EMPLOYMENT TRIBUNALS

Claimant: Ms Elaine Masters

Respondent: London Underground Limited

Heard at: London South

On: 9th, 10th, 11th, 12th, 13th December 2024

Before: Employment Judge Tueje

REPRESENTATION:

Claimant: In person
Respondent: Mr Salter (counsel)

RESERVED JUDGMENT

JUDGMENT

The complaint of being subjected to detriment for making a protected disclosure is not well-founded and is dismissed.

REASONS

INTRODUCTION

1. The claimant has been employed by the respondent since 29th October 2001, initially as a station assistant; she is currently employed by the respondent as a Trains Manager.

2. Her claim is brought under section 47(B) of the Employment Rights Act 1996. The claim follows an e-mail sent by the claimant on 27th April 2018 to Nick Dent, the respondent's Director of Line Operations, attaching a document titled *"Outline of events".* It is a 22-page document, which the claimant says contains the 7 qualifying disclosures relied on for the purposes of her claim. The claimant states that as a consequence of making those disclosures, she was subjected to 19 separate detriments.

3. Early conciliation started on 11th August 2022 and ended on 22nd September 2022. The claimant presented her ET1 claim form to the Tribunal on 20th October 2022. The respondent's ET3 response form is dated 23rd November 2022, and it relies on Amended Grounds of Resistance dated 7th December 2023.

4. At a preliminary hearing on 15th September 2023, the Tribunal made a case management order setting out the list of issues to be determined at the final hearing. By paragraph 4, the claimant was required to provide additional information, which her former representative e-mailed to the Tribunal on 22nd September 2023.

5. The matters which the Tribunal has to determine are based on the list of issues prepared following the preliminary hearing on 15th September 2023, and the additional information provided on behalf of the claimant on 22nd September 2023. Those matters are set out at paragraphs 20 to 26 below.

6. The final hearing was originally listed as a 7-day hearing. However, prior to the hearing, the parties were notified that due to the lack of availability of judges and non-legal members, the claim was to be heard by a judge sitting alone over 5 days from 9th to 13th December 2024.

7. At the start of the hearing on 9th December 2024, this was reiterated to the parties with reference to paragraph 28 of the Presidential Guidance on Panel Composition.

8. 9th December 2024 was spent primarily dealing with the documents to be relied on during the final hearing.

9. The Respondent had provided the following documentation:

    9.1 A 940-page hearing bundle (the "Hearing Bundle");

    9.2 A 202-page bundle of the claimant's documents (the "Supplementary Bundle"); and

    9.3 A 5-page Opening Note prepared by Mr Salter, counsel for the respondent.

10. The claimant complained that certain documents she had asked the respondent to include in the Hearing Bundle were omitted from both of the above bundles provided by the respondent. She therefore wished to rely on her own additional bundle of documents. The documents in this additional bundle were not paginated. They were presented in around 51 individual plastic document folders; each folder containing between 1 to 20 pages of documentation. The claimant had prepared sufficient copies for use by the parties, the Tribunal and for witnesses.

11. Mr Salter expressed some concern about having insufficient time to consider and/or take instructions on any new documents as may be required. However, it became apparent that, after dealing with documents and allowing for reading time, the substantive hearing would begin on 10th December 2024. Mr Salter agreed that allowed him sufficient time to deal with any new documents that may be contained in the claimant's additional bundle. Therefore, the claimant was given

permission to rely on the additional bundle of documents (the "Additional Bundle"). Mr Salter noted that some documents in the "Additional Bundle" contained sensitive personal information, so it was agreed that if either party wished to make an application during the course of the hearing for anonymity under rule 50 (now rule 49), that application would be considered.

12. Two more documents were admitted which the claimant wished to rely on: an Incident Reporting Form (reference number IRF000430251) and the respondent's Individual Grievance Policy and Procedure document.

13. The claimant relied on the following written evidence:

    13.1 An undated witness statement of Elaine Masters;

    13.2 An e-mail sent by Garry Allan on 20th November 2024 titled *"Account of our meeting";*

    13.3 An e-mail sent by Mark O'Donnell on 29th November 2024 titled *"Account of events involving Bill Wilkin",* in which Mr O'Donnell approved the contents of an earlier e-mail sent to him on 27th November 2024;

    13.4 An e-mail from Chris Bates titled *"For your confirmation"* approving the contents of an e-mail sent to him on 20th November 2024; and

    13.5 An e-mail from Pasquale Romano titled *"Account of Edgware Road"* approving, with some specified qualification, the contents of an e-mail sent to him on 5th December 2024.

14. The claimant's witness statement provides a comprehensive account of events that have taken place during her employment, although some parts of her statement appear to be incomplete. For instance, there seem to be various reminders to herself to insert further information (e.g. at paragraphs 93, 103, 202, 210, 211, 212, 245, 261, 265 to 269, 272 etc. of the claimant's statement). Some paragraph numbering in her statement is out of sequence, but it is paginated and is 34 pages long.

15. The respondent relied on the following witness statements from its current and former employees:

    15.1 Witness statement of Nick Dent, Director of Customer Relations;

    15.2 Witness statement of Steve Manuel (LUCC Manager);

    15.3 Witness statement of Amy Owen (Head of Customer Operations - Bakerloo and Piccadilly Lines);

    15.4 Witness statement of Dale Smith (Head of Customer Operations - Jubilee and Northern Lines);

    15.5 Witness statement of Peter Tollington (retired Head of Modernisation);

15.6 Witness statement of Roy Victor (Asset Systems and Improvement Manager); and

15.7 Witness statement of Margaret Waite (Head of Customer Operations on Central, Waterloo and City, and Victoria Lines).

16. Both parties relied on written submissions provided to the Tribunal on 13th December 2024, the claimant providing 5-page written submissions; the respondent providing 22-page written submissions.

17. The Tribunal also heard oral submissions from the parties.

18. The Tribunal reserved its decision, which is now provided below.

ISSUES FOR THE TRIBUNAL

19. The Issues for the Tribunal to determine are as follows.

20. Time limits

20.1 Whether the claim was made either within three months of the act complained of, or within three months of the last in a series of similar acts complained of?

20.2 If the claim was not made within the periods specified above, was it reasonably practicable for the claim to have been made within the time limit?

20.3 If it was not reasonably practicable, was the claim made within a reasonable period?

21. Protected Disclosures

21.1 Whether the disclosures the claimant relies on, which were contained in the e-mail sent to Mr Dent on 27th April 2018, are qualifying disclosures as defined by section 43B of the Employment Rights Act 1996. The disclosures relied on are as follows (as recorded at paragraphs 2.1.1.1.1 to 2.1.1.1.7 of the case management order made on 15th September 2023):

(i) John Doyle (General Manager) breached a whistleblower's confidentiality and identified him by announcing in a team meeting with the Claimant that someone had made a protected disclosure.

