EMPLOYMENT TRIBUNALS

Claimant: Miss L Sulllivan

Respondent: E-ACT

Heard at: Manchester **On:** 28 to 31 October 2024

Before: Employment Judge Phil Allen
Ms L Atkinson
Mr P Dobson

REPRESENTATION:

Claimant: In person
Respondent: Mr N Grundy, counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claimant did make protected disclosures in the ways alleged in the list of issues as protected disclosures (a) and (l). The Tribunal did not find that the claimant was subjected to detriments on the grounds of the protected disclosures which it had found were made.

2. The claim for detriment as a result of having made a protected disclosure or disclosures, was not presented within the applicable time limit. It was reasonably practicable to do so. The claim for detriment is dismissed.

3. The claim for unfair dismissal was not presented within the applicable time limit. It was reasonably practicable to do so. The claim for unfair (constructive) dismissal is dismissed.

REASONS

Introduction

1. The claimant was employed by the respondent from 31 October 2016 until her resignation on 30 August 2022. She was a receptionist. From September 2020 she worked at the Royton and Crompton Academy. The claimant alleged that she made

approximately thirty-one protected disclosures between September 2021 and June 2022 and that she was treated detrimentally as a result. She also alleged that the respondent fundamentally breached the duty of trust and confidence and, as a result, when she resigned, she was entitled to treat herself as having been dismissed. She contended that any such dismissal was automatically unfair as a result of being because she made one or more protected disclosures or was, in any event, unfair. The respondent denied the complaints and contended that they were not entered within the time required.

Claims and Issues

2. The claimant entered two claims against the respondent, which had been joined and were heard together. Two preliminary hearings (case management) were conducted in the case, on 16 February 2023 and 21 April 2023. Prior to the first preliminary hearing, the claimant had provided some further particulars of her claims and, following that hearing, she provided some more further particulars (95). The claimant had claimed disability discrimination, but that claim was not pursued, as confirmed at the second preliminary hearing. Following the second preliminary hearing, Judge Callan appended a proposed list of issues which outlined the issues but left some details to be inserted. The parties were ordered to agree a list of issues.

3. In the bundle for this hearing was included an agreed list of issues (156). At the start of the hearing the claimant agreed that the list contained all the issues which needed to be determined, all of the disclosures relied upon, and all of the detriments alleged. The claimant highlighted that one of the disclosures in the list was in fact split over two numbers. The respondent raised some concerns about whether the legal questions included in the list entirely captured the legal questions which needed to be addressed. During her evidence, when being asked about the alleged detriments, the claimant said on more than one occasion that the list had not been drafted by her. The list appeared to have been predominantly based upon the claimant's second set of further particulars and, in considering the list of issues, we also looked at the further particulars upon which it was based, to illuminate what was recorded.

4. The content of the agree list of issues as included in the bundle is appended to this Judgment. As this Judgment is addressing only the liability issues and not the remedy issues, something which was accepted by the parties at the start of the hearing, the attached list does not include the remedy issues.

Procedure

5. The claimant represented herself at the hearing. Mr Grundy of counsel represented the respondent. The hearing was conducted in-person with both parties and all witnesses attending in-person at Manchester Employment Tribunal.

6. An agreed bundle of documents was prepared in advance of the hearing. The claimant highlighted that preparation of the bundle had been particularly difficult and she had received various versions of the bundle prior to the hearing, but nonetheless by the start of the hearing what was provided was agreed. A photograph and some

plans were added to the bundle with the claimant's agreement on the first day of the hearing, the claimant herself added a photograph on the second day. Where a number is referred to in brackets in this Judgment, that is a reference to the page number in the bundle. We read only the documents in the bundle to which we were referred, including in witness statements, or as directed by the parties.

7. We were also provided with witness statements from each of the witnesses called to give evidence at the hearing. On the first morning, after an initial discussion with the parties, we read the witness statements and the documents referred to.

8. We heard evidence from the claimant, who was cross examined by the respondent's representative, before we asked her questions. That took from lunch time on the first day until lunch time on the second day.

9. For the respondent, we heard evidence from: Ms Andrea Atkinson, Executive Headteacher for the North Secondary Academies and, at the relevant time, the Headteacher of Royton and Crompton Academy; and Ms Davinia Reynolds-Brown HR Business Partner. They were each cross-examined by the claimant, and we asked questions. Ms Atkinson gave evidence on the afternoon of the second day, and we sat late that day in order to complete her evidence at her request. Ms Reynolds-Brown's evidence was heard on the morning of the third day.

10. After the evidence was heard, each of the parties was given the opportunity to make submissions. We adjourned until the afternoon of the third day to allow time for the claimant to prepare for her submissions and to allow time to read the respondent's skeleton argument document. The claimant subsequently provided a written submission document upon which she relied. The respondent's representative provided both written and oral submissions, the claimant chose to rely upon her written submissions. The respondent's counsel had provided the Tribunal and the claimant with copies of three authorities at the start of the hearing.

11. We adjourned to consider our decision and the parties returned on the afternoon of day four when we informed the parties orally of our Judgment in the liability issues and the reasons for it. The claimant requested the written reasons of the decision. Accordingly, that Judgment and the reasons for it are contained in this document.

Facts

12. The claimant worked for the respondent from October 2016. We were provided with the statement of main terms and conditions of employment which applied from 1 April 2021 (170). That recorded that her job title was support staff-receptionist. We were also provided with a variation of the statement which applied from 7 September 2021 until 21 July 2022 (176). We were, surprisingly, not provided with any policies or procedures.

13. The respondent operates as an Academy Trust and is responsible for a number of Academies, including The Oldham Academy North and the Royton and Crompton Academy.

14. The claimant previously worked at The Oldham Academy North. Whilst there, she raised two formal grievances, one on 18 June 2020 (178) and one on 7 September 2020 (184). The first grievance was upheld on 17 July 2020 (181). Following the second, it was agreed she would move to the Royston and Crompton Academy.

15. After she moved to Royton and Crompton Academy, the claimant was initially managed by Mrs Smith, the Headteacher's Phil Allen, and, sometime after, by Ms Ashton-Ringland (who reported to Mrs Smith). We did not hear any evidence from either Mrs Smith or Ms Ashton-Ringland.

16. On 30 September 2021, the claimant sent an email to Ms Ashton-Ringland, copied to Mrs Smith (201). The email was headed "*Abusive parents and support required*". It began with the claimant stating that "*I need to put on record the abuse I am receiving on reception from parents and I am asking for support as I am at the end of my tether*". She provided examples. She described how the Head of Years' voicemails were full, meaning that messages could not be left. She set out what she believed was a solution. She ended the email by saying "*I really hope my mind doesn't have to break before any action is needed*". The content of the email was entirely directed towards the claimant needing to be given more support and the parents given better direction, it did not address abuse of others. In her second particulars of claim (57), the claimant described the email as asking for support.

17. On 1 October 2021, Ms Ashton-Ringland met with the claimant. No email was sent that day. In her witness statement, the claimant said that she raised (she said again) about students not being escorted to reception, being left unattended in reception, and that they were tailgating visitors and staff to get through the main doors and out of school. She described how that made her feel, because she was scared and did not feel safe at work. She said she told Ms Ashton-Ringland that she was stressed and anxious and didn't know how much more she could take. We heard no evidence which contradicted the claimant's account of what had been said in the meeting and therefore we accepted her account.

18. On 6 October 2021, the claimant emailed Mrs Smith (206). The email related to a specific student and asked whether it was ok for him to come to reception at the end of the day and wait for his mother to arrive. The claimant went on to say:

> "*Especially in light of … situation and down to safeguarding as we are not trained in reception if anything happens and also cant look after him as too busy. Scott has said, students shouldn't be left in reception with a member of staff*"

19. A short time later, on 6 October 2021, the claimant emailed Scott Lewis, the respondent's Safeguarding Lead (205). She referred to the email about the particular student sitting in reception, sought advice, and said:

> "*My concern is that receptionist are not 1st aid/Senco trained and in terms of safeguarding I am too busy to keep an eye on students who sit in the waiting area. Students could have panic attacks etc and I might not necessarily know as I'm too busy. Also we have visitors in reception and students are being*

> *sent up sick with sick bowls, which isn't very nice, also* [Heads of Year] *are not escorting students to reception and they are having to sit in the waiting area until their parents/carers arrive. I know we have had this conversation before and I understand it is difficult for them as they are also busy and it can make all our lives easier by sending them to reception including mine, but for peace of mind, I want to check with you"*

20. An email was sent by Mr Lewis later that day to all pastoral staff telling them that students should always be accompanied to reception (207).

