to her conversations with Mr Hunter. At this point Mr Scothern clearly was aware that the claimant had raised concerns. The claimant responded that she had some unresolved concerns, so was waiting for them to come to a close before committing to business team involvement.

65. The claimant has pointed to the Outlook calendars of Roxanne and Mr Scothern with reference to Friday 16 April 2021 where she says that she was blocked from seeing the appointments or meetings they were attending. The tribunal has been shown screenshots where the exact activities are shown and which the claimant has compared to what she says was a subsequent screenshot where appointments for the week ending 16 April are simply shown as "busy" or "tentative" without any additional detail. The tribunal can come to no conclusion as to what was done to the entries or by whom.

66. The claimant submitted her formal grievance to Ms Cryer on 19 April 2021 **(PID 4)**. Amongst other things, she raised data protection breaches, fraud involved in recruitment decisions, breach of Covid regulations and race discrimination including the Chimp Paradox reference. There were at least 28 allegations set out over 10 pages of text.

67. She emailed Ms Cryer again on 27 April saying that others had advised her to contact her local MP and then go to the police to "report these crimes to be independently investigated." She said that she had given the respondent every opportunity to investigate her concerns and this had failed to happen – she had earlier referred to Mr Hunter having not been able to carry out an impartial investigation in a timely manner.

68. Ms Cryer responded on 27 April recognising that the claimant had lodged the grievance with her and saying that she was in the process of identifying someone to look into it in line with the respondent's processes. She said: "I'm taking action and therefore as a council employee whose grievance is being dealt with under our processes, I am unclear why you are contacting an external individual and would ask you not to do this."

69. The claimant sent an email to the respondent's chief executive, Kersten England on 29 April 2021 **(PID 5)** saying that she had reported the matter to an MP and that she could not understand why Ms Cryer had told her not to speak to an external person. She then set out her history with the respondent, her concerns and the actions she thought to be required. Those included an independent investigation, led by the MP referred to, including into the Ms Cryer and Mr Hunter and the way recruitment fraud had been overlooked by human resources. She referred to the vulnerability of children and misuse of public funds.

70. Ms England replied on 30 April saying that she was sorry to hear how the claimant felt she had been suffering and said she encouraged and supported people to speak out and raise concerns. She said that colleagues had confirmed with her that the claimant's grievance was being progressed by way of an independent investigation. It is noted that the claimant provided her with further information and that Ms England emailed the claimant again on 6 May 2021 saying that she was advised by HR that her concerns should be progressed through the grievance process, also noting that the information sent

dated back to 2017 and that there were legal time limits for raising some concerns.

71. The claimant was absent due to sickness from 10 May 2021.

72. The claimant's husband emailed Ms Priya Anand and Ms England on 27 May 2021 **(PID 6)**. He referred to a communication from Nabila Ayub and the claimant not checking her work emails while she was absent due to sickness. He referred to serious breaches of data protection and concerns of misconduct involving Ms Ayub. Mr Hunter had moved Ms Ayub to his service to help stabilise the management team and provide much needed experience in his area. It was intended that the claimant would fall within her management. The claimant and Ms Ayub had been friends. The claimant was not, however, receptive to Ms Ayub managing her.

73. The claimant's husband emailed Ms Lloyd, HR Director, on 21 and 23 June **(PID 7)** raising a complaint against 10 named employees of the respondent including Ms Cryer, Mr Hunter and Ms Dyson. He referred to the unlawful sharing of personal information about the claimant and her having raised concerns of wrongdoing which were ignored and concealed. Details were given at length of the alleged mistreatment of the claimant. A wide-ranging subject access request was then made. He referred to the claimant's worsening health concerns. He asked that this was looked at as a formal complaint.

74. Ms Lloyd told the tribunal that the volume, manner and content of the claimant's communications had presented considerable challenges in responding and providing advice to managers. It is obvious that that would have been the case. She expressed the view that the attitude of the claimant to the respondent's managers was one of suspicion. The breadth and unfocused nature of her allegations, many of which she recognised were of the utmost seriousness, made it, she said, extremely difficult to make any progress with achieving any resolution. It was not possible at all stages to involve members certainly of HR who had not had some prior knowledge of the claimant's issues. Because the claimant had made serious complaints about Mr Hunter as head of service, it was decided that another head of service from another part of the respondent, Lisa Brett, head of service, prevention and early help, would pick up responsibility for managing the claimant's sickness absence.

75. On 23 June, Mr Smith of HR emailed the claimant with a form attached to complete confirming her consent for the respondent to engage with her husband on her behalf.

76. The claimant's husband sent an email to Mr Atkinson (who, as will be explained, had been appointed to investigate the claimant's grievance) on 13 July and again on 4 August **(PID8)**. In the former email he said that they would welcome an independent investigation into the wrongdoings within the respondent. He

expressed their concern about the welfare of children and vulnerable adults referring to the respondent having a duty of care to ensure that taxpayer money was spent on vulnerable people. In the 4 August email, he questioned a lack of progress in the investigation into what included recruitment irregularities and "other such serious alleged criminal activity". Reference was made to harassment at work and a failure to investigate acts of discrimination. A further section provided a definition of whistleblowing and suggested detrimental treatment on that ground.

77. The respondent operated a sick pay policy which applied to all employees with the exception of teachers. In the first year of service, after completing four months' service, employees are entitled to one month at full pay and two months' half pay when absent due to sickness. The claimant was absent from work from 17 May 2021 until 20 October 2022. She moved from full pay to half pay by 29 May 2021 and received no contractual sick pay after 29 July 2021. The claimant agreed that this was in accordance with the respondent's policy.

78. Sick pay could be extended in accordance with the policy at the respondent's discretion "in exceptional circumstances".

79. Anne Eden, payroll officer, wrote to the claimant on 2 June advising her of her sick pay entitlement and enclosing a copy of the scheme. In this she advised that if the claimant had accrued holiday entitlement, she could still book this and be paid normal full pay whilst on sickness absence. She was advised to contact a line manager if she wished to do so. The claimant's case was that she was confused as to who her line manager was due to frequent changes and believed she was blocked off within the system from booking annual leave. The tribunal accepts Ms Lloyd's clear explanation in evidence that employees on sick leave who had exhausted their entitlement to pay could not simply go online to book leave, as they ordinarily could. This had to be arranged through their manager so that payroll could be advised to make payment for leave taken whilst the system would still show the employee as absent due to sickness.

80. The claimant's husband emailed Sue Wilson and Mr Atkinson on 29 July referring to unresolved matters which included a reference to another section of the sick pay policy allowing for full pay where workplace bullying and harassment has occurred. He suggested that the claimant's situation met that criterion and that full pay ought to be actioned and backdated. The claimant, in cross-examination, agreed that the policy gave the respondent a discretion in such circumstances.

81. Mr Smith wrote to the claimant on 24 August on a number of matters, but including the suggestion that sick pay be paid in full arising out of a belief that the claimant's absence resulted from the respondent's failures. He responded

that consideration had been given to the request by himself, in the absence of Ms Lloyd and the strategic director for children's services, but that they were unable to approve the request.

82. Ms Lloyd's (accepted) evidence was that it was rare for the respondent to extend sick pay. She was aware of two isolated occasions where an extension was granted, firstly in the case of an employee with a terminal illness who was applying for ill-health retirement and secondly where an individual had suffered a stroke and was under a rehabilitation plan. The respondent might put in place rehabilitation plans where there was a predetermined timescale for recovery. In this particular case, the individual was learning to talk again and regain mobility - he was provided with some extra months of payment during sickness as part of a rehabilitation plan set up for him following an occupational health recommendation.

83. The claimant has referred, in terms of comparators who she says were treated more favourably, to Irfan Alam and Mark Douglas. There was no evidence that they had received sick pay. The evidence was that they had been given pay during periods of absence pending the completion of investigations and/or in relation to the termination of their employment.

84. Ms Lloyd emailed the claimant and her husband on 5 October referring to Lisa Brett as the person who would be talking to the claimant about her sickness absence and as the point of contact for the claimant to request any periods of annual leave. She also noted the claimant's aforementioned application for the extension of sick pay, that this had been considered, but that the claimant had been advised of her request being declined.

85. The claimant agreed in cross-examination that Lisa Brett was her point of contact from September and could be used by her to request periods of annual leave.

86. The claimant emailed Ms Eden on 23 November 2021 asking her to change the settings within the electronic personnel system as it recorded her as being in receipt of sick pay until March 2022 which was preventing her from booking any annual leave. Ms Eden responded stating: "You cannot just look annual leave on the system!!!" and saying this had to be authorised by her manager. She noted that, as the claimant was absent due to ill health, this had to be recorded as sickness. Once a manager authorised annual leave, they would notify payroll who would manually pay her for her annual leave and reduce her accrued leave balance. The claimant responded with her request to book 2 blocks of two weeks off as paid leave.

87. The claimant had emailed a second grievance to Ms Lloyd on 7 September 2021 **(PID 9)** which she said was connected to the first grievance made to Ms Cryer. This included concerns about her protected disclosures, allegations of conflict of interest and that she had been excluded from work-related matters because of her disclosures. She criticised the April grievance as not having been properly investigated. The management capabilities of individual employees were criticised and a complaint from a Kickstart applicant referred to. She expressed concerns about HR concealing wrongdoing. In terms of remedy, she wanted to see an investigation into systemic corruption, with children's services inspectors involved.

88. The respondent's grievance procedure provided, in paragraph 4.3, that employees had to pursue grievances within a reasonable time and usually within one month of the act complained of. If the grievance was lodged after this time, the employee had no right to proceed through the formal procedure unless the respondent decided at its discretion that there were exceptional circumstances, such as a pattern of behaviour which the employee believed to be bullying and harassment. At paragraph 4.6, it was provided that when a grievance was apparently vexatious, malicious or misconceived or when grievances repeated or duplicated complaints already raised and/or resolved, the HR director reserved the right to exclude such cases from the procedure. An additional paragraph 4.6 provided that all related grievances might be dealt with as part of one investigation process at the respondent's discretion.

89. When put to the claimant that a lot of the matters referred to in her second grievance were older than a month, she said that they were a continuation of her allegations, including arising from them not being properly investigated during the informal and first formal procedure. She was referring, for instance, to the covering up of wrongdoing previously raised.

90. On 1 October, Mr Smith met with the respondent's in-house employment solicitor Ms Bailey with a reference in the calendar entry to "NT Case". Later in the day there was scheduled a "Catch Up" attended by Mr Smith and Mr Atkinson.

91. On 5 October 2021, Ms Lloyd emailed the claimant saying that an assessment would be made as to which grievance points could be taken forward either through the respondent's grievance or whistleblowing procedure. It was thought important that she receive feedback on the first grievance she had raised as soon as possible.

92. The claimant was provided with an outcome to her first grievance by letter of 11 October, albeit received by the claimant on 14 October. The claimant submitted her appeal against that grievance outcome on 1 November.