(ii) That Margaret Waite input false notes onto the Competence Management System ("CMS") to inflate the number of train operator assessments she had made. This was used to misrepresent her work outputs such that she was in a higher band for performance-related pay and overtime pay.

(iii) That Kieron Dimelow intentionally gave unrecorded time off to Tony Collins, to inflate the Edgeware Road depot's staff attendance

figures score card. Those recordings were used to increase the amount of bonus pay Kieron Dimelow was entitled to.

(iv) That Margaret Waite and Kieron Dimelow had discriminated against Steve Ostrich and Rob Hallinan by using their perceived disabilities as grounds to attempt to move them out of their positions.

(v) That Mr Ali (Train Operator) should not have been put back on public-facing duties at Liverpool Street then East Finchley station gate line following a violent incident at work. This put both staff members and the public in danger given the level of aggression previously exhibited and the fact he was in possession of a knife.

(vi) That Kieron Dimelow did not carry out an assessment of the Claimant's safety-critical role, but instead input into the respondent's CMS, a false performance rating of 2.

(vii) That Margaret Waite had not correctly categorised a 'Signal Passed at Danger' ('SPAD') incident on Mr Ali's holistic report, which should reflect an accurate account of SPADs to prevent reoccurrence and a risk to train operators and passengers.

22. The Tribunal also needs to consider in respect of each qualifying disclosure whether:

22.1 The claimant disclosed the information;

22.2 The claimant believed the disclosure of information was made in the public interest?

22.3 That belief was reasonable.

22.4 She believed the disclosure tended to show the respondent:

(i) breached any legal obligation (as regards paragraph 21.1(iv) above, the legal obligation is an obligation under the Equality Act 2010); and/or

(ii) endangered the health and safety of any individual.

22.5 That belief was reasonable.

23. If the claimant made a qualifying disclosure, it is agreed the disclosure was protected because it was made to the claimant's employer.

24. The Tribunal also will consider whether the claimant has been subjected to an unlawful detriment. In deciding what detriment, if any, the claimant was subjected to, the Tribunal will consider the matters set out at paragraphs 24.1(i) to 24.1(xix) below.

24.1 Namely, whether the respondent did any of the following (as recorded at paragraphs 3.1.1 to 3.1.19 of the case management order):

(i) Steve Manuel did not conduct the Claimant's end of year performance review within the correct window, between 4 April 2022 - 13 May 2022;

(ii) Steve Manuel and Margaret Waite's decision on or around 13 May 2022 to prevent the Claimant from applying for a secondment;

(iii) Steve Manuel inputting a negative performance rating and negative review notes onto the Claimant's performance record on or around 6 June 2022 and a further negative performance rating and negative review notes on 13 June 2022;

(iv) Steve Manuel inputting equivalent negative performance rating on the Claimant's performance-related pay letter, with wording that she was receiving remedial help, on or around 3 August 2022;

(v) Margaret Waite, Nick Dent and Amy Owen's decision on 23 September 2022 to reject the Claimant's expression of interest for a second secondment;

(vi) Feedback on being unsuccessful based on false performance rating on 23 September 2022;

(vii) On or around 3 October 2022 Margaret Waite entered the Claimant's workplace contrary to established practice that parties involved in an investigation to avoid contact where possible during a grievance and in breach of the post-mediation agreement;

(viii) On or around 12 October 2022 the Claimant's application form for a permanent promotion Train Operations Manager position was rejected by a panel consisting of Margaret Waite and Dale Smith before the interview stage;

(ix) On or around 5 October 2022 Margaret Waite misled Roy Victor that the Claimant had inappropriately contacted her;

(x) On 17 November 2022 Roy Victor issued an outcome of his investigation into the Claimant's grievance of *"no case to answer*". The investigation failed to consider the Claimant's disclosures, and whether Steve Manuel or Margaret Waite had bullied her as a result;

(xi) Margaret Waite marked the Claimant's application for a permanent position, when she should have recused herself from this role as the Claimant had an outstanding grievance against her;

(xii) Claimant was not provided with feedback on her application for permanent promotion for over two months, which meant she was out of time to appeal against the decision;

(xiii) During the investigation hearing on 21 February 2023 Peter Tollington failed to consider the Claimant's disclosures as part of his investigation of her grievance appeal, or consider omissions of evidence relating to her false performance reviews in the original grievance;

(xiv) Instead, Peter Tollington focused his questioning on the Claimant's performance review rather than her allegations of victimisation;

(xv) On 13 March 2023 Peter Tollington did not uphold the Claimant's appeal;

(xvi) May 2023 Nick Dent's email response reviewing the Claimant's appeal contradicted the assurance given in 2018 that her applications for career progression would be treated fairly and on merit;

(xvii) On 14 June 2023 Nick Dent refused to answer the Claimant's question relating to the feedback she received on her application for Train Operations Manager.

(xviii) On 2 July 2023 Nick Dent's email stating that matters had been *"already dealt with in the grievance outcome";*

(xix) Gyn Barton (Chief Operating Officer) response to the Claimant's complaint against Nick Dent.

25. If the Tribunal finds the respondent did any of the things referred to at paragraphs 24.1(i) to 24.1(xix) above, by doing so, did it subject the claimant to detriment.

26. If so, was it done on the grounds that the claimant made any of the protected disclosures referred to at paragraphs 21.1(i) to 21.1(vii) above.

FINDINGS OF FACT

27. Unless otherwise stated, the facts below are either agreed or unchallenged.

28. The findings of fact were reached on the balance of probabilities, having considered the parties' arguments and the witnesses' evidence, including the documents I was referred to in that evidence, and taking into account my assessment of the evidence.

29. I heard evidence from 8 witnesses from 10th to 13th December 2024, including regarding events going back to 2010. Additionally, the parties' witness statements and written accounts, plus the two bundles provided by the respondent and the claimant's additional bundle, I had in excess of 1500 pages of documentation. A proportion of the documentation provided background information. But due to the quantity of written and oral evidence, it has not been possible in this reserved judgment to refer to each matter raised in the evidence. Therefore, the findings of fact referred to in this reserved judgment are those most relevant to the issues, and those necessary to determine the issues.

30. It has also not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. Nor have I referred to every document that I read and/or took into account in the findings below, but that does not mean it was not considered if it was referred to in the evidence and was relevant to an issue.

31. The claimant has been employed by the respondent since 2001 in different roles, initially being recruited as a station assistant. She has also worked at various locations.