21. There was a complaint from a parent emailed on 7 October which appeared to be about the claimant and, as a result of which, Mrs Smith asked Ms Ashton-Ringland to speak to the claimant (208).

22. A camera was installed in the reception area. Ms Atkinson explained that it had been installed to view the place where the signing in book was located. The claimant believed that it had been installed in the wrong place and that it would have been better for it to have viewed the waiting area. She emailed Mrs Smith on 4 November 2021 (222) and said:

> "*There has been a camera installed in reception, which is reassuring and makes me feel a little safer, however, the position of the camera is what concerns me and was wondering if this could be positioned so it covers reception and the waiting area as this is where it mostly kicks off"*

23. Mrs Smith forwarded the claimant's email to others and suggested that it made sense and asked whether it could be moved. Ms Atkinson asked what was meant by "*kicks off*". Mrs Smith responded by saying she had spoken to the claimant and detailed some specific incidents which the claimant had advised her. Prior to receiving the last email from Mrs Smith, Ms Atkinson sent an email on the same day (219) asking for an additional camera to be installed in the waiting room and Ms Ready (another member of staff) asked for a quote to be obtained. No camera was installed in the waiting room while the claimant was employed, but Ms Atkinson told us that one has since been installed.

24. On 12 November the claimant emailed Ms Ashton-Ringland and asked whether she had managed to send a communication around parents being abusive. She asked about a student. She ended the email by saying "*It is extremely busy on reception and yesterday was horrendously busy to the point where it stressed me out*" (199)

25. On 18 November the claimant spoke to Ms Atkinson. It was the claimant's evidence that she did so twice, once when Ms Atkinson was in reception and once from her car in the car park (where the claimant was eating lunch). Ms Atkinson did not recall the conversation in the car park. The claimant's evidence was that they spoke about the message to parents. The claimant sent an email to Ms Ashton-Ringland (232), saying she had spoken to Ms Atkinson and said that Ms Atkinson had asked the claimant to remind Ms Ashton-Ringland to include something in the letter to parents about abuse.

26. Ms Ashton-Ringland responded to the claimant's email with the following response (231):

> "*For future reference, please come to me in the first instance with any issues regarding reception. We shouldn't really be stopping Andrea when she is walking around the Academy. I appreciate that you have been getting a lot of abuse form parents and I agree with you that this is not acceptable, that is why a letter is being sent out to parents reminding them that this won't be tolerated, the letter will be going to parents tomorrow when I have had the final version checked"*

27. On 19 November the claimant responded (230). Her email was sent to Ms Ashton-Ringland but was copied to Mrs Smith. In it she started by thanking Ms Ashton-Ringland for the meeting that morning and her support and understanding. She went on to say:

> "*I had got to the point where working in reception on my own and being abused daily had now caused me stress and felt it was important to let you know and to follow H&S Policy Appendix 18 Stress and 3.5 lone working. On average I receive up to 1000 calls a week, 300 missed calls per week, having to manage attendance calls, students sent to reception, signing students out/appointments, visitors/deliveries, 2 phones, 2 intercoms, sending up to 30 emails per day had become unbearable and was affecting my well-being.*
>
> *Andrea asked me to call Bryn to let her out of the carpark … I asked her advice on safeguarding issue that had just occurred, which she asked me to add to the letter … Andrea knocked on my window and had a 10 minute conversation with me, which I was grateful for. So the email sent confused me, and felt you had not been given the full picture.*
>
> *I am happy a resolution has been found, because I do genuinely love my job and working at R&C and looking forward to Monday"*

28. Ms Ashton-Ringland responded and thanked the claimant, telling her that she was always there if the claimant needed anything. In evidence, the claimant said that while she said that she was often not available when the claimant tried to contact her. We were also provided with a note of the meeting (237).

29. On 1 December Mrs Smith emailed an email group called pastoral at the school and said (241a):

> "*Please note that no students should be placed/allowed to go up to main reception & sit in the waiting area after school awaiting lifts, they should be waiting in the main academy"*

30. It was the claimant's evidence that students continued to visit reception unattended even after emails had been sent saying that it should not occur.

31. On 14 January 2022 a supply teacher entered the school through the student gate when he should have first visited reception and been signed in and issued with the appropriate lanyard. The claimant emailed Mr Lewis and informed him about

what had occurred (242). She said it was the second time it had occurred that month. She explained that the supply teacher had been brought back to reception for the claimant to sign in. Mr Lewis responded by thanking the claimant.

32. An incident occurred on 7 April 2022 which, it was common ground, had resulted in danger to students. Following being released from an exam, a group of students had become trapped between two doors close to reception due to the maglocks on the doors and the number of students in the area. The claimant had found the incident very distressing, and she described to us what occurred and why she had found it so concerning. There was no evidence before us that the claimant informed anyone else about the incident and we were not provided with any emails which she sent about the incident. The evidence provided to us was an email sent from Ms Atkinson to various people on 7 April (255) which she began by saying "*Firstly, Lisa I am so sorry for what has happened to you on reception this evening but this was not only unsafe and dangerous but also a serious safeguarding breach*". In the email, Ms Atkinson recounted what had occurred and explained what needed to occur if there was an early release of students.

33. On 25 April 2022, the claimant sent an email to Mr Lewis and others headed "*Safeguarding issue*" (266). In it she explained that a student who left each day at 2.10 pm had been brought back to school by his father because he now left at 3.05 pm and the claimant had not been informed so had let him go. She said "*I also have a duty of care to ensure that all pupil are safeguarded and feel it is important that I am being informed of students who are leaving early. Is there any chance I could have an up to date list off all students that have an agreed early finish asap to avoid this happening again*".

34. The claimant's email was expanded upon by Ms Ashton-Ringland in her own email to Mr Lewis and others, in which she made various requests.

35. The evidence about the provision of a list of those able to leave early from the claimant was that the claimant was provided with a list, but it was then taken away from her. There was no other evidence of it being taken away. Ms Atkinson denied that she had asked that it should be. The claimant compiled and prepared her own list, but highlighted that she was not informed about when arrangements changed.

36. On 29 April Mr Lewis emailed the claimant and said that he had been asked to gather statements about an incident the previous day when a phone had been handed back to a student (270). He asked for an account of events from the claimant. She provided an account in an email on the same day. In summary, the claimant had given a mobile phone back to a student in circumstances where the claimant had believed it was appropriate to do so because of safeguarding concerns. At the end of her account the claimant said the following "*The whole incident made me feel unwell, I had to leave my office and take time out and get a tea with sugar. I feel Jane shouldn't have left me to deal with the situation, my main role is to answer the phone and take messages. As you are aware, I have emailed you on numerous occasions around safeguarding issues and staff escorting students to reception. Staff are still sending students who are sick, behavioural and emotional issues to the wating area".* Mr Lewis thanked the claimant in an email in response and said once he had gathered further statements he would advise further. The claimant's evidence

was that she was never further advised. When asked about the claimant's decision, Ms Atkinson's evidence was that was not a decision which the claimant should have made.

37. On 5 May, the claimant sent an email to Ms Ashton-Ringland (280) in which she explained what had occurred when a difficult child had been in reception with a member of staff. She suggested that students should not wait in reception. She also referred to an incident when it had taken thirty minutes for another student to take off her hoodie and earrings.

38. On 17 May, the claimant emailed Mr Lewis about the number of students who were leaving early (305). She asked if this could be looked into and said that the number of students turning up in reception was a big issue. Mr Lewis responded by querying the number of early leavers stated by the claimant and asking for more information.

39. On 18 May, the claimant forwarded to Ms Ashton-Ringland the emails from 5 May and said she had received no reply from Mr Lewis to her earlier email (307). She reminded Ms Ashton-Ringland of the forthcoming Ofsted inspection. She asked for someone to be placed on reception full-time as she said it was too much on her own.

40. On 19 May, the claimant sent an email to Ms Ashton-Ringland about a student being sent to reception and remaining there for a period when the grandparent due to collect them had not arrived (322). The student was said to have been walking around the waiting area and a visitor had witnessed it. The claimant asked why this happened and said it was unacceptable to leave students with her.

41. Ms Ashton-Ringland met with Mr Lewis on 20 May 2022 about reception concerns. We were provided with a note prepared by Ms Ashton-Ringland in advance (313). There was a note of the meeting (315). An email was sent by Ms Ashton-Ringland to the claimant following the meeting with outcomes (324).