93. Ms Lloyd wrote further to the claimant on 9 November identifying three distinct areas of her second grievance. She considered that the first group of listed grievances had already been addressed by Mr Atkinson's investigation. A second group of listed grievances had been identified as either not having been submitted within a reasonable period of time or deemed by Ms Lloyd and the respondent's solicitor as involving points which were "vexatious, malicious or misconceived" such that the respondent was reserving its right for these points of her grievance not to be investigated. That was said to be in line with the grievance policy, to be a final decision. A third category of listed grievances were said to fall within the respondent's whistleblowing procedures such that a senior manager would be appointed to meet with her to discuss those matters. This third category of whistleblowing points included allegations of serious wrongdoing within children's services, the concealment of wrongdoing by senior management and HR, the fabrication of outcome data and misuse of public money.

94. Ms Lloyd commented to the tribunal that she considered the contents of the second grievance carefully and took advice. The grievance was long and contained many allegations that did not relate to the claimant personally and some which were extreme and represented personal attacks on colleagues. The respondent had a duty to consider the well-being of all of its employees and she had to consider whether any or some of the allegations should properly be investigated considering the limited resources of the respondent and the fact that many hours of management time had already been spent on investigating allegations where some were inherently unlikely and put forward apparently without evidence. She asked Mr Smith to request that Mr Atkinson consider the second grievance and highlight aspects that had already been investigated as part of the first grievance. She again said that this was not an easy exercise because the volume, complexity and lack of clarity of many of the allegations. She recognised that the claimant was making allegations about Mr Smith himself and ordinarily best practice would be for those people not to be involved in advising on a grievance. However, the claimant made allegations about so many people, complaining about nearly everyone who had any interaction with her, that it was not possible to avoid involving employees against whom the claimant had complained given the respondent's limited resources.

95. In cross-examination, the claimant accepted that the intention of Ms Lloyd was that the whistleblowing complaints be investigated, but said that this didn't in fact happen.

96. On 23 November the claimant emailed Ms Lloyd and Mr Westlake, who was to investigate the whistleblowing concerns on Mr Smith's request, purporting to agree with a suggestion to postpone the second grievance until matters within the first grievance had been finalised. Ms Lloyd responded that she had already said that only those aspects that fell within the whistleblowing procedure would

be looked into further and Mr Ian Westlake, head of procurement, had been appointed to look into these aspects. He had emailed the claimant on 17 November to arrange a meeting. This was due to take place on 24 November. Ms Lloyd's view was that those issues could be looked at simultaneously to the continuing first grievance issues and the claimant needed to be available to meet with Mr Westlake at the next proposed date.

97. It is noted that the claimant has complained of a delay in the provision of the first grievance outcome dated 11 October, but, she said, received by her on 14 October as she could not open an earlier version sent to her without a passcode. The tribunal accepts her evidence on the timng.

98. In terms of the timeline, Ms Lloyd referred to a further complaint after the first grievance was raised from the claimant's husband of 21 June 2021 which she asked Mr Smith to respond to and, as referred to above, in respect of which the claimant's consent was sought to discuss matters with him, which was provided on 28 June 2021.

99. As the claimant had made allegations about Ms Cryer, the assistant director responsible for the service, a chief officer from another area had to be identified to commission an investigation, Sue Spink, assistant director of waste fleet and transport services. There is evidence of Mr Smith thanking her for agreeing to undertake this role on 5 July 2021. Ms Spink wrote to the claimant 6 July to confirm her involvement.

100. There was then a delay in identifying an investigator. Normally managers would identify someone within their own department, but it was perceived that this was a complex grievance requiring an experienced investigator who had not been involved in the matters complained of. Mr Atkinson was appointed on 6 July and wrote to the claimant on 9 July asking to meet with her.

101. He ultimately produced an investigation report dated 21 September. Within that he identified a number of delays. The claimant responded to his initial invitation to meet on 13 July. On 15 July the claimant's husband stated in an email that he was in receipt of a USB stick which contained the further information relevant to the grievance. This was received by the respondent on 16 July, but only by Mr Atkinson on 26 July following a period of holiday from 19 – 25 July. On 29 July he offered 10 August as a potential date to meet with the claimant (Mr Atkinson was on leave again from 3 – 6 August) and stated that he needed time to review the information within the USB stick. Meetings with relevant witnesses were scheduled between 11 August – 3 September. A number of witnesses had their own annual leave to take, which impacted on arrangements. Eight witnesses were interviewed. He drafted the grievance and investigation report from 6 – 16 September.

102. The claimant met with Mr Westlake, who had been asked to investigate her whistleblowing concerns, on 12 January 2022 by video and minutes were produced subsequently from a recording made by the claimant. The claimant says that she raised with him concerns about safeguarding and a lack of DBS clearances for casual workers within the Safe and Sound service **(PID 11)**. Certainly, the claimant raised issues relating to the criminal records of people employed within children's services which she told the tribunal related to/encompassed Safe and Sound.

103. The claimant points to a calendar entry for an "Update on Childrens Services" attended by, amongst others, Ms England and Ms Lloyd at 5pm on 12 January, half an hour after her meeting with Mr Westlake had been due to conclude. There is no evidence that the 2 meetings were related. Mr Westlake knew nothing of it, saying that there were a lot of meetings about children's services at that time as the service was "going into measures". It appears to the tribunal unlikely that Mr Westlake would have had time to gather his thoughts and make a report to those attending in the limited timeframe available.

104. The claimant complains that Mr Westlake did not get in touch with her after the meeting or provide her with minutes from it. As referred to, the claimant recorded the meeting with Mr Westlake's agreement. Mr Westlake was sent additional documents after the meeting by the claimant, which were said to support her allegations. His recollection was that these did not cross-reference each of the points of the whistleblowing complaint as he had requested in an email of 14 November 2021. That would indeed be characteristic of the claimant's communications. She also supplied a number of recordings of telephone calls and copies of WhatsApp messages which he did not know whether they had been made with the permission of colleagues or covertly or whether permission had been given to share private messages. He was not sure whether it was permissible for him to listen to/read these so sought advice from HR. That advice was that he should not listen to the recordings or look at the messages pending further consideration. Subsequently he received advice that he should write to the claimant to establish the basis on which she had gathered the information. Mr Westlake emailed the claimant on 29 March 2022 apologising for the delay and referring to the volume of submissions she had made. He asked for information about the text messages and voice recordings, but there is no evidence that the claimant attempted to send him any response. His evidence was certainly that no response was received. That is accepted. The claimant said that she did not receive herself his email of 29 March.

105. In her response to a third grievance raised by the claimant, Ms Lloyd on 24 May wrote to the claimant saying that she was aware that Mr Westlake had emailed her on 29 March 2022 and that to date she was aware that the claimant had not responded to him on the points he raised. It was put to the claimant

that she had not, on receipt of this email, corrected the situation or sought to provide the information. The claimant said in cross-examination, that she was poorly at the time and confused, but that, in any event, others (particularly Mr Atkinson) had listened to the recordings. Mr Atkinson had certainly listened to some recordings. The claimant said that she was getting emails all of the time. When put to her that she could have missed this email because of the number of processes being followed, she said that the processes were confusing for her, but she had never had Mr Westlake's email before these tribunal proceedings.

106. Mr Westlake gave notice of his resignation from the respondent on 16 March 2022 and passed on relevant information from his investigation to HR prior to his departure. He went on leave from 23 May and did not return from leave before his employment ended 12 June 2022. He passed onto Mr Smith, before he went on leave, the work which he had completed in identifying the claimant's complaints. There was no discussion with Mr Smith as to what Mr Smith intended to do. No further steps were taken by the respondent to provide an outcome to the claimant's whistleblowing concerns. Ms Lloyd had not been told that Mr Westlake had not intended to conclude his whistleblowing investigation.

107. The claimant complains that she couldn't log onto the respondent's IT system from 17 January 2022 and was then fully blocked on 8 February. She was also prevented from booking annual leave. The respondent accepts that the claimant's access was blocked. This was raised with the respondent by the claimant.

108. Ms Pedley-McKnight emailed Dominic Barnes Browne, head of IT, on 1 April 2022 regarding the claimant's grievance appeal asking if the claimant's IT access had been blocked after her grievance appeal hearing on 3 February, over which dates and, if so, why. She chased up a response on 13 April. Mr Barnes-Brown responded that day saying that there was no evidence that IT services had been instructed to lock the claimant's account. He noted that the claimant had been in touch with IT on 2 occasions including on 8 February 2022, when she reported that she was unable to log on and use her email address. It had been recorded that "this error has come after we have upgraded the citrix gateway plugin."

109. The tribunal has seen evidence of the claimant calling the IT helpdesk on 26 January 2022 saying that she could not log into her outlook account. That resulted in the claimant's password being reset and her being able to use her work email account from that date. She then found that she was further blocked on 8 February. IT was unable to resolve the issue on that date, despite trying a number of possible fixes. Mr Barnes-Brown said that the issue was logged by IT as resolved on 2 March 2022, because a leaver's request in respect of the claimant was received from Antonia Hughes, Safe and Sound manager. The

respondent's case was that this related to the claimant no longer providing services as part of her separate casual role - her leaving the respondent was applied to both her positions in error such that she was no longer regarded on the system as an employee of the respondent. The claimant did not accept that explanation in circumstances where she did not understand herself to have a separate login to the respondent's systems through her casual role and had no individual email address generated for her arising from that role.

110. The claimant's contention was that on 11 January 2022 she had presented screenshots of the calendar entries of colleagues/managers at a meeting and, having become aware that the claimant was viewing and photographing these, the respondent's senior managers, either Ms Cryer, Mr Hunter or Ms England or all of them had wanted to block her access and had instructed IT to do so. There is no evidence to support that. She noted that she had not had her access reinstated following the purported removal in error.

111. The claimant alleges that those involved in her grievance appeals blocked her emails so that they did not receive supporting evidence she was trying to submit. The employees involved included Ms Pedley-McKnight, Mr Longhurst, Ms Spink and others.

112. The tribunal has been shown an example of bounce back responses which the claimant received. Effectively an automated message was received by the claimant stating "despite repeated attempts to deliver your message, a connection to the remote server was closed abruptly." Reference in the text was also made to this often indicating an issue with the setup of the recipient's firewall. Emails which bounced back included one sent on 24 March 2022 with 9 attachments sent from the claimant's personal account. There was, however, an example of an email which had been received sent on 29 March to Sue Wilson which did not have any attachments. The claimant said that she thought that the respondent's managers were playing games with her and blocking and unblocking her emails. She had come to that realisation only now. On 28 March 2022 she had emailed Mr Longhurst saying that she had sent emails with supporting documents, but had received error messages about suspicious activity. She said in her email that she was not suggesting that he or others had blocked her and thought it might be an error with the Microsoft software. In any event, she referred to 2 envelopes of document she had physically dropped off at the respondent's premises attaching a photograph to show delivery.

113. The outcome of the claimant's grievance appeal was sent to her by letter dated 14 April 2022. Within that, Mr Longhurst, strategic director, who heard and determined the appeal said he appreciated that there had been a delay in providing this, but that he wanted to ensure that he had reviewed the new information posted to him following the reconvened appeal meeting. He said that he was also awaiting a reply from IT and confirmed that he had not accessed or requested the audio files which the claimant had sent to Mr

Westlake as there was no evidence that there had been any consent given to or agreement to the claimant using the recordings as part of her grievance appeal.