THE CLAIMANT'S DISCLOSURES

32. The disclosures the claimant relies on relate to events that occurred between 2010 to around 2012, and the events themselves are dealt with at paragraphs 33 to 46 below.

33. The claimant states that in 2010, a General Manager, John Doyle, announced at a team day, that there was a whistleblower in the team who had contacted HR making allegations of fraud regarding those present in the room.

34. Also in 2010, the respondent embarked on an Operational Restructuring Programme, as part of which, the newly created position of Train Operations Standards Manager ("TOSM") was introduced. The claimant successfully applied for the new post. Consequently, in 2011 both she and Margaret Waite were TOSMs at Edgware Road, reporting to the Train Operations Manager ("TOM"), who, from October 2011 was Mr Dimelow.

35. The claimant and Ms Waite both state Edgware Road had a reputation for its chronic underperformance. They also both state the TOSM role was very demanding. In the claimant's outline of events document she writes (see page 164 of the Hearing Bundle):

> *Even from early on Margaret had been claiming that her workload was bigger than it was, and bigger than mine. Ready to discuss the unacceptable workload with our management, I wrote a list of the hours that it took to carry out the various tasks that the T.O.S.M. role consisted of. When I ran it by her, the comment she had written at the bottom falsely conveyed that she was doing at least 6 hours more work than me a week. …*
>
> *After Kieron's arrival, Margaret began falsely conveying by emails to our management that she was doing work that either did not take place or that had been done by others including me and that tiny tasks she did were labour intensive.*

36. The claimant is also highly critical of Mr Dimelow, and accuses him of adopting *"fraudulent/corrupt and unsafe practices",* and she also claims he falsified records to increase his bonus pay. In particular, she states that he intentionally gave unrecorded time off to a Mr Collins to inflate the depot's staff attendance figures.

37. The claimant states that Mr Dimelow's alleged practices were at odds with her own work ethic, and consequently, she alleges he ousted her from Edgware Road. She claims Ms Waite played a significant role in her departure too.

38. The claimant has made allegations about Ms Waite and Mr Dimelow. Ms Waite denies the allegations, but Mr Dimelow did not provide evidence to the Tribunal.

39. Regarding the allegations against Mr Dimelow, I was not referred to any evidence indicating the respondent had found him guilty of any of the allegations that the claimant has made against him. I also understand he is still employed by the respondent. Furthermore, an express finding as to whether the claimant's allegations against him are true, is not necessary in order for me to determine this claim.

40. To the extent that it is necessary for me to determine whether the allegations against Ms Waite are accurate, I consider they are not. Ms Waite gave direct evidence regarding her involvement in those matters I need to deal with, and I accept her evidence which denies the allegations made against her.

41. It is agreed that Edgware Road was a challenging station, and the TOSM role was very demanding. I consider it unlikely that if Ms Waite failed to *"pull her weight"* that would have gone unnoticed by senior management, making it unlikely that she would have secured the promotions she has achieved. I also accept Ms Waite's direct evidence that she has not discriminated against any of the respondent's employees on the grounds of their perceived disabilities. There has been no direct evidence from the individuals concerned, and I found Ms Waite to be a credible witness. Furthermore, Ms Waite's denial is again supported by her successive promotions, which are consistent with someone who is able and conscientious, rather than someone who tries to falsely inflate the work she has done, or who adopts a discriminatory management style.

42. Despite the above, I nonetheless also find that when the claimant made the disclosures regarding these matters, she believed that the allegations tended to show conduct that would breach the Equality Act, and improper claims for performance-related pay, bonuses and/or overtime amounted to a misuse of taxpayers'/public funds. The respondent argues the passage of time is evidence the claimant did not genuinely believe these were matters of public interest. I note the passage of time that elapsed before the claimant disclosed these matters. However, I accept the claimant's evidence that after witnessing Mr Doyle openly referring to a whistleblower in the team, at the time she worked with Ms Waite, she had concerns that confidentiality for whistleblowers was not universally protected.

43. The claimant describes an incident in around 2011 when there was a violent incident involving a train operator, Mr Ali, who was based at Edgware Road. She states that as a result of the level of aggression he displayed, he should not have been returned to public-facing duties because this put the general public in danger, in addition to the respondent's employees. In her oral evidence, Ms Waite did not dispute this incident occurred, but stated the respondent concluded it was due to a medical episode.

44. The claimant describes a further incident involving Mr Dimelow, stating that in around April 2012 Mr Dimelow, entered on the respondent's CMS system a performance rating of 2 for the claimant, indicating that she was not fully competent in her role. He did so despite not being her manager at the time, and without any discussion with her.

45. The claimant adds that the performance rating of 2 was false.

46. The final disclosure relied on relates to Ms Waite. The claimant alleges Ms Waite failed to correctly categorise an incident involving Mr Ali as a Signal Passed at Danger incident. The claimant states this posed a risk to train operators and passengers because an accurate reporting of SPADs was necessary to prevent a reoccurrence.

47. The claimant compiled notes of these events around the time they happened, and used those notes when she made her disclosures some years later. However, in addition to her concerns regarding confidentiality, due to various life events, in particular the ill-health of family members and bereavements, and focusing on work, at that time the claimant did not take any active steps in respect of the information she had collated.

48. After the claimant bumped into an employee in June 2017 who had also experienced similar problems with Mr Dimelow, and in anticipation of this individual's support, the claimant took steps to inform the respondent's senior management of her concerns regarding the events between 2010 to 2012 that she describes.

49. This led the claimant to attach a document titled, *"outline of events"* to an e-mail she sent to Mr Dent on 27th April 2018.

50. It is common ground that she sent the e-mail, and that it contained those matters set out at paragraphs 21.1(i) to 21.1(vii) above. Therefore, the fact that disclosures were made is agreed, albeit the respondent maintains they were not qualifying disclosures.

51. Following her e-mail to Mr Dent on 27th April 2018, the claimant received no response, so chased Mr Dent on 17th May 2018. On 18th May 2018 he acknowledged receiving the 27th April 2018 e-mail, apologised for not responding sooner, saying he would respond that day. In the event, he responded on 25th May 2018. However, the claimant complains that in accordance with the Grievance Policy Mr Dent should have responded within 7 days. She also complains that in breach of the Grievance Policy, Mr Dent failed to invite her to a grievance meeting.