42. It was the claimant's evidence that, on 20 May, she raised concerns to Ms Ashton-Ringland about students coming to reception unattended and staff disregarding instructions. The conversation led to an email from Ms Atkinson sent on 20 May (211/212) to the pastoral team in which she mentioned safeguarding and students being released from an exam.

43. A letter was sent to parents which suggested that they book an appointment with reception for heads of year (330). The claimant objected to what had been said, in an email of 24 May (327).

44. On 25 May 2022 the claimant sent an email (332) to Mr Lewis and Ms Atkinson, copied to Ms Ashton-Ringland. It explained that a student had been to reception on her own and told the claimant that she was going home because she was unwell. The student had shouted obscenities about the school in front of visitors.

45. On 26 May (334), the claimant sent an email to Julie Ashton about the reception intercom not working. She said it occurred when the weather was bad. Ms

Ashton agreed that it occurred when it rained and said it would be looked into, in September, when there was a new budget.

46. On 27 May, the claimant had a meeting with Mrs Smith and a deputy head. We were provided with a note of the meeting (337) although the claimant in her evidence said that that was not a true reflection of the meeting.

47. Ms Atkinson was concerned about students arriving late at school and wandering around the school. She decided that those students should be signed in at reception and an issue was raised about uniform. On 8 June, the claimant sent an email to Ms Ashton-Ringland and others about students arriving past 8.50 am (346). She said it was difficult for heads of year to collect them and said that she had no practical solution for it, but would not be able to manage alone.

48. On 10 June, Sir Michael Wilshaw visited the school. The claimant returned a mobile telephone to a student, shortly before the inspector entered reception with Ms Atkinson and others. In her evidence, the claimant explained that she panicked and blurted out that the student was calling her mum because the girl who bullies her is at the entrance of the school and wanted to attack her. The claimant said that she recognised that she had used the wrong word. She apologised to Mrs Smith. When Ms Atkinson returned to reception, she told the claimant to be careful with what she said.

49. On 13 June, the claimant sent an email to the headteacher and others (350) asking how long students should be left in reception and giving an example of one who had been left there for some time. Ms Atkinson responded that it was not acceptable and asked others for a backup plan.

50. On 14 June, the claimant sent an email to Ms Ashton-Ringland about the radio signal failing (361).

51. On 27 June 2022, a health and safety auditor attended the school. When in reception she was told that she did not need to sign in or pass over the relevant documentation. She thought that the receptionist was unhelpful. A statement was provided (386a). The claimant denied that the receptionist was her. Ms Reynolds-Brown said CCTV footage had been obtained during the subsequent investigation which had showed it was. The CCTV was not retained. It was not shown to us. There was no record provided of it having been obtained and viewed by the investigator.

52. On 1 July, Ms Atkinson emailed Ms Reynolds-Brown (357) and asked for an update on Marius. We were told that he was the respondent's investigator, but, on this occasion, he was too busy to undertake the investigation. It was accordingly clear that Ms Atkinson had already decided that an investigation might be required. She went on to say "*This has been going on now for quite some time. Given the number of complaints and also what I witnessed in from of the lead Ofsted inspector I am gravely concerned having* [the claimant] *on my reception at present*". In her witness statement, when explaining the complaints which led to her deciding that an investigation was required, Ms Atkinson referred to six documents, two of which post-dated 1 July. Those were: a staff complaint of 8 April 2022 (264), a staff complaint of 20 May (323), a staff complaint of 26 May (331), a staff complaint of 1

July (359), a complaint from a parent of 7 July (264) (that was, at least in part, about the school's communication and contactability generally), and an email of 8 July from a staff member about an irate parent (368). Ms Atkinson was clear that the decision to undertake a disciplinary investigation into the claimant was her own decision.

53. On 7 July, Ms Atkinson emailed Ms Murray (the investigator appointed) and Ms Reynolds-Brown, referred to the parental complaint, and said "*I now have no alternative to but to insist that until we have an outcome, I will have to remove* [the claimant] *tomorrow from reception and give her office work to do*".

54. On 8 July, the claimant was called by Ms Murray and was informed she was to be redeployed due to complaints made against her. It was the claimant's evidence that she was told that she was not to speak to anyone about the investigation and was not to go back to reception duties. She was asked to fold letters and put them in envelopes, but that was a task she was unable to do due to osteoarthritis.

55. The claimant was sent a letter by Ms Murray dated 13 July (377). That said that matters were to be investigated formally under the respondent's disciplinary policy "*to determine whether your actions are considered misconduct/gross misconduct*" (Ms Reynolds-Brown said that the inclusion of gross misconduct was a standard part of the proforma document). Four allegations were listed which were (in summary): what the claimant said in front of Sir Michael Wilshaw on 10 June; the claimant's conduct when the health and safety auditor had visited; unspecified conduct towards parents which was said to have led to several complaints; and unspecified conduct towards colleagues. The letter notified the claimant of a meeting on 18 July, but that was subsequently moved to 19 July and the letter was re-issued (390).

56. The claimant described what occurred on 13 July as being the catalyst for her decision to resign. She told us that after that she was done. In her witness statement, she said that she could no longer cope with her anxiety and went off sick. The claimant was absent from work on ill-health grounds for a period.

57. An investigatory interview took place on 19 July attended by the claimant, Ms Murray, Ms Reynolds-Brown, and the claimant's trade union representative. We were provided with two sets of notes, one taken by Ms Reynolds-Brown and the other of unknown authorship. It was Ms Reynolds-Brown's evidence that the notes included some text which had been pre-written and some which was added. In the meeting, the claimant denied that the person on reception for the health and safety auditors was her, as she said she had nipped to the toilet. The notes provided ended by saying (in pre-written text) "*I appreciate that this is very difficult for you and I will endeavour to conclude the investigation as soon as possible. Thank you for meeting with me today and I will inform you of the outcome in due course*".

58. There was a dispute between the parties about what the claimant was told at the end of the investigation meeting. The claimant believed that the investigation was to progress over the summer and that was supported by the emails subsequently sent by her trade union representative. Ms Reynolds-Brown, in her witness statement, said that the claimant was informed that the investigation would resume in September. It was clear that the claimant knew that there was to be some

absence over the summer, including of the investigator. On this issue, we preferred the claimant's evidence. We found Ms Reynolds-Brown to have a surprisingly specific recollection of some things and not of others and noted that what she contended had been said was not supported by the notes made on the day.

59. In any event, it was Ms Reynolds-Brown's evidence that the investigator was due to be on holiday throughout the summer.

60. We were provided with a number of emails from the claimant's trade union officer seeking an update, including one on 1 August (407) in which he said it was unfair to leave this hanging over the claimant. An HR person responded to tell him that the investigator was on leave until 5 September. The Union representative chased again for a response on 15 August.

61. The claimant applied for a new job on or around 15 or 17 August 2022 after being told about the available vacancy. She was interviewed and subsequently was offered the new job by telephone on 25 or 26 August 2022.

62. On 30 August the claimant resigned by email (424). In her resignation she said "*Please accept this email as notice of my resignation from my position as staff receptionist. I have received an offer as a receptionist at* [another school] *and realise the opportunity is too exciting to decline. They have asked me to start ASAP and I would like to resign with immediate effect and would be grateful if you would accept this*". When being cross-examined, the claimant explained that the opportunity was one which was too exciting to decline. She also explained that she did not know that she was able to treat her contract as having been terminated with immediate effect if she had been constructively dismissed. The resignation was accepted and processed as having been effective immediately.

63. The claimant said that she resigned because she thought she would otherwise be dismissed. In cross-examination, she explained that it was implied to her that she was going to be dismissed and, even though she could not tell that one hundred percent, that was how it made her feel. She wanted to leave with dignity, she wanted to stay professional, and she wanted to receive a good reference (and was concerned about that because she said she knew of someone else who had left and had not).

64. The claimant filled in a form in which she sought to obtain advice from her trade union in the period between the end of her employment with the respondent on 30 August 2022 and her entering her first claim at the Tribunal on 6 October 2022. The claimant had previously been represented by a trade union representative at the investigation meeting on 19 July 2022. It was not entirely clear when she joined the trade union, but it appeared to have been at some point during the time when she had been at the Royton and Compton Academy.

65. The claimant entered her first claim at the Employment Tribunal on 6 October 2022, following ACAS Early Conciliation from 20-22 September 2022. In her claim form the claimant did not tick the box for an unfair dismissal claim. She said she was pursuing a claim for victimisation, treated unfairly, discrimination and safeguarding. In evidence she explained that when she said safeguarding that was whistleblowing.