114. The claimant's position was that there had been a deliberate delay in providing this outcome because she had said that she would go to an Employment Tribunal and the respondent was attempting to stop her from raising her issues externally. She did not accept that Mr Longhurst had considered her evidence.

115. It is noted that the claimant separately complains about email access being removed in March 2022. The claimant said that this went hand-in-hand with her IT access being blocked, as already explained. Her removal, she maintained, effectively triggered notice being given to terminate her Outlook account. Again, she did not accept that this was connected to an error made when she had been processed as a leaver from her Safe and Sound role.

116. The claimant maintains that Ms Lloyd provided an inaccurate and false explanation for the removal of the claimant's email account. The claimant accepts that Ms Lloyd did instruct her PA, Ms Ullah, to make enquiries. Ms Ullah received a response from Colum Sheridan-Small of IT on 3 March 2022 that IT services would not block any employee access without formal notice from a manager. Ms Ullah replied saying whilst "we appreciate it may just be an IT gremlin that's caused the blocking" could they check whether there was any record of a manager blocking the account. Ms Brett's name was given as the individual currently managing the claimant. Mr Sheridan-Small replied on 8 March to say that there were no notes visible whereby a manager had requested to block the account. Ms Ullah then emailed the claimant on 9 March saying there was most likely a network login issue or an expiration of passwords.

117. The claimant told the tribunal that the issue was not resolved. She remained blocked. She was told by Ms Lloyd in May 2022 that it was the Safe and Sound manager who had blocked her which was a false explanation. The claimant was taken to the response of Ms Lloyd on 24 May 2022 to the claimant's third grievance, already referred to above. Ms Lloyd included within that a paragraph regarding the IT issues raised where she said that it would appear that, in the process of her being removed as a casual worker from Safe and Sound, unfortunately her IT account was incorrectly closed. It was put to the claimant that Ms Lloyd was just giving her the explanation she had received from IT. The claimant was of the view that Ms Lloyd's decision was influenced by her protected disclosures.

118. The claimant complains of her grievance appeal being delayed until 24 March 2022 where none of the managers had looked at the evidence sent to them in July 2021. In cross-examination the claimant maintained that her issue was all the delays from her sending of the formal grievance to Ms Cryer in April 2021.

119. The grievance outcome was produced by letter dated 11 October and received on 14 October 2021 by the claimant. She lodged an appeal on 1 November. Mr Longhurst wrote to the claimant on 9 November to set up a grievance appeal hearing on 20 December. There is no evidence that the claimant replied to this. Mr Longhurst wrote to the claimant again on 14 December saying that he had postponed the hearing because he had not received a response and had rearranged it for 17 January 2022. The claimant confirmed that she would attend on that date and asked for the hearing to be conducted remotely. She said that she would send additional evidence prior to the meeting.

120. The appeal meeting commenced on 17 January 2022 and continued for around one and a half hours until the claimant lost her remote connection due to a power cut. By letter of 7 February, Mr Longhurst invited the claimant to a resumed appeal hearing on 10 March. However, on 24 February he put this back to 22 March, because of his need to attend a hospital appointment out of the area. The claimant said in evidence that she had hoped that the meeting would be resumed in January or February. She noted that Mr Longhurst appeared to be able to attend other work meetings during that period. The reconvened meeting lasted around 45 minutes. The claimant was provided with a written outcome on 14 April.

121. The claimant complains that she was not invited to a virtual meeting on 24 March 2022 to discuss a proposed restructure taking place within the respondent. The claimant was absent due to sickness at the time. Mr Hunter's evidence is that it was normal not to invite employees off work due to long-term sickness to such meetings. The claimant agreed that that was normal practice, but thought that the respondent could amend such practices at its discretion and believed that 2 colleagues had been invited to the meeting who were on some form of long-term leave or suspension. It is noted that whilst there were changes to the claimant's role, it was ultimately made permanent – her job was not at risk as part of the restructure. The claimant maintained that her post had been made permanent only because she had raised a third grievance. She did agree, however, that she had been asked to provide comments on the consultation in July.

122. Mr Hunter made arrangements to send consultation documents to the claimant. He contacted Mr Smith 11 April. Mr Smith, who has already been referred to, was employed as head of PACT HR – the HR service which the respondent provided to schools. He subsequently became head of workforce

– HR advisory and business operations. He reported to Ms Lloyd. At this time the claimant was being managed in terms of her sickness absence by Ms Brett. She emailed Mr Hunter on 10 May 2022 to say that the claimant would like the documents regarding the restructure posted to her from someone unrelated to her grievance or whistleblowing concerns. Mr Hunter sent the relevant documents to HR on 12 May 2022 for them to send out to the claimant. The claimant responded with comments to these on 18 May 2022.

123. The claimant complains that the respondent refused to consider her third grievance. This was made in a grievance form submitted on 22 April. It contained five distinct areas of complaint. The first related to her exclusion from the team, the second to her not being notified of the outcome of her whistleblowing grievance despite meeting with the investigator on 12 January 2022, not being consulted about changes to her job description or work area, her sick pay being frozen and, fifthly, her exclusion from IT systems. Ms Pedley-McKnight was asked to review the grievance to confirm if the points raised had already been investigated in the claimant's previous grievance and subsequent appeal to ensure that a grievance was not accepted covering points which had already been investigated. She also looked into issues raised by the claimant regarding her IT access.

124. Ms Lloyd responded to this by letter of 24 May 2022. She said that points 1 and 3 related to an alleged lack of communication. While she was currently absent on long-term sickness as a result of work-related stress, she considered it appropriate that the information identified should not be sent to the claimant as a matter of course. She suggested that if she wished to be kept updated of any work-related matters and, if this was in keeping with medical advice, she should speak to Ms Brett who was managing her ongoing sickness absence. She said that she was aware that the restructure had been discussed with her by Ms Brett.

125. Ms Lloyd identified that point 2 related to the whistleblowing complaint which was an ongoing but separate process.

126. As regards point 4, she said that sick pay had not been frozen, but had been exhausted in line with the respondent's policy. She was aware that the claimant had had discussions with Ms Brett about using some of her leave entitlement to receive full pay whilst absent.

127. Ms Lloyd responded, as to point 5, that the matter had been looked into and it appeared that, in the process of her being removed as a casual worker from within the Safe and Sound team, unfortunately her IT account was incorrectly closed. It was her understanding that it had been explained to her that she was currently absent from work and the respondent would be back in touch when

she was able to work again. As the claimant had not been in touch after the passing of a further 6 months she was routinely removed as a casual worker from the payroll system on the basis that no hours had been worked. She said that she would contact her line manager and ask for the IT account to be reopened to reflect the claimant's ongoing employment within her substantive role and apologised for the error having occurred. She said that there was no evidence that anyone associated with her substantive post had instructed IT to close her account.

128. Ms Lloyd concluded that it was her decision that none of the points the claimant had raised would be investigated further under the respondent's grievance procedure.

129. The claimant complains that she was told that while she was absent due to sickness her email account would remain disabled. Ms Brett emailed Mr Smith and others on 9 August saying that the claimant had asked for the account to be reinstated and asking Mr Hunter if she was able to do this or provide her with an explanation as to why it was not possible. Mr Smith replied on 9 August saying that, as the claimant remained absent due to sickness, she should be discouraged/instructed not to be accessing her work email. There should be no need to activate the account. He said he was assuming that any relevant information, particularly around the restructure, was being sent directly to the claimant as a communication channel had been put in place. If the claimant wanted something specific, she could ask Ms Brett if this could be passed on to her.

130. Ms Lloyd recognised that Mr Smith had taken a different view to her own as to the claimant's systems access. She had not been aware that the claimant remained blocked after she had told the claimant that her access would be restored.

131. The claimant complains that she was bombarded with calls and text messages after the production of an occupational health report on 16 August and forced to attend counselling sessions urgently. That report recommended that the claimant might benefit from a short course of counselling to rebuild her emotional resilience in the context of an initial return to work. As the respondent had offered to fund that intervention, it was recorded that, with the claimant's consent, she had been referred to the external counselling provider, NOSS, for up to 6 sessions of counselling and the counsellor would contact the claimant directly to arrange those appointments.

132. Ms Lloyd had no knowledge of any contact NOSS had made with the claimant. The claimant told the tribunal that she accepted that the calls from NOSS were to help her and she was happy to receive counselling support, but

believed that the manner in which the support was given was very suspicious. The counsellor asked questions which had nothing to do with ill-health asking about how fraud was happening within the respondent and about her legal case.

133. The claimant was absent due to sickness from 17 May 2021 until 20 October 2022. From September 2021 her absence was managed by Ms Brett.

134. A telephone occupational health consultation took place with the claimant on 28 October 2021. In the report produced it was noted that the claimant had submitted fit notes citing stress as the reason for her absence and was experiencing a range of symptoms which her GP suggested were stress related. She was accessing psychological therapies. The claimant attributed her ill-health to workplace issues and had referred to the grievance processes. The claimant was said to be likely to remain symptomatic until the situation was resolved to her satisfaction. It was recommended that a stress management plan be developed. It was not possible to predict a return to work date as it seemed that her recovery was reliant on a satisfactory outcome to the issues she had raised. If a return to work date was identified, it was recommended that there be a 4 week phased return to work.

135. Ms Brett wrote to the claimant on 13 July 2022 seeking to meet with her for an update on her illness and suggesting a telephone conversation between them on 19 July 2022. She said that continued absence could not be sustained indefinitely and, if absence continued, the claimant might have to be referred to a capability hearing where her future employment would be considered. The formal capability procedure would be discussed further at the welfare meeting she was seeking to arrange.

136. There was, in any event, a further occupational health referral and report produced following a telephone appointment on 16 August 2022. The claimant referred to a decline in her mental health in the months prior to her absence and that due to worsening mental health symptoms she was signed off sick by her GP team. The claimant described fluctuating mental health related symptoms. However, some improvement in her health was noted and the claimant had been able to engage with the occupational health advisor fully during a 60 minute consultation. The claimant referred to her having been bullied and harassed.

137. In terms of recommendations, the claimant was not fit to undertake her duties at this time, but the adviser hoped that she might be fit to return in some capacity in 5-6 weeks. A 4 week phased return was recommended together with a robust individual stress risk assessment in place. There was also need for a DSE assessment. It was imperative following a return to work that there

were regular short catch-up meetings. There was then reference, as already described, to the claimant being referred to NOSS for counselling sessions. The claimant was said to be fit to attend meetings if given appropriate support.

138. On 8 August an anonymous purported collective complaint was made to Ms Cryer and others by SkilsHouse staff alleging a toxic environment and bullying behaviour by management - particular reference was made to Ms Qureshi. Mr Hunter acknowledged receipt and Ruth Davidson was appointed as an independent investigator. Whilst she clearly interviewed some individual managers, this investigation has not concluded. Such investigations fell within the remit of the city solicitor rather than HR.