52. Dissatisfied with Mr Dent's response, the claimant e-mailed him on 5th June 2018, copying in Mark Wild, the respondent's Managing Director, and Jean Cockerill, its Head of HR. The claimant's e-mail made various points, including: requesting a meeting in respect of the matters raised; that she was open to mediation, but in addition to rather than instead of the requested meeting; that individuals involved in a grievance should be separated pending the outcome; and that there was an agreement that she would not work with Ms Waite. On the latter point, the claimant later elaborated on this, explaining that she had understood Mr Dimelow had agreed she would not have to work with Ms Waite, and that was the reason the claimant was transferred from Edgware Road several years earlier. The claimant believes it was clear that by her e-mail to Mr Dent, she was making qualifying disclosures that engaged the respondent's whistleblowing obligations.

53. In the months that followed, the claimant continued exchanging e-mails with some or all of Mr Dent, Mr Wild and Ms Cockerill. She also continued to press for a hearing, with or without a meeting, to discuss the disclosures she had made. On 19th October 2018 Ms Cockerill told the claimant that she had asked Martin Boots, Head of Employee Relations, to have an informal meeting with her so that he could understand the issues and consider the next steps.

54. The claimant met with Mr Boots on a number of occasions when she was accompanied by a trade union representative. The first meeting was on 25th October 2018, when she says *"Head of HR Boots had gone through the whole of my "Outline of Events", and there were multiple scribblings on his copy."* He also asked her what outcome she wanted. They met again on 31st October 2018, and finally on 20th December 2018 when Mr Boots went through his letter of the same date.

55. In summary, Mr Boots' letter dated 20th December 2018 refers to paragraph 3.3. of the respondent's Individual Grievance Procedure which states that any concerns should be raised as soon as possible. While acknowledging the claimant's reasons for not raising these matters at the time, Mr Boots states that because the claimant's complaints relate to events in 2011 and 2012, they are out of time for consideration under the Individual Grievance Procedure.

56. Mr Boots' letter continues:

Additionally Nick has also given his assurance that you would be treated fairly and on your merits in consideration for any advancement or development opportunities that you pursue.

57. On 12th March 2019 the claimant e-mailed Nigel Holness, the Managing Director of London Underground, complaining about Mr Boots' conclusion. She pointed out there is no stated time limit in the grievance procedure. Mr Holness responded by an e-mail sent on 21st March 2019 stating he was satisfied with the way Mr Boots had dealt with the matter. Mr Holness also stated:

A facilitated discussion between you and Margaret Waite, and between you and Kieran Dimelow would give you the opportunity to air your concerns with them directly.

58. Following on from this exchange, the respondent arranged for the claimant and Ms Waite to attend mediation, which took place on 17th June 2019 and 9th July 2019. To deal with potential future issues between them going forward, Ms Waite proposed that Amy Owen, who at that time was the Jubilee Line Head of Line Operations ("HOLO") act as an intermediary, if needed. The claimant agreed to this. Ms Owen said she had no knowledge of the issues that had resulted in the mediation, and that in the event, following the mediation, neither the claimant nor Ms Waite requested Ms Owen resolve any issues between them.

59. Also, going forward from the mediation, the claimant and Ms Waite voluntarily agreed that if the latter needed to visit the Morden depot, the claimant's work place, she would send the claimant advance notice of her intended visit. Although it seems there was an implied understanding that advance notification was not

required in the event of an emergency. Consequently, during the COVID pandemic, the claimant accepted it would not necessarily be practical to receive advance notice of Ms Waite's visits.

60. The claimant complains that the respondent failed to properly investigate the matters raised in the outline of events document. Some of those alleged failures, are relied on by the claimant as part of the detriments she says she was subjected to.

THE DETRIMENTS

61. The claimant is currently employed by the respondent as a Trains Manager at the Morden depot, and reports to a TOM, previously Steve Manuel, who reported to the relevant HOLO, a post that Ms Waite held between September 2017 to November 2022. It means Ms Waite's direct reports included the person with responsibility for managing the claimant.

62. The first 4 detriments the claimant complains of involve Mr Manuel who was the claimant's TOM from around 2018 until June 2022. This role entailed him carrying out the claimant's annual performance review. He said he was aware the claimant had made a complaint, which he believed related to when she worked with Ms Waite and Mr Dimelow at Edgware Road. However, Mr Manuel said he had no direct knowledge of the complaint, and saw the April 2018 outline of events for the first time when he prepared his witness statement for these proceedings. I accept Mr Manuel's evidence that he had no prior knowledge regarding the detail of the claimant's complaints (i.e. the disclosures), and no direct evidence to the contrary was adduced.

63. Both he and the claimant agree that overall they had a good working relationship. He describes the claimant as *"friendly and intelligent",* and her strengths as *" … working on the desk. She was very proactive as regards mental health and wellbeing for Train Operators."* However, he also states that there were a few occasions when she made mistakes, such as not completing relevant paperwork, and says that she refused to carry out Local Disciplinary Interviews ("LDI").

2022 Annual Performance Review

64. The first matter which the claimant relies on as a detriment relates to the alleged failure to conduct her 2022 annual performance review. The respondent introduced a new computerised system for conducting the annual review in 2022 called My Journey. At paragraph 201 of her witness statement, the claimant says in around March 2022 Mr Manuel called her into his office and: *"He clicked through slides, explaining from each how the My Journey process would work".* However, she says he did not carry out the annual review, and she says this is supported by messages she sent to Mr Manuel.

65. Firstly, the claimant messaged Mr Manuel at 10:52 on 5th April 2022 as follows (at page 406 of the Hearing Bundle):

I had no computer access last night except the last two hours at desk, so I was unable to look at the P&D review stuff as I had planned

If there is an urgency to tick my review off today then I'm fine to do that with the minimum of conversation (and any deeper chat can then be done at a later point.)

If it can wait until my Thursday's EMS shift then that seems the better option

66. Secondly, the claimant messaged Mr Manuel at 14:08 on 11th April 2022 as follows (see page 408 of the Hearing Bundle):

Just a courtesy text to say sorry that I've not got round to filling in my review stuff but I will do everything to try and make that happen today, once I'm up from stepbacks.

67. The My Journey system has 4 possible performance ratings, *"I am being supported"* is the lowest. The next rating is *"I am achieving",* then *"I am advancing",* with the highest being *"I am exceeding".* My Journey requires the employee to enter information for their annual review, including their objectives, career aspirations and give their own performance rating. Following which, the employee has a meeting with their manager, the manager records their feedback and performance rating on the My Journey system. These tasks were to be completed within a window running from 1st March to 11th April. Following which there would be a review by a senior manager between 11th April to 6th May, consisting of a meeting with all TOMs to explain the ratings allocated to employees, so that the ratings are calibrated for consistency. The final stage of the process involves the manager and employee providing concluding comments and signing off between 6th to 13th May. This timeline is confirmed at page 403 of the Hearing Bundle.