66. The second Employment Tribunal claim was entered on 24 January 2023. In that form, the claimant ticked the unfair dismissal box.

67. We heard a lot of evidence. This Judgment does not seek to address every point about which we heard or about which the parties disagreed. It only includes the points which we considered relevant to the issues which we needed to consider in order to decide if the claim succeeded or failed. If we have not mentioned a particular point, it does not mean that we have overlooked it, but rather we have not considered it relevant to record it for the issues we needed to determine.

The Law

68. The relevant parts of Section 43B of the Employment Rights Act say:

> *"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –*
>
> *(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 or safety of any individual has been, is being or is likely to be endangered, or*
>
> *(e) that the environment has been, is being or is likely to be damaged"*

69. Section 43C provides that a disclosure to a worker's employer is a qualifying disclosure.

70. The word "*likely*" in section 43B requires more than a possibility or a risk that a person might fail to comply with a legal obligation or that health and safety is endangered, the information has to show that it was probable or more probable than not that there would be a breach or endangerment.

71. The necessary components of a qualifying disclosure are:

a. First, there must be a disclosure of information.

b. Secondly, the worker must believe that the disclosure is made in the public interest.

c. Thirdly, if the worker does hold such a belief, it must be reasonably held.

d. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f) of section 43B.

e. Fifthly, if the worker does hold such a belief, it must be reasonably held.

72. Unless all five conditions are satisfied there will not be a qualifying disclosure. Those steps are clear from the statute but were very clearly and helpfully summarised by HHJ Auerbach in **Williams v Michelle Brown AM** EAT/0044/19.

73. The first stage involves a consideration of whether there has been a disclosure of information. The correct approach to the disclosure of information was set out in the decision of the Court of Appeal in **Kilraine v London Borough of Wandsworth [2018] ICR 1850.** In that decision they highlighted that, on occasion, an allegation could be so general and devoid of specific factual content that it would not be a disclosure of information. However, there is not a rigid dichotomy between an allegation and information. In applying the statutory provision, the word "*information*" has to be read with the qualifying phrase, "*which tends to show* [etc]". In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in section 43B(1).

74. It is necessary to consider whether the employee held the belief that the disclosure tended to show one of the relevant forms of wrongdoing and whether that belief was reasonable. This involves subjective and objective elements. The test of what the claimant believed is a subjective one. Whether or not the employee's belief was reasonably held, is an objective test and a matter for the Tribunal to determine.

75. In **Chesterton Global Ltd v Nurmohamed [2018] ICR 731** Underhill LJ held that the same approach, involving both the objective and subjective elements, applies to the requirement that in the reasonable belief of the worker making the disclosure, it is made in the public interest. The respondent provided that Judgment as one of the authorities. Underhill LJ said:

> "*The Tribunal thus has to ask (a) whether the worker believed at the time he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable"*
>
> "*The statutory criterion of what is "in the public interest" does not lend itself to absolute rules, still less when the decisive question is not what is in fact in the public interest but what could reasonably be believed to be … The question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case*"

76. The mental element required imposes a two-stage test: (i) did the clamant have a genuine belief at the time that the disclosure was in the public interest; if so (ii) did she have reasonable grounds for so believing? In relation to motivation, in **Chesterton** Underhill LJ said:

> "*while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: … I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"*

77. **Blackbay Ventures Limited v Gahir (trading as Chemistree) [2014] ICR 747,** another Judgment relied upon by the respondent, highlighted the need for each disclosure to be identified by date and content and for each alleged failure or likely failure to comply with a legal obligation to be separately identified.

78. Section 47B of the Employment Rights Act 1996 provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by her employer done on the ground that the worker has made a protected disclosure. Under section 48(2) it is for the employer to show the ground on which any act, or deliberate failure to act, was done (where it is asserted that it was on the ground of having made a public interest disclosure). The employer must prove on the balance of probabilities that the act, or deliberate failure, was not on the grounds that the employee had done the protected act.

79. The correct approach is to place the burden of proof on the claimant in the first instance to show that a ground or reason (that is more than trivial) for detrimental treatment is a protected disclosure; then by virtue of 48(2) Employment Rights Act 1996 the respondent must be prepared to show why the detrimental treatment was done and if they do not do so adverse inferences may be drawn against them.

80. In determining whether a claimant has suffered a detriment as a result of having made a public interest disclosure, the Tribunal must focus on whether the disclosure had a material influence, that is more than a trivial influence, on the treatment - **NHS Manchester v Fecitt [2012] IRLR 64.**

81. In a detriment case, determining whether a detriment is on the ground that the worker has made a protected disclosure, requires an analysis of the mental processes (conscious or unconscious) of the employer acting as it did. It is not sufficient to demonstrate that ‘but for’ the disclosure, the employer’s act or omission would not have taken place. The protected disclosure must have materially influenced the employer’s treatment of the worker.

82. In his submissions, the respondent’s counsel also placed emphasis upon what was said in **London Borough of Harrow v Knight [1003] IRLR 140** and, in particular, in paragraph 16 of that Judgment. He submitted that, in order for liability to be established, we needed to find that: the claimant had made a protected disclosure; the claimant had suffered some identifiable detriment; the respondent had ”done” an act or omission (deliberate failure to act) by which the claimant had been ”subjected to” that detriment; and the act or omission had been done by the respondent “on the ground that” the claimant had made the identified protected disclosure.

83. A worker is subject to a detriment if she is put at a disadvantage. A worker suffers a detriment if a reasonable worker would or might take the view that they had been disadvantaged in the circumstances in which they had to work. The concept of detriment is very broad and must be judged from the viewpoint of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment.

84. For dismissal and section 103A of the Employment Rights Act 1996, the question is whether the principal reason for the dismissal was that the claimant made a public interest disclosure.

85. The unfair dismissal claim was a claim for constructive unfair dismissal. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed by her employer if:

> *"the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

86. The principles behind such a constructive dismissal were set out by the Court of Appeal in **Western Excavating (ECC) Limited v Sharp** [1978] ICR 221. The statutory language incorporates the law of contract, which means that the employee is entitled to treat herself as constructively dismissed only if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.

87. The term of the contract upon which the claimant relied in this case was the implied term of trust and confidence. In **Malik and Mahmud v Bank of Credit and Commerce International SA** [1997] ICR 606 the House of Lords approved a formulation which imposed an obligation that the employer shall not:

> *"…without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.***"**

88. It is also apparent from the decision of the House of Lords that the test is an objective one in which the subjective perception of the employee can be relevant but is not determinative. Lord Nicholls put the matter this way:

> *"The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances."*

89. Not every action by an employer which can properly give rise to complaint by an employee, amounts to a breach of trust and confidence. The conduct must be likely to destroy or seriously damage the relationship of confidence and trust.

90. Where there is a fundamental breach of contract by the employer, the employee may elect to accept the breach and bring the contract to an end, or treat the contract as continuing, requiring the employer to continue to perform it – that is affirmation. Where the employee affirms the contract, they lose the right to treat the employer's conduct as having brought the contract to an end. Affirmation can be express or implied. Mere delay will not, in the absence of something amounting to affirmation, amount, in itself, to affirmation. However, the ongoing and dynamic

nature of the employment relationship means that a prolonged or significant delay may give rise to an implied affirmation because of what occurred in that period.

91. On time and jurisdiction, the starting point is the wording of section 48(3) of the Employment Rights Act 1996. That section provides:

> *"An employment tribunal shall not consider a complaint under this section unless it is presented –*
>
> *(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of acts or failures, the last of them, or*
>
> *(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

92. The period is, of course, extended by any period of ACAS Early Conciliation.

93. Section 48(4) says:

> "*For the purposes of subsection (3) –*
>
> *(a) Where an act extends over a period, the "date of the act" means the last day of that period, and*
>
> (b) *A deliberate failure to act shall be treated as done when it is decided on;*
>
> *and in the absence of evidence establishing to the contrary, an employer … shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it is to be done"*

94. Section 111 of the Employment Rights Act 1996 has comparable provisions for the claim for unfair dismissal, save that under section 111(2)(a) the three-month period begins with the effective date of termination.