139. A welfare meeting took place with the claimant remotely on 12 October 2022 with Ms Brett and Ms Qureshi, as manager of the whole service, in attendance. The claimant's fit note was to expire on 21 October 2022 and the aim was to welcome the claimant back to work on a 4 week phased return from 24 October 2022. Ms Qureshi updated the claimant on her role within the revised structure. A phased return to work plan was discussed which involved the claimant working a ½ day from home on the Monday of her first week followed by ½ day at Margaret McMillan Tower on the Wenesday to give the claimant a first opportunity to meet her new line manager, Kirti Patel. A half day was to be worked on the Friday. 3 days were to be worked during week 2 with the possibility of working from home, with 3 days worked during week 3 and 4 days during week 4.

140. Working at Keighley Town Hall was raised by the claimant and discussed but it was clarified that this was not a base or office space but a temporary space where advisers could book to see clients on a face-to-face basis. The claimant's case before the tribunal is that employment advisers did work there and there would have been space to accommodate her also.

141. The claimant expressed a desire for a medical report from her GP as beneficial to ensure that her health was not impacted and gave her consent to this being requested by occupational health. She agreed to a further occupational health referral to ascertain what reasonable adjustments could be put in place to help a successful return to work. Going forward it was envisaged that Ms Patel would address a number of matters at subsequent one to one meetings with the claimant including that there was an expectation of a fresh start with all grievance matters having been concluded and that, if the claimant wished to raise new concerns, this needed to be done in accordance with the respondent's policies and backed up with clear tangible evidence.

142. Ms Brett wrote to the claimant summarising their discussions by letter of 18 October 2022. This set out the phased return plan discussed, albeit the column

relating to the Friday of each week of the phased return had been cut off – in clear and obvious error.

143. The claimant was informed by a colleague within the respondent of a calendar entry on the morning of 18 October to discuss her return to work. This was attended by Ms Cryer, Mr Hunter, Ms Pedley-McKnight, Mr Welluch and Ms Qureshi. Mr Hunter told the tribunal of the need for a meeting due to the complexity of the claimant's case and to ensure that all return to work policies were being adhered to. Senior management also wished to ensure that support was provided to Ms Qureshi and Patel because they had raised concerns about how the claimant had behaved to previous managers – they were concerned that "they would get the same".

144. Ms Patel emailed the claimant on 21 October welcoming her back to SkillsHouse and the business services team. She noted that the claimant was already aware that she would be her line manager and would be conducting "your Return to Work with you next week". She said that Ms Pedley-McKnight would also be in attendance to support her in any HR concerns which might arise. In terms of the arrangements for the first week back, she noted that the claimant would be working from home for half a day on the Monday. On the Wednesday she informed the claimant that her half day at Margaret Macmillan Tower would involve the return to work meeting from 09:00 – 10:00 and then the claimant working through Evolve. The claimant was given details of a new IT account for her with a new username and initial password. Ms Patel asked the claimant for permission to look at the claimant's previous occupational health assessment.

145. The return to work meeting on 26 October did not go well. The claimant was anxious and believed herself to be being under attack. It was clear from her evidence that she had been unable to process much of what was said and she described herself that much of the meeting was a blur for her. Ms Patel's perception was that claimant was immediately hostile at the meeting. The claimant's perception was that she was scared and anxious. The claimant believes she was shouted at by Ms Pedley-McKnight but Ms Pedley McKnight perceived that the claimant was talking constantly and she was forced to raise her voice to get a word in. The claimant said that she could not recall threatening to report people to the police, but on balance this is likely to have occurred particular given that such a report was subsequently made. There was a break in the meeting during which the claimant phoned a union representative. The claimant said that she had been advised that this was not the right process, but she should attend but not agree to anything. The claimant identified a colleague who came into the meeting with her, but did not contribute to it.

146. Ms Patel asked the claimant to log onto her computer at the meeting to refresh her memory as to the arrangements put in place, but the claimant had

not brought her laptop with her. She told the tribunal that it was not working properly and, in circumstances of her suffering pain in her hand, she had not brought it with her, not expecting to need it on this day. That expectation is surprising.

147. The claimant said that she could not recall expressing disdain for the Council and saying that no one enjoyed their job, albeit she told the tribunal that this was true.

148. The claimant did agree to a new occupational health referral. The claimant would not discuss the issue of support and adjustments and said that the respondent should have her medical records already. The respondent believed a further referral was necessary to get the information it wished to obtain.

149. There was some discussion of the phased return for the first 2 weeks, but the claimant refused to agree to plan further ahead. She asked to be based at Keighley again and it was clarified that the employees who worked there were employment advisers who booked rooms to support jobseekers back to work. It was explained that she was contractually required to work at Margaret Macmillan Tower which was the SkillsHouse base.

150. The evidence the tribunal has seen is of a cohort of staff used to working from home during the pandemic being encouraged to return to office based working at Margaret McMillan Tower or at bases in the community when necessary to meet service users. The base subsequently changed to another location in Bradford city centre, Britannia House, on short notice.

151. Ms Pedley-McKnight did refer to this being a chance for a fresh start. She acknowledged that the claimant had, during the meeting, made several references to her whistleblowing and grievances but said that the claimant needed to move on. The claimant's perception was that she was told that "she couldn't do this" and there was a lot of shouting at her.

152. The claimant felt poorly and came back from a break to go to the toilet saying that she had been sick. She left the site shortly thereafter. The respondent maintains that the claimant was told that she could go home whereas the claimant maintains that she sat in the reception area waiting at length for the respondent to contact her before deciding that it was time for her to leave.

153. The account of Ms Patel set out in her notes of the meeting is accepted as accurate. It was confirmed by Ms McKnight in evidence upon which she was not challenged. The claimant herself has described the meeting as a bit of a blur. The claimant's adverse reaction to Ms Patel and Ms Pedley-McKnight on entering the meeting was almost immediate.

154. The plan was for the claimant to work from home for half a day on Friday 28 October. Ms Qureshi tried to telephone the claimant on that day without success as she understood that Ms Patel had asked the claimant to come into the office in order to synchronise her laptop, but the relevant email was not copied to Ms Qureshi. Ms Patel had in fact asked the claimant to come in to do this the following Monday. Ms Qureshi wished to ascertain how the claimant was feeling having heard about the unsuccessful return to work meeting. She told Ms Patel that she had tried to contact the claimant and left Ms Patel to manage the situation.

155. The plan was then that on Monday 31 October the claimant would either work from home or attend Margaret Macmillan Tower. The claimant said that she had seen her doctor by then who had told her to take some time out. She emailed Ms Patel that morning reporting that she was sick and that a sick note would follow later that day. She also told the tribunal that the police got in touch with her regarding her harassment allegations and that they saw this as an internal employment matter.

156. Ms Patel wrote to the claimant on 2 November referring to her unacceptable behaviour during the return to work meeting. She listed areas of concern in terms of the claimant's behaviour and attitude as well as her not being contactable during the aforementioned Friday. Expectations for improvement were listed. The letter was to be placed on the claimant's file for a period of 6 months. The claimant was told that she needed to be aware that, should there be any further concerns about her conduct or behaviour, this could result in formal disciplinary action. The letter was sent because the claimant's behaviour had been inappropriate and Ms Patel did not want the claimant to return to work exhibiting similar behaviours.

157. The claimant subsequently provided her fit note which was acknowledged by Ms Patel by email of 7 November. She also said that she was sorry to hear that the claimant was not feeling well and would be off on long-term sick leave. Suggested dates were given in November for a welfare meeting. The claimant was asked for her up-to-date mobile phone number.

158. Ms Patel emailed the claimant on 18 November regarding the ability to reach her by telephone. She sought to arrange a welfare meeting on 24

November saying that this was a formal meeting and that a notetaker would be present to take minutes. The claimant was given the right to be accompanied.

159. The claimant sent an email on 22 November to a number of senior managers including Ms England, Ms Lloyd and Ms Patel. She provided an update on the situation since her return to work. She referred to her occupational health appointment on 16 August and on the same day having numerous calls from various NOSS councillors saying that she welcomed the support to get her back to work. However, since then the internal processes had not, she said, been followed. One of the complaints was about the 26 October return to work meeting which she described as a mandatory face-to-face meeting on the second day of her phased return in a small enclosed room with numerous people she had not met before. She referred to Ms Pedley-McKnight making several threats and to her feeling scared and ill. She referred to further threatening correspondence since.

160. Mr Hunter responded to this by his own email of 8 December. He asked the claimant to consider entering into an informal solution and reconciliation. The claimant responded on 17 January 2023 saying that she had a vivid experience of the internal grievance process and did not wish to go through that again. She suggested that Ms Patel and Ms Qureshi write a letter of apology to her for their behaviour towards her and her union representative. If that was done, then she said she was happy to move on and put the whole episode behind her. Mr Hunter responded on 19 January saying that Ms Patel's and Ms Qureshi's view of the meeting differed from hers and they did not agree to an apology under the circumstances as they felt they had acted professionally. He said he would still like to resolve the issue informally and suggested a mediation with both of them asking if she would be prepared to explore this option.

161. The claimant did attend a well-being meeting with Ms Patel on 24 November 2022. The claimant said that she was not well. Ms Patel asked about her symptoms and what adjustments might be made. The claimant responded that everything was in her medical evidence and she was under medication. She said that stress, bullying and harassment was making the situation worse "especially manager that doesn't know what she is doing" and that adjustments had been rejected since 16 August 2022. The claimant described Ms Patel's behaviour as unacceptable. The claimant, at this stage, was covered by a fit note until January 2023.

162. Ms Patel wrote to the claimant on 5 December summarising their meeting. She confirmed that a further occupational health appointment had been booked for 15 December. She said that she wished to make it clear that, as much as this assessment was there to ensure the claimant could be best supported, given the length of the sickness absence, the failed phased return to work and there being no foreseeable return date, the findings would be used to inform the respondent's approach to her absence through a capability hearing which

was likely to take place in January 2023. The claimant was told that one outcome from a capability hearing could be her dismissal due to continued ill-health.

163. The occupational health appointment was cancelled by the claimant but rearranged for 9 January 2023. The report from that consultation was that the claimant was unfit for work and to be fit would require a significant and sustained improvement in the symptoms she was experiencing. A specific timeframe for a return to work could not be predicted, but a return to work was not anticipated for another 3 months and possibly longer. The claimant would remain symptomatic until her work-related concerns were addressed to her satisfaction. There were no adjustments that could be advised to expedite a return to work at this stage. The claimant was said not to be a candidate for medical redeployment. She was fit to attend meetings, but would need support.

164. Following receipt of that report, Louise Williams was appointed to deal with a capability hearing.

165. The respondent's policy provided that if it was likely that the point would be reached where the employee's job could no longer be kept open and no suitable alternative employment is available, the employee must be informed of the likelihood and be referred to capability hearing. It was stated that the likely consequence of such a hearing would be dismissal. Capability hearings for long-term ill-health cases were to be convened on the basis of an up-to-date occupational health report stating a range of situations including one where an employee remained incapable of discharging their duties with no prognosis as to when they would be fit enough, the point being reached where the employee's absence could no longer be sustained and attempts at redeployment had been unsuccessful.