68. The claimant entered information for her performance review onto the My Journey system, and received an invitation from Mr Manuel to attend her end of year review on 4th April 2022. His e-mail attached further slides explaining the My Journey system. However, the claimant says Mr Manuel never conducted a My Journey review when they met on 4th April 2022, and says this is borne out by her exchanges with him.

69. Mr Manuel's position is that he conducted the claimant's annual review. He says that in February and March 2022 he spoke to the claimant about the new My Journey system ahead of them meeting on 4th April 2022, when Mr Manuel says he conducted the annual performance review during their meeting, which lasted approximately 30 minutes. In his witness statement he refers to two areas where he says the claimant could improve. Firstly, a greater balance between her working on the desk and fulfilling other roles such as people management, claiming that to avoid the latter, she would swap shifts or not put herself forward for suitable people management opportunities.

70. Secondly, an occasion when he says that contrary to good practice, she authorised an employee's annual leave even though it coincided with a strike day. He says they discussed ways she could get more involved in people management, by taking on health & safety responsibilities, and so he gave her an emergency plan for the depot as an action point for her to discuss with trade unions, with a view to supporting her to increase her people management responsibilities.

71. Mr Manuel gave the claimant the lowest rating of *"I am being supported*." He didn't inform the claimant at that stage because he considered the rating was provisional, and was subject to confirmation following the senior management review.

72. I find that the available evidence supports Mr Manuel's account that the claimant's annual performance review was carried out on 4th April 2022. Mr Manuel says he spoke to the claimant in February and March 2022 regarding the new My Journey system. To some extent this is agreed by the claimant, who refers to them meeting in March 2022 when Mr Manuel showed her slides explaining how the My Journey process works. She also accepts that he invited her to a review meeting on 4th April 2022, and her text message to him on 5th April 2022 suggests that meeting went ahead. Mr Manuel says that was the review meeting and it lasted 30 minutes. The claimant disputes her review was carried out on that day, and says her message shows she intended them to meet briefly on 5th April, and have a later more detailed discussion, which would be her annual review.

73. I have taken into account the matters that Mr Manuel says were discussed on 4th April 2022, in particular, that the claimant should improve the proportion of people management tasks she undertakes, that they consequently discussed her taking on a health & safety role, and he provided action points in respect of this. Although Mr Manuel has taken on board Mr Victor's comments that his communication with the claimant regarding her performance should have been clearer, I consider their meeting on 4th April 2022 was an annual performance review meeting.

74. The claimant did not dispute these discussions took place during the 4th April 2022 meeting. It is correct that the claimant's text on 5th April 2022 refers to them having a *"deeper chat",* but it also queries whether there's any urgency to tick off the review that day. Read in the context of their meeting the previous day, which Mr Manuel had described in the invitation as a review meeting, together with what was discussed, the claimant's text message seems more likely to be referring to ticking off, or checking and confirming the information on the My Journey system that was entered as part of the annual performance review. I don't find these messages support the claimant's contention that Mr Manuel failed to carry out her annual performance review.

75. As to the performance rating Mr Manuel gave the claimant, I find his rating was based on his genuine belief that it reflected her performance. My decision is based on a number of reasons. Firstly, when the claimant cross examined Mr Manuel she challenged his assertion that she swapped shifts to avoid people management by showing e-mails from colleagues who requested the swap. Mr Manuel correctly responded that most of those e-mails she relied on pre-dated the period covered by the 2022 performance annual review. Secondly, as it was agreed the claimant and Mr Manuel had a good working relationship, and he was not the subject of the disclosures, I find he had no reason to act in bad faith by deliberately awarding an unjustified rating. Finally, his unchallenged evidence was that he gave the claimant action points on how she could seek to increase her people management responsibilities, by taking on a health and safety role. I find those actions consistent with someone who was genuinely looking at ways to support the claimant.

Preventing the Claimant Applying for a Secondment

76. Following Mr Manuel's promotion to Control Centre Manager, on 13th May 2022 he announced that Martin Phelps, a Trains Manager, would be seconded into the TOM position at the Morden depot for 12 weeks. The appointment was temporary, pending the recruitment of a permanent replacement, who would be replaced following a full recruitment exercise. The claimant considers that she *"was a very strong candidate, arguably the strongest as a former TOSM",* which duties overlapped with the TOM role. And as a former TOSM, she had gained experience of managing Train Managers in three different depots. On 18th May 2022 she e-mailed Mr Manuel and queried why Mr Phelps was selected for the secondment over her. Mr Manuel's responses addressed this and also addressed her queries regarding the annual performance review, it said:

    76.1 The decision was made based on the information held on My Journey;

    76.2 Only Train Managers with a performance rating of at least *"I am advancing*" were considered;

    76.3 Mr Manuel had completed the claimant's My Journey annual review on 4th April 2022; and

    76.4 Ms Waite had subsequently carried out a senior management review of the annual reviews.

77. In his witness statement Mr Manuel says that he selected Mr Phelps for the secondment, and he was best placed to do so having recently carried out the Train Managers' annual performance reviews. He adds that Mr Phelps' performance review, which is in the Hearing Bundle, shows that Mr Manuel rated him as a very able Train Manager. He explained temporary cover was required quickly because he was due to start in his new role on 12th June 2022. Finally, he states that because it was a local business secondment of less than 13 weeks, the respondent's policy allowed the position to be filled without advertising the vacancy.

78. Ms Waite says she did not select Mr Phelps for the secondment, but asked Mr Manuel to do this based on the performance reviews he had recently carried out. However, Ms Waite confirmed that, in light of the claimant querying the selection, she reviewed the My Journey information and was satisfied with Mr Manuel's choice.

79. The claimant believes it's unlikely that Ms Waite, who is more senior, would allow Mr Manuel to select the secondee, with whom Ms Waite would need to work closely.

80. On either account, the secondment was not advertised, which inevitably prevented the claimant from applying for the position.

81. I find that it was Mr Manuel, and not Ms Waite, who selected Mr Phelps for the temporary TOM position. He provided direct evidence on this point, which is corroborated by Ms Waite's evidence. They have explained why Mr Manuel was

in a good position to select the secondee after just having completed the annual performance reviews. That explanation is consistent with the documentary evidence showing that Mr Phelps' annual review had been recently completed. I also take into account that the claimant has no direct knowledge of who made the decision: her assertion is based on her belief of what she thinks happened.

Inputting Negative Performance Review Information

82. The claimant alleges that on 6th June 2022 Mr Manuel input false information on the My Journey system, including overwriting the claimant's own rating, replacing it with a lower one. She says that on 13th June 2022, his last day at the depot, Mr Manuel finalised her My Journey entry and also made it incapable of being edited. Mr Manuel denies these allegations.