95. Whether it was not reasonably practicable for the claim to be entered in time, is a question of fact for us to decide. Key to the question, is why the primary time limit was missed. We must apply the words of the statute, that is whether it was not reasonably practicable. That does not mean: whether it was physically possible; or (simply) reasonable. Asking whether it was reasonably feasible to present the claim in time, is an alternative way of expressing the test. **Dedman v British Building and Engineering Appliances Ltd** [1973] IRLR 379 said that the words should be given a liberal interpretation.

96. For detriment, we must focus on the date of the act giving rise to a detriment, not the consequences that followed from it. It is sometimes necessary to distinguish between the act (or failure to act) and the detriment. Time runs from the date of the act, regardless of whether the claimant had any knowledge of the detriment that the act produced. For a series of similar acts, there must be some relevant connection between the acts. For acts to form part of such a series they must be found to have been unlawful.

Conclusions – applying the Law to the Facts

97. We did not reach our decision by following the list of issues in the order in which it was set out. We did not start with issue two, the time and jurisdiction issues in relation to the claim for detriment. We started by addressing the substantive issues in that claim (issues four to fourteen).

98. We considered each of the alleged protected disclosures set out in the list of issues (at issue four) and applied to them the five questions or necessary components which we have set out in the legal section, following on from the decision in the **Williams** case.

99. In the list of issues produced by Judge Callan following the preliminary hearing on 21 April 2023, she had identified that an issue to be determined for each of the alleged disclosures was whether the claimant believed that it tended to show that: a person had failed, was failing or was likely to fail to comply with a legal obligation (she said, for example, to apply safeguarding measures); or that the health or safety of any individual had been, was being, or was likely to be endangered. That was what needed to be considered under subsections (b) and (d) of section 43B(1) of the Employment Rights Act 1996. For no apparent reason, in the agreed list of issues provided for this hearing, that had been changed (for issue six) to the less technically correct and much broader issue of: whether the claimant believed that the disclosure of information showed one or more types of wrongdoing or failure listed in section 43B(1)(a)-(f).

100. In her witness statement, the claimant had placed reliance upon subsections (b), (d) and (e) of section 43B(1). Accordingly, we did not consider subsections (a), (c) or (f) which did not apply. In practice, for the alleged disclosures which we were considering, subsections (b) and (d) were closely related. The legal obligations upon which the claimant relied were the duty of care an employer owes to its employees and the health and safety obligations to which the respondent was subject to provide a safe working environment for its staff, students, and visitors. The issues were closely related to whether the claimant believed that the information disclosed showed that health and safety had been endangered, was being endangered, or was likely to be endangered. For subsection (e) we found that the claimant misunderstood what was required for the subsection to apply as she considered it to be a subsection which referred to the working environment. We accept that what is said in subsection (e) relates to the environment of the world and not a workplace environment (that is to perhaps what may be described as environmental issues) and did not find that for any of the alleged disclosures upon which the claimant relied that the claimant believed that what she was disclosing showed that the environment (in that sense) had been, was being, or was likely to be damaged.

101. For all of the alleged protected disclosures, we considered carefully what was said in the record or document at the time. We considered what the claimant told us in her evidence about the disclosure made. We considered the surrounding circumstances. The claimant did not expressly address for each alleged disclosure what exactly she had considered at the time that it showed. For her alleged protected disclosures collectively, she said that she did not know at the time that she was reporting a protected disclosure (something which the respondent emphasised in its closing submissions). However, what she went on to say in her witness statement, was that she now believed that raising issues was in the public interest and (far more importantly as what we needed to decide was what she believed at the time) "*at the time I knew in my heart that I am required to report any concerns and I was just doing my job trying to keep pupils and staff safe and improve the school*". We considered that evidence when we considered each of the alleged protected disclosures.

102. The first alleged protected disclosure was included in the list of issues as part of issue four. That was said to be an email the claimant sent to her line manager about abusive and threatening behaviour from parents, not feeling safe at work, and requesting support, on 30 September 2021 (201). We considered the content of that email carefully. We found that the claimant did disclose information within the email, as she provided examples of the abuse she said she was receiving. We then asked ourselves whether the claimant had reasonably believed that the disclosure of the information which she was disclosing was in the public interest? We noted that the content of the email was entirely focussed on the claimant herself and did not refer to others being affected (including anyone else working in reception). It did not address improvements required for the school. Based upon what the claimant said when disclosing the information, we did not find that she believed that the disclosure was being made in the public interest. Even had we done so, we would not have found it to have been reasonable to have done so. The email did provide information which showed that the claimant believed she was personally being put at risk and that she was not being provided with an entirely safe working environment, however the fact that the focus of those elements was on the claimant herself supported our decision that the claimant had not believed that the disclosure was made in the public interest when she made it. We did not find number four to be a protected disclosure.

103. In cross-examination, the claimant agreed that there was no email of 1 October 2021 as was referred to in the list of issues as protected disclosure (a) (the second one on the list). She said that the reference was to a meeting. Had we limited our consideration to an email of 1 October, there was no email and therefore we would not have found that a protected disclosure had been made. We looked at the claimant's further and better particulars (95) upon which the list of issues was based and noted that the claimant in it relied upon what was said in a meeting, not upon an email. As a result, we considered what the claimant had said in the meeting which took place on 1 October with Ms Ashton-Ringland. What the claimant said was discussed was set out at paragraph eleven of her witness statement and we have accepted the claimant's account of what was said. As we have already explained, we also considered what she said at paragraph forty-five of her statement. In the meeting the claimant did provide information, as she set out that students were not being escorted to reception and being left unattended and were tailgating visitors or staff to get through the main doors and leave the school. We accepted that the

claimant believed that disclosing that information was in the public interest, as she believed that students being left unattended in reception and leaving the school was information which was in the public interest. We found that it was reasonable to have believed it was in the public interest. We accepted that she believed that students leaving school unattended was something which tended to show that an individual's health and safety was likely to be endangered. That belief was reasonable. As a result, and having found that the claimant made a protected disclosure when she gave the information to Ms Ashton-Ringland in the meeting on 1 October because subsection 43B(1)(d) applied, we did not also need to consider whether subsection (b) also applied.

104. We next considered alleged disclosure (c), as it occurred prior to the disclosure relied upon as (b). That was an email to Mrs Smith on 6 October (206). It forwarded on an email from another member of staff and asked a question about what had been said in that email. There was information provided in that email, which was that the reception staff were not trained and that students had been left in reception when Mr Lewis had said they should not be. However, when we focussed upon what the claimant said in the email, we did not find that she believed that the disclosure was in the public interest. The focus was on what Mr Lewis had said and training. She was asking a question of her line manager's line manager about the proposed arrangement for the particular student. We did not find that, when she did so, she believed that was in the public interest and we would not have found it reasonable had she done so. We also did not find that when she said what she said she believed that she was disclosing information which tended to show that a person's health and safety had been, was being, or was likely to be endangered (and we would emphasise the requirement for both likely and endangered). Based upon the information she provided, we also did not find that she believed that it tended to show any breach of any legal obligation. It was not a protected disclosure.

105. Alleged protected disclosure (b) (205) was a further email sent in response to the same staff member's earlier email. This was an email to Mr Lewis. The email asked a question but, when considered alongside the previous email which had been sent, we did not find that it provided any information. Even had we found that it contained any information, we would not have found that the claimant reasonably believed that what she was providing was in the public interest or that either subsection (b) or (d) of section 43B(1) would have been satisfied for the same reasons as we explained for alleged protected disclosure (c).

106. Alleged protected disclosure (d) (222) was an email about cameras sent to Mrs Smith on 4 November 2021. That email did not disclose any information. It asked about it being put in an alternative position or covering a different area. We considered whether the statement that the waiting area was "*where it mostly kicks off*" was sufficient to amount to conveying information and, whilst we were mindful of the fact that conveying information is not a difficult test to meet, we did not consider that those words alone were sufficient to do so. In any event, we would not have found that the disclosure of that information could have reasonably been believed to be in the public interest, even had it been considered to be information and even had the claimant considered what was said to have been in the public interest.

107. Alleged protected disclosure (e) (199) was an email of 12 November from the claimant to Ms Ashton-Ringland. The email did provide information in that the claimant told her manager how busy reception had been. However, focussing on that information, the claimant did not believe that providing it was in the public interest and, had she done so, that would not have been a reasonable belief. We also would not have found, based upon the information provided, that the claimant reasonably believed that what she was providing satisfied the requirements of subsection (b) or (d) of section 43B(1).