166. The claimant in cross-examination said she had no issue with the occupational health physician who had assessed her. However, she wanted to return to work and considered that there were all sorts of things that could help her return to work. On further questioning, they amounted to the respondent taking into account the concerns she had raised, the claimant adding that the management of the respondent had run its operations "as if they were a bunch of friends".

167. The claimant was invited to the capability hearing by letter of 26 January and again advised of its purpose and the possible termination of her employment. The claimant provided various documentation dropped off at the respondent's premises on the day of the hearing, rescheduled to 23 February. The claimant told the tribunal that the original date set had given her little time to prepare and arrange for her union representative to attend. The respondent

had expected the claimant to attend the hearing, but the claimant intended to provide documentation to be considered in her absence. The claimant considered that there had been an agreement that she could simply make a written representation.

168. The documentation provided by the claimant included grievances and expressions of concern she had made. Ms Williams read through all of this and accepted therefore that she was aware of the claimant's whistleblowing concerns and how events had impacted on the claimant's health.

169. The claimant's case was considered in her absence. Ms Williams wrote to her by letter of 23 February. She referred to the management case having been presented by Matt Findull, education and skills lead. It was recorded that the claimant had indicated that she was not attending, but had submitted information for consideration in her absence. Ms Williams' decision was to terminate the claimant's employment on a payment in lieu of notice for reasons of capability with effect from 23 February 2023. It was said that the claimant had been absent from work since 10 May 2021 and there had been significant contact to ensure that she was supported, including a referral to occupational health, a stress management action plan and welfare meetings. Reference was made to the occupational health report of 9 January 2023 where mental health and physical symptoms were noted, including long-term health conditions. It was noted that the OH adviser commented that the claimant seemed to have several different health issues which appeared to compound each other. The adviser also indicated that she was unlikely to be fit for work for 3 months and possibly longer and that she was not a candidate for medical redeployment. Ms Williams concluded that the absence was unsustainable and the claimant was given a right of appeal.

170. The claimant indeed lodged a written appeal and provided further documentation in support. She attended an appeal hearing before 3 elected councillors, Councillors Hussain, Godwin and Hurd on 27 July 2023. The claimant raised that she lived in Councillor Godwin's ward and had seen him campaigning. The panel did not consider there to be any conflict of interest. Before the tribunal the claimant said that she had raised that Councillor Godwin had procured the claimant's harassment by a local warden who was known to him. The tribunal does not accept that she raised this at the appeal. It is not reflected in the notes which do otherwise refer to the suggested conflict of interest. Councillor's Hussain's evidence that this was not raised is preferred in circumstances where this would have been memorable and there was no suggestion that the claimant's union representative, present at the hearing, was concerned with proceeding.

171. The claimant told the tribunal that she accepted that she had a full chance then to put forward her case. She agreed that there was no further medical evidence provided at that stage, noting that nothing had been requested from

her. There was no change in the claimant's medical situation. The claimant in cross-examination referred to an NHS counsellor teaching her coping techniques.

172. The panel determined that the claimant's appeal ought to be rejected. It commented, amongst other things, that it would have been very helpful if the claimant could have brought an up-to-date medical report from her GP or another medical professional involved in her care. In order to reinstate her, the panel said that it had to be persuaded that there had been a significant improvement in her symptoms and that she was medically fit to return to work. A medical report may also have provided guidance on what, if any, adjustments would be recommended to assist a return to work. In the absence of such assessment, the panel was left to rely solely on the claimant's personal opinion that she had now recovered and was in a position to return to work. None of the documentation shared by the claimant evidenced any improvement in her symptoms. A recent Job Centre Plus letter of 13 July 2023 still talked about her taking reasonable steps to move towards work, which was described by the panel as some way off a GP report confirming unequivocally that she was now fit to carry out her role. It was noted that the claimant had not found alternative employment in the 4 months since leaving her employment with the respondent. The panel commented that, as at the capability hearing, the claimant had been continually absent from work for 22 months of her 28 months of employment. This was described as not a case where the respondent had been hasty in making a decision to terminate employment. Support had been offered to the claimant during her sickness. The panel was left with the impression that she continued to harbour a great deal of anger and mistrust towards the respondent and its management which did not bode well for her being able to make a fresh start and achieve a successful return to work. The panel said that it had been influenced by the failed attempt to return to work in October 2022 despite significant planning and support being offered and the advice from occupational health that the claimant was likely to remain symptomatic until her concerns about the workplace were resolved to her satisfaction.

173. In cross-examination, in connection with the claimant's pleaded reasonable adjustments complaint, the claimant said that she was not suggesting that she ought to have been given a phased return of 12 weeks at any point. She had agreed to any phased return being for 4 weeks in October 2022 and any reference to a 12 week period being a reasonable adjustment must have been a misunderstanding at one of the earlier tribunal preliminary hearings.

174. The claimant was also asked questions as to why she had not brought a tribunal complaint at an earlier point in time. She said that she was raising things internally, following internal processes and it was the respondent who was delaying matters. When put to her that she could have bought her tribunal complaint at an earlier point in time, she said that she was dealing with worsening ill-health and had a lot to handle at the same time. The respondent

was under a duty to look at her serious matters of concern at an early stage and she believed that a number of the respondent's managers were rewarded for "beating me down".

Applicable law

175. Section 43A of the Employment Rights Act 1996 provides that a "protected disclosure" means a qualifying disclosure (as defined by Section 43B) which is made by a worker in accordance with any of the Sections 43C to 43H. Section 43B of the Employment Rights Act 1996 provides as follows:-

> *"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is in the public interest and tends to show one or more of the following:-*
>
> *(a) that a criminal offence has been 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; ……*
> *…*
> *(d)that the health and safety of any individual has been, is being or is likely to be endangered….*

176. It is clear that a disclosure must actually convey facts and those facts must tend to show one of the prescribed matters – see **Cavendish Munro Professional Risks Management Ltd v Geduld 2010 ICR**. The making of an allegation or the expression of opinion or state of mind is insufficient. Langstaff J noted, however, in **Kilraine v London Borough of Wandsworth 2018 ICR 1850** (as endorsed by the Court of Appeal in that case) that "the dichotomy between "information" and "allegation" is not one that is made by the statute itself" and that "it would be a pity if tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggest that very often information and allegation are intertwined". Two or more communications taken together can amount to a qualifying disclosure even if, taken on their own, each communication would not – see **Norbrook Laboratories (GB) Ltd v Shaw ICR 540**.

177. In terms of a reasonable belief, the focus is on what the worker in question believed rather than on what a hypothetical reasonable worker might have believed in the same circumstances. There must, however, be some objective basis for the worker's belief. The exercise involves applying an objective standard to the personal circumstances of the person making the disclosure. It has been said that the focus on belief establishes a low threshold. However, the reasonableness test clearly requires the belief to be based on some evidence beyond rumours, unfounded suspicions or uncorroborated allegations.

178. As regards the public interest requirement, the tribunal refers to the case of **Chesterton Global Limited v Nurmohamed [2017] IRLR 837**. The nature of

the respondent and the information provided in this case is not such that there is any significant hurdle for the claimant to surmount.

179. Pursuant to Section 47B of the Employment Rights Act 1996: "A worker has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer done on the ground that the worker made a protected disclosure."

180. Section 48(2) provides that on a complaint to an Employment Tribunal

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

181. As regards the meaning of "detriment" the Tribunal refers to the case of **Chief Constable of West Yorkshire Police –v- Khan [2001] 1 WLR** where it was said that the term has been given a wide meaning by the Courts and quoting the case of **Ministry of Defence –v- Jeremiah [1980] QB 87** where is was said that *"a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment".*

182. The issue of causation is crucial. The tribunal refers to the case of **NHS Manchester v Fecitt and others [2001] EWCA Civ 1190** and in particular the judgment of Elias LJ. His view was 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 whistleblower. He said:

> *"Once an employer satisfies the Tribunal that he has acted for a particular reason – here, to remedy a dysfunctional situation – that necessarily discharges the burden of showing that the proscribed reason played no part in it. It is only if the Tribunal considers that the reason given is false (whether consciously or unconsciously) or that the Tribunal is being given something less than the whole story that it is legitimate to infer discrimination in accordance with the **Igen** principles".*

183. Whether detriment is on the ground that the claimant made a protected disclosure therefore involves an analysis of the mental processes (conscious or unconscious) of the relevant decision makers. It is not sufficient to demonstrate that "but for" the disclosure, the employer's act or omission would not have taken place.

184. The claimant complains of direct discrimination based on race. In the Equality Act 2010 direct discrimination is defined in Section 13(1) which provides: *"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."* In terms of a relevant comparator for the purpose of Section 13, *"there must be no material difference between the circumstances relating to each case".*

185. The Act deals with the burden of proof at Section 136(2) as follows:-

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravenes the provision concerned, the court must hold that the contravention occurred.*
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provisions".*

186. In **Igen v Wong [2005] ICR 935** guidance was given on the operation of the burden of proof provisions in the preceding discrimination legislation albeit with the caveat that this is not a substitute for the statutory language. The Tribunal also takes notice of the case of **Madarassy v Nomura International Plc [2007] ICR 867**.

187. It is permissible for the Tribunal to consider the explanations of the respondent at the stage of deciding whether a prima facie case is made out (see **Laing v Manchester CC IRLR 748**). Langstaff J in **Birmingham CC v Millwood 2012 EqLR 910** commented that unaccepted explanations may be sufficient to cause the shifting of the burden of proof. At the second stage the employer must show on the balance of probabilities that the treatment of the claimant was in no sense whatsoever because of the protected characteristic. At this stage the Tribunal is simply concerned with the reason the employer acted as it did. The burden imposed on the employer will depend on the strength of the prima facie case – see **Network Rail Infrastructure Limited v Griffiths-Henry 2006 IRLR 865**.

188. The Tribunal refers to the case of **Shamoon v The Chief Constable of the Royal Ulster Constabulary [2003] ICR 337** for guidance as to how the Tribunal should apply what is effectively a two stage test. The Supreme Court in **Hewage v Grampian Health Board [2012] UKSC 37** made clear that it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.

189. Section 103A of the Employment Rights Act provides that:

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

190. This requires a test of causation to be satisfied. This section only renders the employer's action unlawful where that action was done because the employee had made a protected disclosure. In establishing the reason for dismissal, this requires the tribunal to determine the decision making process in the mind of the dismissing officer which in turn requires the tribunal to consider the employer's conscious and unconscious reason for acting as it did.

191. The issue of the burden of proof in whistleblowing cases was considered in the case of **Maund v Penwith District Council 1984 ICR 143**. There it was said that the employee acquires an evidential burden to show – without having to prove – that there is an issue which warrants investigation and which is capable of establishing the competing automatically unfair reason that he or she is advancing. However, once the employee satisfies the tribunal that there is such an issue, the burden reverts to the employer who must prove on the balance of probabilities which one of the competing reasons was the principal reason for dismissal.