83. The claimant e-mailed Mr Manuel and Ms Waite with these allegations, but when neither responded, she submitted a grievance to Mr Dent by an e-mail sent on 1st August 2022. Her e-mail (at pages 451 to 452 of the Hearing Bundle), deals primarily with her dissatisfaction with the annual performance review. Although she also states that the issues relating to her annual performance review were *"… more unacceptable for being done after [she] had raised issue … over being disregarded outright for the current TOM secondment at Morden."*

84. The claimant's complaint was referred to Roy Victor, the respondent's Asset Systems & Improvement Manager, to deal with. He has been trained by the respondent as an Accredited Manager, which enables him to deal with harassment and bullying complaints. He also states he had no prior knowledge of the claimant, nor does he interact on a day-to-day basis with anyone involved in the complaint.

85. As to the claimant's allegation regarding the My Journey data, I consider it is unlikely that on 6th June 2022 Mr Manuel entered any information on the My Journey system regarding the claimant, and rendered it incapable of being edited, as the claimant asserts. According to the documentation regarding My Journey, the annual review process is completed by 13th May each year, including calibration of performance ratings. If Mr Manuel had subsequently entered false information and downgraded the claimant's self-score, that risks undermining the review process carried out by senior management. I find it unlikely that Mr Manuel would take such a serious step. I also consider it unlikely that on his final day as Morden TOM (being 13th June 2022), he would revisit the claimant's annual review, which had been closed by that time. It's more likely he would be focusing on a smooth transition with Mr Phelps, and the new position he was about to take up.

The Claimant's Pay Award for 2022

86. At page 802 of the Hearing Bundle is a letter to the claimant dated 22nd July 2022 titled: *"Performance Related Pay Award 2021/2022"* confirming her annual salary with effect from 1st April 2022. The letter also refers to the claimant's performance rating, stated to be *"I am being supported".* The claimant states this is the first time she learnt of the performance rating she'd been given.

87. The letter concludes with red text in parenthesis which reads: *"(LM to personalize if employee is new to role or wishes to add further comment)"*

88. On around 3rd August 2022, the claimant submitted an addendum to her grievance regarding the above letter.

89. Despite the title of the letter, Mr Manuel states the annual salary notified to the claimant was union negotiated and not performance related; the claimant accepted that was the case during her oral evidence. Therefore, her performance rating did not affect her annual salary. Mr Manuel also says that the letter was a standard letter generated by HR. The claimant states that Mr Manuel input negative information regarding her performance rating and her receiving support.

90. I find that the letter is a standard worded letter written to the claimant, generated by HR using a template. That is consistent with the concluding sentence of the letter, which does not apply in the claimant's case, and therefore is consistent with a standard letter being used, where inapplicable text has not been deleted. I also take into account that the claimant has no direct knowledge as to who or how the letter was generated. Mr Manuel is better placed to provide evidence regarding what input if any he had, and I accept his evidence that the letter was generated by HR.

91. As to whether the wording described a negative performance rating and referred to the claimant receiving support, I find that both of these are reflected in the letter. I consider being given the lowest performance rating is negative. In the context of the performance review ratings, receiving support is also negative. However, I note Mr Manuel says he had set action points for the claimant in respect of taking on health and safety responsibilities, which I consider amounts to providing support, which is referred to in the letter. Therefore, although the information in the letter was negative, I consider it accurately reflected the position at that time (i.e. before the claimant's performance rating was upgraded).

The Further TOM Secondment

92. Mr Phelps' secondment was due to end on 24th September 2022, and he invited those Train Managers interested in doing so, to submit an expression of interest to replace him, which the claimant did. It seems two others applied for the position, both of whom had performance ratings of *"I am advancing."*

93. Because the claimant had an outstanding complaint involving Ms Waite, Ms Waite's evidence was that she considered it inappropriate to be involved in the selection for the further TOM secondment, and she raised this with Mr Dent. Mr Dent states that he asked Ms Owen to make the selection. The evidence of Ms Waite, Mr Dent and Ms Owen is consistent on this issue.

94. In her witness statement, Ms Owen says she had no knowledge of the claimant's 2018 disclosures. She was also unaware that of those who had applied for the second secondment, it was the claimant who had brought a grievance about Ms Waite, nor did she know any details about the grievance, such as that the grievance related to the claimant's My Journey performance rating.

95. Ms Owen states that, as she had not been called upon to act as an intermediary between the claimant and Ms Waite since the mediation three years previously, that was not at the forefront of her mind. She states that she neutrally considered the My Journey entries for all three candidates. In her witness statement she adds that if she had been aware the claimant's grievance related to her performance rating, she may have requested further information to determine whether it should have any impact on her selection decision.

96. Ms Owen's e-mail sent on 21st September 2022 confirming her selection is in the bundle.

97. As to the reasons for her selection, in her witness statement Ms Owen says:

> *Overall I noted that all of the candidates were lacking experience in one respect or another. I was looking for a candidate that was achieving in their role and who was ready to move on and stretch themselves. This "readiness" was lacking from all of the candidates. My Journey was quite new at the time, but I was able to note that there was nothing from Daniel Cohen regarding career progression, and he had just spent one year in the Training team and so had less relevant recent experience. Elaine Masters had a rating of "not met", which I am now aware she was challenging at the time. That said, irrespective of Elaine Masters' rating, she gave no detail or reasons which evidenced that she was meeting her objectives or that she was otherwise ready for a TOM opportunity.*

98. The claimant was subsequently informed that she had been unsuccessful. The list of issues indicates the claimant rejects the assertion that Ms Waite was not involved in her being rejected for this secondment. The claimant also criticises the selection and feedback being based on My Journey data, which she was disputing.

99. I find that it was Ms Owen who selected the secondee. This is supported by Ms Owen's e-mail sent on 21st September 2022, an extract of which is above. This e-mail is contemporaneous to the events being dealt with, it provides a full account of Ms Owen's feedback regarding all three applicants, and gives no indication that anyone else was involved in the selection. Therefore, I find that neither Ms Waite nor Mr Dent were involved in selecting the secondee. From the feedback, it is evident that Ms Owen based her selection on the information held on the My Journey system, including the claimant's performance rating. However, she states she was unaware at that time that the claimant disputed that information.

Ms Waite's Visit to the Morden Depot

100. It is common ground that Ms Waite visited the Morden depot on 3rd October 2022 without notifying the claimant in advance of her visit. Ms Waite says she visited in connection with handover arrangements between the outgoing temporary TOM, Mr Phelps, and the incoming temporary TOM.