108. Alleged protected disclosure (f) (232) was an email of 18 November to Ms Ashton-Ringland sent following two conversations which the claimant had with the headteacher. The email did provide information, because it informed Ms Ashton-Ringland that the claimant had spoke to the headteacher. However, that information (being the information provided) was not information which the claimant believed was in the public interest and, even had she done so, it would not have been reasonable to believe that. We also would not have found, based upon the information provided, that the claimant reasonably believed that what she was providing satisfied the requirements of subsection (b) or (d) of section 43B(1).

109. Alleged protected disclosure (g) (230/231) was an email sent by the claimant to her line manger on 19 November, copied to Mrs Smith. The email followed a meeting. It provided information about the claimant, the stress that she felt she was facing, and her concerns about lone working. It also provided information about the claimant's second conversation with the headteacher. We did not find that the claimant believed that the information she was providing was in the public interest, nor would we have found it reasonable for her to have done so. It was an email which was self-focussed. That is illustrated by the fact that the health and safety concerns raised by the claimant in the email, were her own.

110. Alleged protected disclosure (h) was said to be raising concerns to Mrs Smith on 1 December 2021. The claimant relied upon an email (241a) which was sent by Mrs Smith, not the claimant. There was no evidence of any disclosure by the claimant on 1 December 2021.

111. Alleged protected disclosure (i) was an email to Mr Lewis of 14 January 2022. That was the email in which the claimant detailed that a supply teacher had entered the school through the student gate and had needed to be brought back to reception for the claimant to sign him in. The claimant did provide information in the email. We found that she did believe that people inappropriately being given access to the site without being appropriately signed in was an issue which was in the public interest (considering the school and its students). The issue being raised by the claimant was an appropriate one to raise and we certainly understood that the claimant was raising something which could potentially be a health and safety issue. However, focussing upon the precise information which the claimant provided, we did not find that she believed that the information which she was providing showed that health and safety had been, was being, or would be endangered. The account was about a supply teacher, who was someone appropriately attending the site, who had been brought to reception, albeit not in the appropriate way. We also did not find that the claimant would have believed that the information showed a breach of a legal

obligation. Even had the claimant had the required belief, we would not have found it to have been reasonable for the information provided.

112. Alleged protected disclosures (j) and (k) were not two disclosures but were intended to be read together as a single alleged disclosure. That was highlighted by the claimant at the start of the hearing. There was no evidence that the claimant had disclosed any information at all about what occurred on 7 April, even though the situation had clearly involved the students' health and safety being endangered.

113. Alleged protected disclosure (l) was an email of 25 April 2022 (266) about a student who had been allowed to leave earlier than he should have been and had been returned by his parent. This had occurred because the claimant had not been told about the change in leaving time. The email sent disclosed information about what occurred on the day with the student. We found that the claimant did believe that disclosing this information was in the public interest because it was about the safety of the particular child and also other students (to which she referred in the email). It was reasonable for her to have that view. We also found that the claimant believed that the health and safety of the student had been endangered by being released from school earlier than he should have been and earlier than expected. We found that to be reasonable. As a result, we found that (l) was a protected disclosure.

114. We considered alleged protected disclosures (m), (n) and (o) together as they were all contained in the single email trail of 29 April 2020 (268-270). The emails began with Mr Lewis explaining that he had been asked to gather statements about an incident, and the subsequent email was the claimant providing that explanation. Unlike most of the alleged protected disclosures, it was not the claimant raising something, but the claimant responding to a request to explain. Within the claimant's email of 29 April, she clearly provided information as she gave her account about what had occurred. However, we did not find that she believed that doing so was in the public interest, she was simply responding to an investigation by explaining herself. Even had she believed it was in the public interest, we would not have found that to have been reasonable. The decision which the claimant reached with regard to the mobile phone was one that was all about the health and safety of the student, but that was not the reason for the information being disclosed and we would not have found that the claimant believed that what she was providing satisfied the requirements of subsection (b) or (d) of section 43B(1), or that such a belief would have been reasonable (had she done so).

115. Alleged protected disclosure (p) was an email of 5 May (281). Within it, the claimant provided information about what had happened. We did not find that the claimant believed that what she provided was in the public interest, nor would such a belief have been reasonable. The information the claimant provided was about what happened in reception, not about anything with a wider public interest. We also did not find that the claimant believed that what she was providing satisfied the requirements of subsection (b) or (d) of section 43B(1), or that such a belief would have been reasonable (had she done so).

116. Alleged protected disclosure (q) related to a meeting between Ms Ashton-Ringland and Mr Lewis on 20 May 2022. There was a note prepared by Ms Ashton-

Ringland (313) and an email detailing the outcome (324). We were not provided with any email from the claimant. What the claimant relied upon could not have been a disclosure from the claimant, and therefore it could not have been a public interest disclosure by her.

117. Alleged protected disclosure (r) was an email of 19 May 2022 (305). Within that email the claimant provided information. We did not find that the claimant believed she was providing information in the public interest, she was just proposing a different system which would assist her on reception. We also would not have found that any belief was reasonable. We also did not find that the claimant believed that what she was providing satisfied the requirements of subsection (b) or (d) of section 43B(1), or that such a belief would have been reasonable (had she done so).

118. Alleged disclosure (s) was an email of 18 May (307). We did not find that the email provided any information. It contained a request from the claimant for a reply to a previous email. From what was said, we also found it was clearly not considered to be information provided in the public interest, as it was focussed upon the claimant and the school's forthcoming Ofsted inspection. We neither found that the claimant believed that what she was saying was in the public interest, nor would it have been reasonable for her to have done so. We also did not find that the claimant believed that what she was providing satisfied the requirements of subsection (b) or (d) of section 43B(1), or that such a belief would have been reasonable (had she done so).

119. Alleged protected disclosure (t) was an email from the claimant to Ms Ashton-Ringland on 19 May 2022 about a student being sent to reception. It provided information about what had occurred with the student. The email concluded by stating that it was unacceptable to leave students with the claimant. We did not find that this was information the claimant believed to be in the public interest, as the email was focussed on the claimant and her responsibility and the school's image, not matters which could be in the public interest such as health and safety or safeguarding. It would not have been reasonable had she done so. We also did not find that the claimant believed that the information she was providing satisfied the requirements of subsection (b) or (d) of section 43B(1), or that such a belief would have been reasonable (had she done so).

120. Alleged protected disclosure (u) was the claimant raising concerns on 20 May to Ms Ashton-Ringland about students coming to reception unattended and staff disregarding instructions. The conversation led to an email from Ms Atkinson sent on 20 May (211/212) to the pastoral team in which she mentioned safeguarding and students being released from an exam. Based upon what the claimant evidenced (which we accepted), she did supply information, but we did not find that the discussion included the claimant providing information which she considered to be in the public interest or that she believed met the statutory requirements. It followed the previous day's email and was focused upon the claimant and reception operation.

121. Alleged protected disclosure (v) was about a letter sent to parents and the claimant's objection in an email of 24 May (327) to what had been said. In cross-examination the claimant accepted this had not been a protected disclosure and pointed out that her witness statement had not said that it was.

122. Alleged protected disclosure (w) in the list of issues was an email of 25 May 2022. The claimant did not address this in her witness statement and could not explain why when questioned. An email of that date was sent (332) to Mr Lewis and Ms Atkinson, copied to Ms Ashton-Ringland. It was simply an email which addressed school business about a student and, whilst it provided information, there was no evidence that it fulfilled the other criteria for a protected disclosure (or that the claimant believed so).

123. Alleged protected disclosure (x) (334) was an email to Ms Ashton about the reception intercom not working. The claimant provided information that it had not worked. There was nothing in the email which suggested that the claimant believed that what she was disclosing was in the public interest, as it focused on parents and visitors becoming angry towards the claimant when it did not work. This was not something which the claimant believed to be in the public interest, it would not have been reasonable had she done so, and we also did not find that the claimant believed that what she was providing satisfied the requirements of subsection (b) or (d) of section 43B(1), or that such a belief would have been reasonable (had she done so).

124. Alleged protected disclosure (y) (338) was the claimant raising concerns in a meeting with Mrs Smith and a deputy head. We were provided with a note of the meeting (337) although the claimant in her evidence said that that was not a true reflection of the meeting (although her statement provided no information about what was missing or not true). This meeting followed the claimant's concerns about the letter sent to parents. The notes recorded the claimant as disclosing information about her own health. The claimant's own evidence did not record her providing any other information, she was complaining about an additional duty and that no one had thought-through the letter to parents. The information the claimant provided was all about the claimant, and we did not find that she believed it was in the wider public interest. It would not have been reasonable for her to so believe. We also did not find that the claimant believed that what she was providing satisfied the requirements of subsection (b) or (d) of section 43B(1), or that such a belief would have been reasonable (had she done so).