192. It is appreciated that sometimes there will be a dearth of direct evidence as to an employer's motives in deciding to dismiss an employee. Given the importance of establishing a sufficient causal link between the making of the protected disclosure and the dismissal, it may be appropriate for a tribunal to draw inferences as to the real reason for the employer's action on the basis of its principal findings of fact. The tribunal is not, however, obliged to draw such inferences as it would be in any complaint of unlawful discrimination.

193. In a claim of ordinary unfair dismissal, it is for the employer to show the reason for dismissal and that it was a potentially fair reason. One such potentially fair reason for dismissal is a reason related to capability pursuant to Section 98(2)(a). This is the reason relied upon by the respondent. If the respondent shows a potentially fair reason for dismissal, the tribunal shall determine whether dismissal was fair or unfair in accordance with Section 98(4) of the Employment Rights Act 1996 ("ERA"), which provides:-

> *" [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
> *depends upon whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
> *shall be determined in accordance with equity and the substantial merits of the case".*

194. Classically in cases of long-term ill health, a tribunal will consider whether reasonable medical evidence was obtained, the degree of consultation with the employee and the possibility of alternative employment or changes to the employee's role. The tribunal refers to the case of **East Lindsey Disrtrict Council v Daubney [1977] IRLR 181**. The tribunal must not substitute its own view as to what decision it would have reached in particular circumstances. The tribunal has to determine whether the employer's decision to dismiss the

employee fell within a band of reasonable responses that a reasonable employer in these circumstances might have adopted. It is recognised that this test applies both to the decision to dismiss and to the procedure by which that decision is reached. In long-term ill health cases it is essential to consider whether the employer can be expected to wait longer for the employee to return – see **Spencer v Paragon Wallpapers Ltd 1977 ICR 301**. In **McAdie v Royal Bank of Scotland [2007] EWCA Civ 806** the Court of Appeal confirmed that an employer could fairly dismiss an employee for ill health capability even if the employee's illness was attributable to the conduct of the employer. The key issue is whether the employer acted reasonably in dismissing at the time of dismissal.

195. A dismissal, however, may be unfair if there has been a breach of procedure which the tribunal considers as sufficient to render the decision to dismiss unreasonable. The tribunal must have regard to the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

196. If there is such a defect sufficient to render dismissal unfair, the Tribunal must then, pursuant to the case of **Polkey v A E Dayton Services Ltd [1998] ICR 142** determine whether and, if so, to what degree of likelihood the employee would still have dismissed in any event had a proper procedure been followed. If there was a 100% chance that the employee would have been dismissed fairly in any event had a fair procedure been followed, then such reduction may be made to any compensatory award. The principle established in the case of **Polkey** applies widely and beyond purely procedural defects.

197. The duty to make reasonable adjustments arises under Section 20 of the Equality 2010 Act which provides as follows (with a "relevant matter" including a disabled person's employment and A being the party subject to the duty):-

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

198. The tribunal must identify the provision, criterion or practice applied, the non-disabled comparators and the nature and extent of the substantial disadvantage suffered by the claimant. 'Substantial' in this context means more than minor or trivial.

199. The case of **Wilcox –v- Birmingham Cab Services Ltd EAT/0293/10/DM** clarifies that for an employer to be under a duty to make reasonable adjustments he must know (actually or constructively) both firstly that the employee is disabled and secondly that he or she is disadvantaged by the disability in the way anticipated by the statutory provisions.

200. Otherwise in terms of reasonable adjustments, there are a significant number of factors to which regard must be had, which, as well as the employer's size and resources, will include the extent to which the taking of the step would prevent the effect in relation to which the duty is imposed. It is unlikely to be reasonable for an employer to have to make an adjustment involving little benefit to a disabled person.

201. In the case of **The Royal Bank of Scotland –v- Ashton UKEAT/0542/09** Langstaff J made it clear that the predecessor disability legislation when it deals with reasonable adjustments is concerned with outcomes not with assessing whether those outcomes have been reached by a particular process, or whether that process is reasonable or unreasonable. The focus is to be upon the practical result of the measures which can be taken. Reference was made to Elias J in the case of **Spence –v- Intype Libra Ltd UKEAT/0617/06** where he said: *"The duty is not an end in itself but is intended to shield the employee from the substantial disadvantage that would otherwise arise. The carrying out of an assessment or the obtaining of a medical report does not of itself mitigate, prevent or shield the employee from anything. It will make the employer better informed as to what steps, if any, will have that effect, but of itself it achieves nothing."* Pursuant, however, to **Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10**, there only needs to be a prospect that the adjustment would alleviate the substantial disadvantage, not a 'good' or 'real' prospect. In the case of **Doran v Department of Work and Pensions EAT 0017/14** approval was given to a proposition that, in the context of a long-term ill health absence, the duty to make reasonable adjustments is not triggered unless and until the claimant indicated an intention or wish to return to work.

202. It is not permissible for the Tribunal to seek to come up with its own solution in terms of a reasonable adjustment without giving the parties an opportunity to deal with the matter (**Newcastle City Council –v- Spires 2011 EAT**).

203. If the duty arises, it is to take such steps as is reasonable in all the circumstances of the case for the respondent to have to take in order to prevent the PCP creating the substantial disadvantage for the claimant. This is an objective test where the tribunal can indeed substitute its own view of reasonableness for that of the employer. It is also possible for an employer to fulfil its duty without even realising that it is subject to it or that the steps it is taking are the application of a reasonable adjustment at all.

204. Applying the aforementioned principles to the facts as found, the tribunal reaches the conclusions set out below.

Conclusions

205. The tribunal is obviously required to make determinations regarding a significant number of separate acts of whistleblowing and a range of alleged detriments said to be because of them. It has reached its conclusions ensuring that it has taken time to step back and view the wider picture as a whole (rather

than just specific instances in isolation), an exercise which might be of particular assistance in drawing appropriate inferences.

206. The claimant was raising concerns of a very serious nature and questioning the propriety of a number of senior managers. This is not a case of an individual raising matters which would be of no concern to an employer - far from it. The claimant was also from an early stage involving external parties. The respondent had practical difficulties in how best to manage the claimant and her tenacity and re-raising of issues is bound to have caused a significant strain in terms of management time. The respondent's evidence is that the significant number of more senior HR professionals had been involved at various stages in the claimant's case. As is classic in many whistleblowing cases, the claimant might have been subjectively regarded as a significant problem for the respondent.

207. Much of that perception may, however, have also arisen because of the way in which the claimant raised concerns. The concerns were raised very quickly in the context of a very short period of employment and in many cases in a most general way where the claimant was surprisingly quick to cast significant aspersions on the ability and good faith of a range of individuals. Almost everyone who ever became involved in managing her issues of concern or employment became the subject of at times vitriolic criticism, the claimant believing in a wide and overarching conspiracy, at times on the basis of presumptions. She reached conclusions which were at times, on the facts, quite a leap. There were few shades of grey in the claimant's assessment and little ability to pause and reflect that there might be room for differences of opinion in what was a genuinely difficult period for the respondent, not least given the background of the coronavirus pandemic.

208. Many of the concerns raised by the claimant were of a potential but indirect effect on children for whose care the respondent was under a statutory duty. The claimant's role did not involve caring for at risk children but rather the placement of over 16-year-olds in employment. Much of her grievance was that the respondent's resources were being mismanaged or misapplied in a way which might impact on frontline care of children. That the respondent had not always efficiently met its statutory obligations to children in its care was not news to the respondent and the claimant was certainly not unique in raising these matters. Nor did she possess any unique insight or special information. The respondent's children's services were in a form of special measures with oversight already and inevitably in place from relevant statutory bodies.

209. That is part of the background against which the claimant made disclosures and how she was then managed.

210. Apart from the first 3 relied upon, all of the other disclosures of information relied upon by the claimant are accepted now by the respondent to have been protected qualifying disclosures. It is not therefore necessary for the tribunal to determine whether disclosures 4-11 were protected disclosures. It nevertheless reminds itself of those disclosures and the nature of wrongdoing referred to.

211. Turning to the first alleged disclosure (PID 1), this is of the claimant telling Ms Dyson verbally that a cohort from Hope Housing of Eastern European origin had criminal records, had exhibited aggressive behaviour, were suited for building jobs only and confirming the same in an email to Ms Dyson on 2 February 2021. The tribunal has no evidence of specific information given by the claimant to Ms Dyson, when and in what circumstances. The claimant's pleaded case is that the aforementioned email to Ms Dyson confirms the information provided. However, it does not contain information of the nature referred to. It is a detailed communication from the claimant about an aspect of her work, the difficulty/barriers faced by some of this cohort of potential work placements and how the respondent might overcome these and effectively improve its service delivery. There is no allegation of, for instance a breach of a statutory obligation or raising of a health and safety risk involved. It cannot in the circumstances amount to a protected qualifying disclosure.

212. The second disclosure (PID 2), is that Mr Scothern did not know what he was doing as regards his duty of care under the Children and Social Work Act 2017 with particular reference to the names and addresses of young and vulnerable people being openly displayed on an Outlook calendar. The claimant says that she sent an email on 21 February 2021 to Mr Hunter in this regard which includes issues about recruitment and data breaches. The claimant has not however disclosed the alleged email of 21 February 2021 to Mr Hunter and there is no evidence before the tribunal of that communication. In those circumstances, the tribunal again cannot find that the claimant made a protected qualifying disclosure.

213. The third and final disputed disclosure (PID 3) is of the claimant sending an email to Mr Hunter on 8 March 2021 referring to data breaches by the accessibility of information from the Outlook calendars. Again, however, the content of that email does not reflect the nature of the information relied upon by the claimant as a further protected disclosure. There is no allegation to him in that email about data breaches. The subject of the email is irregularities in the recruitment process of a number of managers, whose performance and ability is criticised. Whilst the claimant maintains that investigations need to take place internally, there is no clear reference to a breach of legal obligation as opposed to breaches of internal procedures. In any event, the pleaded disclosure is again of data breaches and none is evident. There is no protected disclosure as pleaded within the email of 8 March 2021.

214. The first disclosure chronologically is therefore the fourth disclosure (PID 4) made by the claimant in her grievance of 19 April 2021 sent to Ms Cryer. The claimant's raising of her grievance initially with Mr Hunter is not one of the pleaded disclosures relied upon by her.

215. That conclusion is highly significant in terms of the first 3 whistleblowing detriments alleged by the claimant. The latest of those relates to the video meeting on 17 March 2021 (the Chimp Paradox reference) more than a month prior to the first protected disclosure which can be relied upon. It must follow therefore that none of those alleged detriments can have been because of a protected disclosure. The claims in respect of those detriments must therefore inevitably fail.

216. The tribunal nevertheless considers the substance of the alleged detriments pleaded. The first relates to the business team not inviting the claimant to a meeting in February 2021. The claimant did not, however, identify any business team meeting in February 2021 to which she was not invited.