101. Ms Waite explains that as the claimant had submitted a complaint against her, she considered the voluntary agreement reached at the time of the mediation, that she would give advance notice of her visits, was void. She also points out that there was no direct contact between her and the claimant on 3rd October 2022.

102. I have taken into account Ms Waite's explanation, but I nonetheless find that her visit to the depot on 3rd October 2022, without advance notice to the claimant, was contrary to the voluntary post-mediation agreement. I have not been provided with any evidence that the claimant and Ms Waite had mutually agreed it had come to an end, or that the agreement was either time-limited, or conditional on there being no further complaint or grievance made by either party. In the circumstances, I find that the agreement remained in place.

Ms Waite's E-mail Communications Regarding the Visit

103. It is also agreed that at 1:41 am on 5th October 2022 the claimant e-mailed Ms Waite about her recent visit to the Morden depot. The claimant's e-mail reads:

As COVID is no longer governing how we can and cannot work, I must now respectfully ask that the agreement for me to receive notice by text before any of your visits to Morden now be abided by. Thank you and regards, Elaine

104. Ms Waite forwarded the claimant's e-mail to Mr Victor, raising concerns that the claimant, who had submitted a harassment and bullying complaint against her, had e-mailed her directly at 1:41 am.

105. Regarding this, the claimant says in her witness statement (see paragraph 242):

On 5th October 2022 at 9:21, Investigator Roy Victor, who is an accredited manager for bullying and harassment (AM), asked by text for a chat (Exhibit), and we spoke in the minutes after. After clarifying his understanding of my Addendum 2, he asked me about dialogue with HOLO Waite, seemingly of the impression that I had initiated contact.

106. When asked during cross-examination how Ms Waite had misled Mr Victor, the claimant stated that she had failed to inform him that it was Ms Waite's visit to the Morden depot on 3rd October 2022 without prior notice, that had led the claimant to e-mailing Ms Waite to remind her of the voluntary agreement.

107. I find that Ms Waite did not mislead Mr Victor as the claimant suggests. It is correct to say that Ms Waite's e-mail does not refer to her visit to the Morden depot. However, as stated, Ms Waite forwarded the claimant's e-mail to Mr Victor, who could therefore read for himself what the claimant was saying. Based on the evidence, and that Ms Waite forwarded the claimant's e-mail to Mr Victor, I find there is no evidence to support the assertion that she misled Mr Victor.

The Permanent TOM Position

108. In due course, recruitment to the permanent TOM position at Morden was undertaken, and the claimant applied for the position. She was informed by an e-mail sent on 12th October 2022 from Amanda Jales, in the respondent's HR department, that she had not been shortlisted for an interview.

109. The claimant requested feedback on her application, and on 19th October 2022 and 11th November 2022 Ms Jales informed her she would receive feedback from the panel. In a later e-mail sent on 12th December 2022, Ms Jales told the claimant she had chased Ms Waite and Dale Smith, at that time Mr Smith was HOLO on

the Central Line, for feedback. Ms Jales subsequently sent the claimant the requested feedback, and based on Ms Jales' e-mail of 12th December 2022, the claimant believed the feedback was from Ms Waite and Mr Smith.

110. In his witness statement Mr Smith says that he alone reviewed and scored the claimant's application, and he considered she did not satisfy the minimum criteria to be invited for an interview. He also states that he had no knowledge of the contents of the outline of events document that the claimant e-mailed to Mr Dent on 27th April 2018. He says that due to the number of applicants and their workloads, he and Ms Waite agreed that they would divide the applications between them. He also says the applications were anonymised during the marking process. Ms Waite's witness statement details the same process. She says that after they completed marking they would moderate each other's scores, with someone from HR present, and applicants remained anonymous during that process too.

111. At pages 548 to 553 of the Hearing Bundle is a spreadsheet showing who assessed the applications, and the applicants' scores. In the bundle, the scores were anonymised, except for the claimant's. In his witness statement, Mr Smith says (at paragraph 10):

As is apparent from the spreadsheet of scores the reason that Elaine did not get invited to interview is that she did not meet the criteria for consulting, negotiating and attending meetings with trains TU representatives and strong understanding of trains agreements. Elaine only had one "2", however, she didn't have any "4s" or "5s" and so it is clear that there were stronger candidates than her. Overall, Elaine scored 29 points with the most successful candidates scoring 35, 34, and 32 points respectively.

112. As far as Mr Smith recalls, the first time he was asked to provide feedback in respect of the claimant's application was when Ms Jales e-mailed him on around 14th December 2022, and he responded by providing feedback. He notes that due to the quantity of applicants, ordinarily feedback is not provided to applicants who are not shortlisted.

113. In respect of this recruitment process, I make the following findings:

114. I find that the claimant's application was marked by Mr Smith alone. The written and direct oral evidence of Ms Waite and Mr Smith are consistent with each other, and both describe a process where they divided the applications between them, with each only marking a portion of the applications. The claimant's was marked by Mr Smith; this is supported by the documentary evidence, namely the spreadsheet, which supports their evidence that they divided the applications between them. In reaching this conclusion, I have taken into account that, while the claimant asserts Ms Waite marked her application, she has no direct knowledge of this. I have also taken into account that the claimant relies on Ms Jales referring to the process being carried out by a panel. However, I have no evidence from Ms Jales about why she referred to a panel. Therefore, without an explanation from her about why she used this word, I attach limited weight to her e-mail that a panel marked or gave feedback on the claimant's application, which is contrary to the direct evidence of Mr Smith and Ms Waite.

115. Ms Waite did not recuse herself from marking the claimant's application, but she had no need to, because Mr Smith alone marked the claimant's application.

116. It follows from the above, that I do not consider Ms Waite marked the claimant's application for this secondment position.

117. It is correct that the claimant received feedback over two months after she was notified of the outcome of her application: Ms Jales e-mailed her on 12th October 2022 to explain she had not been shortlisted, and Mr Smith provided feedback after receiving Ms Jales' e-mail sent on 14th December 2022. It's unclear why Ms Jales appears not to have forwarded the claimant's earlier requests for feedback.

118. The claimant says that, due to the time that elapsed before she was provided with feedback, she was out of time to appeal against the decision not to shortlist her. That assertion is unchallenged, and therefore, I find that was the case.

119. It was during this period, on 20th October 2022, that the claimant presented her claim to the Tribunal.

The Outcome of the Investigation

120. On 17th November 2022 the claimant was notified of the outcome of her complaint, which as stated, had been dealt with by Mr Victor. He had interviewed the claimant on 22nd August 2022, Mr Manuel on 2nd September 2022 and Ms Waite on 13th September 2022. He said he also reviewed the My Journey data.