125. Alleged protected disclosure (z) was an email of 8 June to Ms Ashton-Ringland and others about students arriving past 8.50 am (346). This appeared to have followed an increased focus on students arriving late, to stop them wandering around the school. We understood why the claimant did not feel the additional requirements imposed on her were entirely fair or why that was her role. In the email she provided information about the number of students. However, that information was not information she believed to be in the wider public interest; she believed it was about her role and being overstretched. We accepted her evidence that an element was concern about herself being put in danger when being left alone and asked to challenge difficult students, which did involve concerns about health and safety and a safe working environment, but the personal focus of those risks reinforced that it was not believed to be in the wider public interest (and would not have been reasonable if it had).

126. Alleged protected disclosure (aa) was an email of 13 June to the headteacher and others (350), asking how long students should be left in reception and giving an

example of one who had been left there for some time. The claimant provided information about the student. Whilst the claimant did, in her evidence, make a reference to safeguarding, the information she provided was really about a system breakdown. It was not acceptable (as Ms Atkinson's response said), but we did not find that the claimant genuinely considered this to be information she was providing in the public interest and would not have found it reasonable had she done so. It also did not meet the statutory requirements.

127. Alleged protected disclosure (bb) (361) was an email to Ms Ashton-Ringland about the radio signal failing on 14 June. She provided information about the issue with the radio. In her witness statement, the claimant contended that this left her in a vulnerable position. As a result, we did not find that the claimant believed that was in the public interest as it was focussed upon her own health and safety and well-being. It would not have been reasonable had she done so.

128. Alleged protected disclosure (cc) was about sending the claimant's line manager concerns about two SEND students. The claimant said that she had done so in evidence, but provided no page numbers for where she had done so. She gave no genuine account of what information was provided and when. Based upon the evidence provided, we were unable to find that a protected disclosure was made.

129. Alleged protected disclosures (dd) and (ee) were in practice a summary of the specific matters we have addressed. They did not add anything to the claimant's case and, based upon what was asserted, we were unable to find that any other protected disclosures had been made.

130. As we have explained, we found that the following were protected disclosures which the claimant made: what she said to Ms Ashton-Ringland on 1 October 2021 in a discussion (being alleged protected disclosure (a), albeit not quite what was relied upon in the list of issues at (a)); and what was said in an email of 25 April 2022 sent to Mr Lewis and others about what had happened with a student leaving the school (l).

131. We then turned to consider the detriments alleged (issues eleven to fourteen). We would observe that the detriments were somewhat non-specific which made consideration more difficult, particularly when considering causation and dating the alleged detriment. Nonetheless, as far as we were able, we considered them.

132. Detriment 11(a) was the claimant's contention that she was given more work than she was capable of doing. We understood that to be a complaint that the claimant had more work to do in reception than she could handle. We had some sympathy for the claimant based upon the number of calls she alleged were made and the other tasks she described. None of the respondent's witnesses who gave evidence were genuinely in a position to tell us about the claimant's workload. We accepted that having a high workload is capable of being a detriment, albeit we were not provided with sufficient evidence to genuinely ascertain that in this case. However, turning to issue fourteen, there was absolutely no evidence whatsoever that the level of the claimant's workload was influenced at all by the disclosures which we have found were made.

133. Detriment 11(b) was the respondent not taking the claimant's concerns seriously. We accepted that the respondent did send emails to staff and letters to parents in response to issues the claimant had raised, some of the time. Meetings were also arranged. We accepted the claimant's evidence that any such steps taken were somewhat ineffectual and, on occasion, inconsistent. We would have expected any organisation being told that a member of staff was frequently being subjected to abuse, to have done more than send the limited letters provided. We therefore did find that the respondent did not treat the claimant's concerns as seriously as they could have done, and certainly they did not actually resolve the issues which caused her concerns. We had to consider detriment from the claimant's perspective (albeit objectively) and therefore found that she was subjected to a detriment. However, applying issue fourteen, we did not find that any such failure was as a result of the protected disclosures which we found to have been made.

134. We did not find detriment 11(c) to be a detriment for the claimant.

135. For detriment 11 (d), the claimant did not have first aid training, nor was she provided with any training specific to students with special needs. That was not a detriment for the claimant as a receptionist, where it was not a requirement for her role to have that training.

136. The respondent did instal a camera (11(e)), but not in the place which the claimant thought it should have done. She was grateful that they had done so at the time. She suggested another camera or an alternative field of vision for that camera. The headteacher proposed an additional camera should be installed and we understood it has been since the claimant's employment ended. This was not a detriment for the claimant and, even if it had been, it was nothing whatsoever to do with the protected disclosures we found.

137. The failure to ensure the radio was in good working order (detriment 11(f)) was a detriment for the claimant given that she was instructed to use the radio and it was an important method of communication for her in her role. However, there was no evidence whatsoever that the radio issues, or the failure to address them, were because of the protected disclosures which we have found were made.

138. We understood why the claimant was concerned about the matters set out as detriment 11(g). We did not find that those issues were a detriment for the claimant.

139. We have already addressed the issue of abuse of the claimant when considering detriment 11(b). We accepted that the claimant herself expressed to the respondent that issues caused her stress. To that extent and looked at from her perspective, the inability to resolve those issues could be viewed as a detriment. However, there was no evidence that any steps taken or not taken (as relied upon for detriment 11(h)) were materially affected by the protected disclosures the claimant had made.

140. Alleged detriments (i) and (j) were not clear, but did not add anything to the decisions that we have already explained.

141. Accordingly, as a result, we did not find that the claimant suffered any of the detriments alleged on the grounds that she had made either, or both, of the protected disclosures which we found she had made (in October 2021 and April 2022).

142. Turning to the issue of time and jurisdiction (issue two), the first claim entered was for detriments arising from a public interest disclosure. That was entered at the Tribunal on 6 October 2022, following ACAS Early Conciliation which was from 20-22 September 2022. As a result and calculating three months from the start of the period of Early Conciliation, any alleged detriment which occurred on or after 21 June 2022 would have been brought within time, but (without considering whether it was part of a series of similar acts or failures or whether an extension of time should apply) anything earlier would not. We did not agree with the respondent's submission that the relevant date was 4 July.

143. As we have already said, the non-specific nature of the detriments relied upon made dating them difficult. Nonetheless we found that all of the detriments relied upon occurred prior to 21 June 2022. We were not able to date exactly when each of them occurred. However, we particularly noted that the claimant's case was that the failure to take her concerns seriously extended from September or October 2021 and continued. Whilst the detriments may therefore have carried on passed the relevant date, the respondent's failure would have occurred much earlier and that is the crucial date for determining when the detrimental act (or failure to act) occurred. On that basis, the claim was not entered within the time required. We needed to apply the test of whether it was reasonably practicable to have entered the claim in time. The claimant is an individual who was capable of researching time limits, she had access to a trade union representative, and there was no real reason why the claim was not entered earlier. Our decision was that it was reasonably feasible or practicable for the claimant to have entered her claim for detriment in time and therefore we did not have jurisdiction to determine that claim. Nonetheless we did, as we have explained, consider the claim on its merits in any event.

144. Turning to the unfair dismissal claim and time/jurisdiction, the second claim form was entered at the Tribunal on 24 January 2023. That was the first time the claimant had claimed unfair dismissal. The effective date of termination was 30 August 2022. As a result, that claim was not entered within the period of three months and was out of time. In the first claim form the claimant did not claim unfair dismissal. She did not tick the box (even thought the details for the box spell out constructive dismissal is included). She did not include any content which asserted unfair or constructive dismissal.

145. We needed to consider whether it had been reasonably practicable to have entered the claim for unfair dismissal in time. The simple answer was yes it was. That was for the reasons we have already given as they related to the first claim, but strongly reinforced by the fact that the claimant did enter a claim form within what would have been the time required for unfair dismissal and therefore it would have been reasonably practicable for her to have included an unfair dismissal claim in it. We therefore did not have jurisdiction to consider the claim for unfair dismissal.

146. As a result of that decision, we have not needed to explain what we would have found in the same detail as otherwise we would have done. We did consider the constructive dismissal claim in any event and have provided our decision briefly.