217. Secondly, the claimant complains of her exclusion from a meeting with PwC in January 2021 and from Expect Distribution meetings in February/March 2021. She has failed however to provide any evidence of any PwC related meeting in January 2021 that she was excluded from. In fact, she identified a PwC meeting on 2 February which is not a pleaded detriment. In any event, that meeting is referred to in Outlook calendar entries as taking place from 10:00 until 11:00 whereas the alleged disclosure in the email to Ms Dyson of 2 February 2021 was sent at 11:11 on that day. That disclosure of information cannot therefore have influenced the claimant's attendance at that meeting. The Expect Distribution meeting relied upon took place on 15 March 2021. However, all that the claimant can say about this meeting is that Expect Distribution is a business involved in road haulage and she was involved in promoting that as a sector for potential job opportunities. The tribunal has no knowledge of what the meeting was about or how the attendees were chosen. The claimant herself recognises that not every team member would attend every meeting. There is no evidence before the tribunal which could allow it to conclude that this amounted to detrimental treatment.

218. Turning to the third detriment and Mr Scothern's reference to the Chimp Paradox book, the tribunal does not conclude that the claimant was treated to her detriment in this being referred to at the meeting and in her being specifically referred to it as a useful publication regarding psychology and motivation. The claimant's insistence that the tribunal listened to the recording of the meeting was misplaced in that it displays clearly that this was a free-flowing conversation amongst colleagues illustrating Mr Scothern's genuine regard for the publication and the fact that the claimant's colleagues were almost sick of hearing about it, them regarding his reference to it being something of a running joke. It is absolutely clear that Mr Scothern had sought

to educate all of the team about the value of the publication and that those who had heard it before thought his singing of its praises to be somewhat of a stuck record. The claimant gives the impression of being newer to the team then others, but there is nothing to signify that she was upset about the comment at the time it was made or thought it to be aimed specifically at her or to make her feel individually uncomfortable. She did become upset at a later stage of this one-hour meeting, but in relation to struggles with a particular aspect of her work. It is noted that on 22 March 2021 she was comfortable to communicate with Mr Scothern referring to her own inner chimp.

219. There is no evidence that Mr Scothern was at the point of this meeting aware of the claimant's alleged protected disclosures or of the particular criticisms she was making regarding his own selection and appointment as a manager. Mr Hunter's evidence, which could not be challenged is that he had not then discussed what had been raised by the claimant in her informal grievance with Mr Scothern, which is accepted in the context of Mr Hunter clearly wishing to deal with the matter informally rather than to escalate it.

220. In any event, the claim of whistleblowing detriment must fail in circumstances where the alleged detriment precedes any pleaded disclosure found to have been a protected qualifying disclosure.

221. The fifth detriment (the fourth having been struck out for failure to pay a deposit order during the case management process) is of the respondent's failure to pay discretionary sick pay over and above that prescribed in the respondent's policy.

222. In circumstances where the claimant was treated in accordance with the respondent's policy applied to all employees on long-term sick leave, there was no detriment. She certainly was not entitled to sick pay, based on her length of service, in excess of the one-month of full pay and two months of half pay she received. The claimant had referred, in the context of this previously also being a complaint of race discrimination, to 2 named comparators, but neither of those individuals were absent on long-term sick leave at all. The respondent's policy did provide for exceptions to be made, but there were only two examples evidenced where additional payments during sickness had been made and those were indeed in circumstances quite different from that of the claimant. One individual was terminally ill in circumstances where a decision on early ill-health retirement was pending and another had suffered from a stroke and was under a rehabilitation plan to get him back into work. The claimant, of course, had very short service with the respondent and whilst she also refers to a provision in the policy which allows for enhanced payments to be made when an individual is absent due to sickness because of bullying and harassment, there had, in the claimant's case, been no finding of her being subjected to such behaviour. In terms of causation, the tribunal accepts the respondent's explanation that its adherence to the policy in the absence of any exceptional

circumstances was the only reason for the claimant receiving no more than her contractual entitlement. It was not influenced by the claimant's grievance and subsequent raising of concerns.

223. The claimant's sixth detriment relates to Ms Lloyd calling the claimant vexatious malicious and misconceived in response to a grievance and handpicking what she would investigate as complaints of whistleblowing detriment.

224. In fact, Ms Lloyd's letter of 5 October 2021, the contents of which form the basis of the complaint, explained that some points of the claimant's second grievance would not be investigated because they had not been submitted within a reasonable time or because they were considered "vexatious, malicious or misconceived". This wording was taken directly from the grievance policy which allowed the respondent to determine that matters could not be taken forward as grievances in such circumstances. Ms Lloyd's accepted evidence is of a careful and genuine assessment of the claimant's complaints uninfluenced by the claimant's protected disclosures. Indeed, Ms Lloyd extracted from the grievance all of those points, some of an extremely serious nature, which would be added to the claimant whistleblowing process and with the accepted intention that those would proceed to be investigated. There was no attempt to silence the claimant in terms of her whistleblowing complaints.

225. The claimant then as her seventh detriment complains of the delay in providing an outcome to her first grievance. On the facts, the tribunal is ultimately unable to conclude that there was detrimental treatment as opposed to a grievance of a complex and wide-ranging nature proceeding in an entirely expected manner, including as to the time taken to resolve it. The grievance was submitted to Ms Cryer in April and resolved by the middle of October. That is not a short period of time, but if the length it took could be reasonably regarded as unfavourable treatment, the respondent has explained to the tribunal's satisfaction why the grievance outcome took the time which it did. Certainly, once Mr Atkinson had been appointed to investigate, he carried out a significant amount of work on a significant number of allegations in a timely manner and as quickly as could be reasonably expected. The claimant does not appreciate the pressure in terms of workload her grievances placed on the respondent's management, including HR, who on the evidence were managing significant numbers of absence, disciplinary and grievance cases.

226. The eighth alleged detriment is that Mr Westlake did not get in touch with the claimant after their initial meeting to discuss her whistleblowing disclosures and did not provide minutes of it or investigate her concerns. In fact, the tribunal's findings are that Mr Westlake did communicate with her and started to investigate the complaints. He was appointed to investigate whistleblowing concerns and the tribunal cannot conclude, as it is being asked to, that he treated the claimant to her detriment because they were concerns of

whistleblowing. Mr Westlake did face a volume of information and wide-ranging allegations to investigate where it would, as he describes, have taken him considerable time to cross-reference the complaints with the purported evidence the claimant was providing. He asked the claimant for further information about how she obtained the recordings she provided. Whilst within the earlier grievance process Mr Atkinson might not have had the same concerns about data protection issues, albeit the scope of information from voice recordings and private messages he did consider is unclear beyond the 17 March video meeting, the tribunal considered Mr Westlake's concern to be genuine. The claimant did not respond to his email even when subsequently reminded that contact was awaited. Mr Westlake then departed from the respondent's employment and took steps to pass the work he had thus far completed onto Mr Smith. The claimant had her own recording of her meeting with Mr Westlake (as he knew), such that the failure to provide minutes cannot be viewed as detrimental treatment.

227. The claimant's pleaded detriment is as identified above. It is not (more generally) that the respondent failed to provide an outcome to her whistleblowing concerns or any lack of progress beyond Mr Westlake's involvement. The claimant did not respond to Mr Westlake's request for clarification as to how evidence had been gathered, nor chase up thereafter any lack of progress. There is no evidence that Mr Smith progressed the investigation either personally or by appointing a replacement for Mr Westlake following his departure. The respondent's witnesses could only speculate as to why that might have been the case. It was not a matter that formed part of the claimant's complaints they had come prepared to answer.

228. The claimant's ninth detriment relates to her being unable to log in to the respondent's IT system from 17 January 2022 and having her access completely blocked from 8 February 2022. She says that she was unable to book annual leave in those circumstances. Whilst the claimant was, at that point, absent due to sickness she could reasonably consider her inability to access the respondent's systems during this period as unfavourable treatment. However, specifically as regards the booking of holidays, the claimant, on Ms Lloyd's accepted evidence, was in the same position as all other employees absent on sickness in that line manager approval was required so that payroll could be informed that whilst the system would continue to show the employee as absent from work, payment of holiday pay could be made. The claimant was well able to understand which managers or members of HR she could contact in this regard.

229. In any event, the evidence is not that there was any deliberate blocking of the claimant because of her protected disclosures. The claimant's assertion is of a conspiracy whereby senior managers instructed those within IT to block her. She accepts that none of the IT staff would have taken such action unilaterally and that none of the managers would have been capable or have the required permissions to block her directly. The evidence is that there was

an issue regarding the claimant's password on 1 February 2021 which was resolved. The claimant subsequently reported being blocked from the system and there is evidence of IT trying to resolve the issue but without success. The claimant was then processed as a leaver from her casual engagement through Safe and Sound, a notification which would generate a number of tickets including an instruction effectively to IT to close her account. It appears that the claimant may have had only one active account which in fact related to her substantive role. In any event, IT simply processed the request which had the effect of blocking her from any access even though she continued in her substantive role.

230. The matter was subsequently considered by Ms Lloyd who asked for it to be looked into and provided an explanation to the claimant on 24 May 2022 on the basis of what she had been told. She said that she would contact the claimant's line manager and ask for the IT account to be reopened. Subsequently, albeit with some delay, Ms Brett, who was managing the claimant's sickness absence, enquired as to the reopening of the claimant's account, but was advised by Mr Smith in August 2022 that whilst the claimant was on sick leave she should be discouraged/instructed not to access work emails. Hence her access was not reopened. Mr Smith's reasons are evidenced on the face of his correspondence with Ms Brett at that time. The claimant's pleaded detriment is not, however, in respect of any decision of Mr Smith and the respondent has not come to this tribunal to deal with such distinct complaint. In terms of the chronology, Mr Barnes-Brown received an instruction from Ms Patel on 20 October 2022 to give the claimant IT access coinciding with the claimant's brief return to work. A new account was set up accordingly for the claimant.

231. The tenth alleged detriment is a delay of the claimant's grievance appeal until 24 March 2022 in circumstances where none of the directors had looked at the evidence which had been sent to them in July 2021. However, there was no delay in the sense of a deliberate attempt to delay the claimant's grievance appeal. Ms Longhurst wrote to the claimant on 9 November 2021 to invite her to an appeal hearing on 20 December 2021. This was postponed only because he did not receive a response from the claimant. The meeting was rearranged to 17 January 2022. The hearing was not completed on that day only because the claimant was unable to continue to connect to the remote hearing due to a power cut. It was rescheduled for 10 March 2022 and arranged then for 22 March only because Mr Longhurst had to attend a hospital appointment outside of the area. The meeting went ahead and the evidence is that the claimant's documentation provided by her was considered. The claimant refers to Mr Longhurst being able to conduct other work-related meetings before the final reconvened appeal hearing, but the claimant says this without regard to Ms Longhurst's general workload and how long those other meetings might have been in his calendar. The claimant's complaint of delay is not made out and the respondent has provided a satisfactory explanation for the various stages of the process and the reason why it progressed against the timeline it ultimately did. In these arrangements no one was materially influenced by the claimant's protected disclosures.

232. As an eleventh detriment, the claimant complains that in March 2022 those involved in the grievance appeal blocked her personal email preventing her from sending further evidence which necessitated her printing out the additional documents and hand delivering them to the respondent.

233. The tribunal's factual findings are that some emails from the claimant with multiple attachments received a bounce back message, albeit an email also sent from the claimant's personal email address without attachments around the same time arrived. There is no evidence of the claimant's emails being deliberately blocked (the claimant at the time did not herself believe that to be the case) and the claimant's assertion that the respondent was playing games with her by blocking and unblocking their access is just that, a bare assertion. The automatically generated bounce back messages were, the tribunal considers, entirely genuine with again no instruction given to anyone within IT to block the claimant's personal email address. It is difficult to see why the respondent would seek to deliberately block the claimant's further documentation. It knew that the claimant would ensure that Mr Longhurst received the information as she indeed did by her hand delivering the pack of documents. That was entirely predictable and there is no basis for concluding that the respondent was simply being difficult to cause the claimant distress.

234. As a twelfth detriment, the claimant maintains that the respondent refused to consider her third grievance when she alleged that the respondent had not earlier followed its internal procedures. The evidence is that there was a genuine consideration of the claimant's third grievance by Ms Lloyd who asked Ms Pedley-McKnight to carry out a thorough review of the grievances for potential overlap. Ms Lloyd explained in writing fully to the claimant why the third grievance would not be progressed and she genuinely and accurately believed that the claimant was seeking to reraise matters already determined. Whilst the tribunal accepts that the refusal to consider the third grievance amounted to detrimental treatment, the reason was as notified to the claimant at the time by Ms Lloyd and uninfluenced by the claimant raising protected disclosures.

235. The claimant's next detriment 13 is that she was not invited to a virtual meeting on 24 March 2022 regarding a restructure of the department. Again, the claimant could reasonably view this as an act of unfavourable treatment, despite her ultimately being provided with information on the restructure and her contract ultimately being made permanent. However, she accepted that it was the respondent's normal practice not to invite staff on long-term sickness to such meetings. The tribunal accepts that this was the reason for her not being invited, uninfluenced by her protected disclosures. Mr Hunter referred to a communication from the claimant asking not to be contacted by him.

236. The claimant's fourteenth detriment is of her work email being removed from the respondent's systems in March 2022. The reasons for that occurrence have already been dealt with above and her removal was in no sense whatsoever related to her protected disclosures.

237. In detriment 15, the claimant maintains that Ms Lloyd provided an inaccurate and false explanation for the removal of her email account. On the contrary, Ms Lloyd made genuine enquiries as to what had occurred and passed on the information she had received to the claimant.

238. In detriment 16, the claimant complains of being told that whilst on sick leave her email account would remain removed in August 2022. That can reasonably have been perceived as unfavourable by the claimant, whatever the respondent's intentions may have been. However, the reason for that was Mr Smith taking the view that the claimant should not be accessing emails whilst on sick leave as opposed to it being anything to do with the whistleblowing concerns previously raised by her. This was a different perspective to that of Ms Lloyd, but there is clear evidence from contemporaneous correspondence of the reason for that decision being taken by Mr Smith, with a reactivation of the claimant's account then occurring at the point she was fit to return to work.

239. In detriment 17, the claimant complains of being suddenly bombarded by calls and texts, her feeling that she was being forced to attend counselling sessions urgently. The claimant had in fact been contacted by a third party provider of counselling services so that arrangements could be made for treatment which she had agreed in an occupational health review might be beneficial to her. The claimant at the time appeared to welcome such contact. There is no evidence of any form of bombardment. The evidence is that it would be normal procedure for occupational health to make the referral and for the counselling service to then contact the employee with no involvement in this process on the part of the respondent including HR. That was the reason for the contact from the provider of counselling services and was in no sense whatsoever influenced by her protected disclosures.

240. All of the claimant's complaints of whistleblowing detriment fail and are dismissed.

241. The claimant also complains of the reference by Mr Scothern to the Chimp Paradox book as an act of direct race discrimination. This requires less favourable treatment than a comparator who was the same or not materially different circumstances of the claimant. The evidence is, however, of all of the attendees at the meeting having been "subjected" to an explanation and promotion of the chimp paradox theory by Mr Scothern. Mr Scothern was particularly interested during this meeting that the claimant be made aware of

the theory, but only in circumstances where he did not believe he had told her about it in contrast to the other attendees, who have been told about it on a number of previous occasions. Had there been any facts from which the tribunal might reasonably have been able to conclude a difference in treatment because of race (and, indeed, had this claim been brought instead as one of racial harassment), the tribunal can and does make a positive finding that Mr Scothern's reference to the book was in no sense whatsoever related to the claimant's race. Again, the tribunal accepts that Mr Scothern genuinely held this book in high regard and believed that there were theories promoted within it which provided a helpful insight and understanding into human behaviour. He told everyone that and repeatedly. It did not occur to him or the other attendees that the theory or its promotion to the claimant had any racial connotations. It was not said to make the claimant feel uncomfortable and the evidence, as already referred to in the context of the whistleblowing detriment complaint, is that the claimant was not upset by the reference at the time it was made.

242. The claimant then brings a complaint of unfair dismissal. The tribunal concludes that the claimant was dismissed because of her long-term ill-health absence at a point where there was no indication of an ability to return to work. Ms Williams was aware of the fact that the claimant had made allegations of wrongdoing against the respondent and its managers. However, her evidence to the tribunal, which it accepts, was absolutely clear that she was interested only in understanding whether the claimant might be fit to attend work in circumstances where she had been absent for around 18 months.

243. Ms Williams was brought in to conduct the capability hearing as an independent person. She was not involved in any of the disclosures and grievances. She was adamant in her refutal of the suggestion that she dismissed the claimant because of her whistleblowing. The claimant had been absent from work for a significant period in the context of her having only provided services to the respondent for a very brief period. The termination of her employment in such circumstances is wholly unsurprising. Whilst the claimant refers to herself as being employed at no cost to the respondent and that her entitlement to payment during sickness had ceased, the respondent genuinely considered that the claimant's continued employment had become unsustainable against the background of her absence and with advice that a return to work might be sustainable only if the claimant's complaints were resolved in her favour. That inability to return to work was only reason for the termination of her employment. She was not automatically unfairly dismissed.

244. Turning to the complaint of ordinary unfair dismissal, the tribunal must still decide whether the respondent acted reasonably or unreasonably in dismissing the claimant by reason of the claimant's long-term ill-health capability. Again, the claimant had been absent for a significant period and almost 2 years by the time of the expiry of her existing fit note. Up to date occupational health advice was that there was no anticipated date for return to work with an anticipation that it would be at least another 3 months and possibly longer in the future. The

health practitioner's view was that the claimant's complaints would need to be resolved to her satisfaction if she was to return to work. The claimant at no stage questioned the occupational health assessment or sought to make representations or provide evidence that she would be fit for work. Whilst she referred to undergoing counselling and being under medication, she was not stating positively that she might be fit to return to work or against any defined timescale.

245. The claimant has not articulated specific criticisms of the process adopted. The dismissal was in accordance with the respondent's own capability process. The claimant knew that dismissal was a possible outcome of the capability hearing and had a full opportunity to make representations. She chose to provide those in writing for the initial capability hearing and attended an appeal hearing where she had a full opportunity to address the panel, but provided no evidence that the situation had or was likely to change regarding her state of health.

246. The claimant's main argument before the tribunal appears to be that it was unfair to terminate her employment when the respondent had caused her sickness. That is the claimant's genuine perception, but the tribunal does not have the evidence upon which it could conclude that the claimant was bullied or harassed causing her absence or that the cause or exacerbation of ill-health was the way the respondent dealt with the various complaints. In any event, the respondent was reasonably entitled to come to a view that, whatever its cause, it could not sustain the claimant in her employment any longer. That was a genuine view Ms Williams did reach and which was upheld on appeal. Certainly, dismissal in the circumstances, not least the length of absence against the length of total employment, was within a band of reasonable responses open to an employer in these circumstances. The claimant was fairly dismissed.

247. Such conclusion may have needed to be revisited had the claimant's complaint of a failure to make reasonable adjustments succeeded. It is accepted that the claimant was a disabled person from January 2023. As already referred to, there is no evidence upon which the tribunal could conclude that she was a disabled person by reason of her depression at an earlier defined date. The claimant's impact statement provided on 3 November 2023 is lacking in detail as to the effects on her ability to carry out normal day-to-day activities and with reference to any particular timescale. The tribunal does not have medical evidence as to her condition, in particular, in October 2022 when the claimant says the duty to make reasonable adjustments first arose. Again, the tribunal must have an evidential basis for a conclusion of disability status at a particular relevant point in time.

248. Even if the tribunal had ben able to find that the claimant had been a disabled person by reason of her depression by October 2022, the complaints

could not have succeeded. As at the time the return to work was being discussed with the claimant and implemented briefly in October 2022, there was in fact no requirement for the claimant to work solely at Margaret McMillan Tower. The return to work plan envisaged the claimant working for part of each of the first 4 weeks from home. There was an expectation that the claimant would attend her office space on some occasions during the phased return, but there is no evidence that the claimant was placed at a substantial disadvantage when compared to non-disabled person in a requirement to attend that office location on a brief number of occasions. The claimant maintains that a reasonable adjustment would have been to allow her to work from home for 1 day each week and from Keighley Town Hall for the remainder. In the context of her condition of depression, the tribunal has no understanding as to how any (what) disadvantage might be alleviated by her working at a site different to Margaret McMillan Tower. Her role would have been the same and she would have been under the same management with the same need to interact with her managers.

249. The claimant also relies on a second PCP, a requirement to work normal hours of 37 hours over 5 days each week. There was no such requirement in October 2022 with an expectation then that she would work on a part-time basis only during a 4 week phased return to work.

250. The claimant in her pleaded complaint refers also to the implementation of a 12 rather than 4 week phased return as being a reasonable adjustment. Before the tribunal, the claimant maintains that this was a misunderstanding. She was not saying and had never said that a 12 week phased return to work was reasonable or appropriate in her circumstances. She had agreed to a 4 week phased return.

251. At no point after October 2022 did the duty to make reasonable adjustments arise or revive. The claimant was not subsequently fit to resume work, including with the reasonable adjustments sought within this complaint. The claimant's complaint of disability discrimination must therefore fail.

252. The tribunal would note that if any of the individual detriment complaints had been made out, their success would have depended upon the application of time limits in circumstances where the stand-alone complaint of direct sex discrimination was significantly out of time and the majority of the whistleblowing detriment complaints (all apart from those relating to detriments 12, 16 and 17), even assuming that a linkage could be made between the out of time individual acts of detriment. That would have required a conclusion supporting a number of individuals acting in concert to do the claimant down, which the tribunal rejects. A standalone reasonable adjustment claim arising out of the application of a practice in October 2022 would also have been out of time. The claimant was not impeded by reason of ill-health from submitting her tribunal complaint at an earlier stage. She was able to participate in

meetings and raise and participate in grievances and hearings to seek to resolve them. The claimant's failure to bring a claim at an earlier stage was a matter of her individual choice.

Employment Judge Maidment

Date 7 May 2024

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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:

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