147. We focussed on the question of why exactly it was that the claimant resigned (issue seventeen). We found, based upon the claimant's evidence and in particular what she said in cross-examination, that the reasons for the claimant's resignation were that she thought she was going to be dismissed, she wanted to leave with respect and a reference, and (to an extent) because she obtained a new job which she said was an exciting opportunity (as she said in her resignation email). We did not find that she resigned for any of the reasons listed at paragraph sixteen. The predominant reason for resignation was to avoid dismissal. That was a sensible reason for resigning, but not one that amounted to constructive dismissal (in the circumstances of this case). As a result, the claimant was not constructively dismissed, because the reasons she alleged were not the reasons for her resignation, her contract was not fundamentally breached, and she was not entitled to treat herself as dismissed under the Employment Rights Act 1996.

148. We would add that we had some concerns about the investigation process followed by the respondent, had we needed to consider it. There were procedural errors, including the commissioning person for the investigation being one of the complainers. The explanation for the process appeared to rely upon complaints made after the decision was made to investigate. Perhaps most problematically, an employee was warned that she was facing an investigation which could lead to dismissal for gross misconduct immediately prior to the summer holidays, when no progress whatsoever was made during the summer break and, from the evidence, it appeared that no progress was ever going to have been made. The respondent also appeared to show a lack of empathy to the claimant and the issues she was facing, and that was reflected by pursuing a disciplinary investigation rather than taking a more supportive approach (which might have been appropriate). In her submissions, that claimant stated that the lack of evidence was extremely concerning and made reference to the lack of CCTV which she claimed would have showed that it was not her for one of the allegations; we agreed that it was concerning. However, for the reasons we have already explained, we did not need to address and determine whether the things the claimant alleged amounted to a breach of the duty of trust and confidence, and we were mindful that had we needed to have done so, we would have needed to have focussed on the issues raised by the claimant and relied upon as listed.

Summary

149. For the reasons explained above, we found that the claimant did make two protected disclosures. Those disclosures were not the reason for any detriments alleged. Neither claim was brought within the time required and we did not have jurisdiction to consider either the claim for detriment or the claim for constructive unfair dismissal.

Employment Judge Phil Allen

5 November 2024

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

11 November 2024

FOR THE TRIBUNAL OFFICE

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

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

Annex
List of Issues

Claims

1. The claimant brings the following claims:
    a. Detriments (protected disclosures); and
    b. Unfair dismissal.

Whistleblowing (out of time jurisdictional issues)

2. Whether the claimant's whistleblowing claims were brought in time, i.e. before the end of the period of three months beginning with the date of the act to which the complaint relates or, where that act is part of a series of similar acts or failures, the last of them pursuant to section 48(3)(a) Employment Rights Act 1996.

3. If not, whether the Tribunal is satisfied that it was not reasonably practicable for the claimant's claims to be presented in time pursuant to section 43(3)(b) of the Employment Rights Act 1996.

Protected disclosures

4. The claimant alleges that she made the following qualifying disclosures: Emailing her line manager about abusive and threatening behaviour from parents, not feeling safe at work and requesting support on 30 September 2021.

    a. Emailing her line manager about students being left unattended in reception on 1 October 2021.

    b. Emailing the Safeguarding Lead regarding her concerns about an autistic student on 6 October 2021.

    c. Emailing the Headteacher's PA regarding her concerns about autistic and sick students being left in reception on 6 October 2021.

    d. Raising concerns about cameras in reception to the Headteacher's PA in person on 4 November 2021.

    e. Emailing her line manager about abusive parents and a lack of support on reception on 12 November 2021.

    f. Emailing her line manager and the Headteacher about safeguarding concerns on 18 November 2021.

    g. Emailing her line manager and the Headteacher's PA about a rota being put in pace on 19 November 2021.

h. Raising concerns about pupils being left unattended in reception to the Headteacher's PA on 1 December 2021.

i. Emailing the Safeguarding Lead about concerns about a new supply teacher walking straight on site on 14 January 2022.

j. Emailing the Head of Year 11, the Safeguarding Lead, the Deputy Head, the Headteacher's PA and the Assistant Headteacher for Behaviour about concerns

k. about students being trapped between two doors in reception on 7 April 2022.

l. Emailing her line manager and the Safeguarding Lead about a vulnerable student left in reception on 25 April 2022.

m. Emailing the Safeguarding Lead about an incident with a student and her mobile phone on 28 April 2022.

n. Emailing the Safeguarding Lead about an incident with a student on 29 April 2022.

o. Raising concerns to her line manager about the incident with the student on 29 April 2022.

p. Emailing her line manager about student behaviour in reception on 5 May 2022.

q. Emailing her line manager and the Safeguarding Lead and a follow up conversation about concerns over students waiting in reception in May 2022.

r. Emailing her line manager about a vulnerable student left in reception on 19 May 2022.

s. Emailing her line manager about students leaving early on 18 May 2022.

t. Emailing her line manager about a vulnerable student left in reception on 19 May 2022.

u. Raising concerns to her line manager about students coming to reception unattended on 20 May 2022.

v. Emailing her line manager and the Deputy Head about letters to parents on 24 May 2022.

w. Emailing her line manager, the Safeguarding Lead and the Headteacher about an ill student left in reception on 25 May 2022.

x. Emailing the Site Manager about the reception's intercom on 26 May 2022.

y. Raising concerns about PA support, stress levels and safeguarding concerns in a meeting with the Deputy Head on 27 May 2022.

z. Emailing her line manager, the Safeguarding Lead and the Assistant Headteacher for Behaviour about students arriving late on 8 June 2022.

aa. Emailing her line manager, the Safeguarding Lead and the Assistant Headteacher for Behaviour about students arriving late on 13 June 2022.

bb. Emailing her line manager about poor radio signal on 14 June 2022.

cc. Emailing her line manager about concerns about two SEND students throughout 2022.

dd. Raising concerns to her line manager about safeguarding and health and safety in June 2022.

ee. Expressing concerns about safeguarding to the Safeguarding Lead throughout 2021 and 2022.

5. Whether there was a disclosure of information.

6. Whether the claimant believed that the disclosure of information showed one or more types of wrongdoing or failure listed in section 43B(1)(a)-(f).

7. Whether that belief was reasonable held.

8. Whether the claimant believed that the disclosure of information was in the public interest.

9. Whether that belief was reasonably held.

10. The respondent denies that the claimant made a qualifying disclosure.

Detriments

11. The claimant alleges that the respondent subjected her to the following detriments:

a. Being given more work than she was capable of doing.

b. Not taking her concerns seriously.

c. Failing to provide space and treatment for a sick child.

d. Failing to acknowledge that she had no first aid training or special education needs training.

e. Failing to instal a camera in the waiting area.

f. Failing to ensure the radio was in good working order in case of emergencies/lockdowns.

g. Failing to rectify issues with security meaning that parents and students could visit and leave the school premises on their own accord.

h. Failing to protect both her and students from harm.

i. Failing caused by deviating from a known process. I.E. Safeguarding/Health and Safety.

j. Failing caused by system breakdown.

12. Whether the alleged detriments occurred as stated by the claimant.

13. Whether the alleged detriments amount to detriments.

14. Whether the alleged detriments occurred on the grounds that the claimant made a protected disclosure.

Unfair dismissal

15. The respondent accepts that the claimant has sufficient continuity of service for an unfair dismissal claim.

16. Whether the respondent's conduct amounted to a fundamental breach of contract such as to have entitled the claimant to have treated herself as constructively dismissed, that being a serious breach of trust and confidence. The claimant relies on the following conduct by the respondent as amounting to a serious breach of trust and confidence and duty of care:

    a. The lack of communication and not answering questions put forward by the claimant and Union Rep after the investigation meeting on 19 July 2022, in particular in relation to the claimant's mental health.

    b. Informing the claimant that she could not discuss the investigation with her line manager because it was confidential.

    c. Breaching an agreement from July 2020 which provided the claimant could discuss any issues with her line manager.

    d. Failing to send the minutes of the investigation meeting on 19 July 2022.

    e. Failing to ensure the claimant's working environment was safe.

    f. Failing to give the claimant the full support she needed to do her job.

    g. Poor working conditions, having an impact on the claimant's mental health.

h. Requesting to attend an “informal meeting” which was held by a “Deputy Head” after I mentioned I was going to put in a grievance.

17. Whether the principal reason for the claimant’s resignation was the respondent’s conduct.

18. Whether the claimant waived such alleged breach of contract by her conduct.

19. Whether the dismissal of the claimant was also an unfair dismissal having regard to the provisions of section 98 of the Employment Rights Act 1996.

20. Whether the claimant was dismissed as a result of making a protected disclosure.