121. In summary, Mr Victor's conclusions regarding whether Mr Manuel conducted the 2022 annual review were as follows:

122.1 Mr Manuel had carried out the claimant's annual performance review in April 2022, but he had not made it sufficiently clear to the claimant that he considered she was not adequately fulfilling the people management aspects of her job.

122.2 Mr Manuel should have given the claimant prior feedback that she was not adequately fulfilling that aspect of the position.

122.3 In his view, the claimant had not properly engaged with the annual performance review.

122.4 He considered the claimant's performance rating should be changed from *"I am being supported"* to *"I am achieving".*

122.5 However, he does not consider she was likely to have been selected for the secondment because the other applicants had both been rated higher with *"I am advancing".*

122.6 Finally, he considered both the claimant and Mr Manuel would benefit from further guidance regarding the My Journey annual review process.

123. As to the complaint regarding bullying, in his report, Mr Victor defined bullying as including: *"… an abuse or misuse of power or authority…"* He concluded that there

was no evidence that anyone had exceeded their authority or misused their power. He also states that Ms Waite's involvement in the annual review process was properly limited to participating in the calibration process, in accordance with her position as a senior manager. He also considered she was not involved in the secondment selections in June and September 2022. He found these decisions were taken by Mr Manuel and Ms Owen respectively. In his view, as neither Mr Manuel nor Ms Owen had been involved in those matters that were the subject of the claimant's disclosures, and they had based their decisions on the My Journey data, he did not consider that the claimant's disclosures had affected the June 2022 and September 2022 selection decisions.

124. Section 4 of his report is titled "*Findings and conclusions"* and includes a definition of harassment and bullying. Section 5 is titled *"Summary of conclusions"* and it begins with the following:

This complaint is distinct from Bullying or Harassment, I believe this should have originally been investigated as a local grievance and in the first instance not come to myself as an accredited H&B Manager. In reviewing the information before me, there is no evidence of behaviour against a protected characteristic or behaviour that is an abuse or misuse of power or authority through means intended to undermine or humiliate.

125. I find that Mr Victor did investigate the claimant's allegation of harassment and bullying, as set out in the above extract from section 5 of his report. Mr Victor also dealt with the claimant's disclosures: his conclusion was that her disclosure did not affect the recruitment decisions regarding the temporary and permanent TOM posts. The main focus of the claimant's original complaint as set out in her e-mail to Mr Dent dated 1st August 2022, was regarding the My Journey annual review process, and that was an issue which Mr Victor dealt with both in his investigation and his report.

126. Dissatisfied with Mr Victor's investigation and conclusion, on 22nd November 2022, the claimant appealed against Mr Victor's decision. Her grounds of appeal can be summarised as follows:

126.1 Consideration was only given to whether Mr Manuel (but not Ms Waite) bullied or harassed the claimant;

126.2 The definition of bullying and harassment used did not include victimisation;

126.3 As Mr Victor concluded the matter should have been dealt with as a local grievance, it should have been referred back to Mr Dent prior to any investigation;

126.4 The definition of bullying and harassment used did not include *"offensive, intimidating, malicious or insulting behaviour";*

126.5 Mr Victor said he would re-interview the claimant if necessary, but did not give her an opportunity to refute Mr Manuel or Ms Waite's accounts; and

126.6 Part of his report is unclear as to whether he appreciated the claimant made her disclosures after Ms Waite arrived at the Northern Line.

The Claimant's Appeal Against Mr Victor's Outcome of the Complaint

127. The appeal was conducted by Peter Tollington, who was Head of Modernisation, Line Operations, but who has now retired. The claimant said that because he was of a lower grade compared to Ms Waite, it was inappropriate for him to conduct an appeal about complaints involving Ms Waite. One of the documents in the claimant's Additional Bundle (see paragraph 10 above), was an organisational hierarchy chart which she had prepared. It showed the positions held by those who have featured in this case. Mr Tollington says the claimant is incorrect: he says he and Ms Waite were on the same grade.

128. I prefer Mr Tollington's evidence on this point. He is in a better position to know whether he and Ms Waite were of the same or different grades, and he gave direct evidence that they were the same grade. I do not consider the claimant's organisational hierarchy chart to be of particular assistance: she prepared it herself, so it inevitably reflects her belief. But as stated, I prefer Mr Tollington's evidence on this point.

129. He had previously worked for the respondent in many roles including as the General Line Manager on various lines for in excess of 10 years. Mr Tollington was also an Accredited Manager who had received training in, and was familiar with, the respondent's Harassment & Bullying procedure and its Whistleblowing Guidelines. Mr Tollington interviewed the claimant on 23rd February 2023, when she was accompanied by a trade union representative. He also interviewed Mr Victor on 3rd and 6th March 2023.

130. Mr Tollington notified the claimant of the outcome of her appeal in a letter dated 30th March 2023, which is in the Hearing Bundle. That letter individually lists the claimant's six grounds of appeal, it deals with information he obtained while conducting the appeal, before setting out his findings. Mr Tollington makes a separate finding in respect of each of the six grounds of appeal using the same format for each. First he uses the ground of appeal as a heading, before dealing with his findings in respect of that ground, followed by his conclusion on that ground. In summary, his conclusion was that he did not consider there was merit in the claimant's appeal.

131. His witness statement mainly focuses on the claimant's allegations of him which she relies on in these proceedings. The first one relates to the allegation that the claimant was victimised by Ms Waite as a result of the disclosures she made in 2018, who consequently was undermining the claimant's efforts to secure promotion. The claimant complained that these were matters that Mr Victor had not properly considered. Mr Tollington states that having interviewed Mr Victor and having read his report, he considers Mr Victor was aware of and considered this aspect of the claimant's complaint. And according to Mr Tollington, Mr Victor concluded that Ms Waite was not involved in the decisions made regarding the temporary and permanent TOM positions, so Mr Victor had rejected the allegations that Ms Waite had victimised the claimant in the way she claims. Therefore, in Mr Tollington's view, Mr Victor understood the claimant was alleging

that as a result of the disclosure she made, it was her contention that Ms Waite was obstructing her promotion. Mr Tollington expressly addresses this point at paragraph 7 of his decision letter dated 13 March 2023 (page 636 of the Hearing Bundle).

132. Mr Tollington adds that, based on his own experience as a General Line Manager, Mr Manuel as the outgoing TOM, would have been best placed to decide on the first secondee to that post. He therefore considered Mr Manuel being responsible for selecting Mr Phelps was appropriate, an explanation that Mr Victor had accepted.

133. In light of the above, and in particular, paragraphs 130 to 132 above, I find that Mr Tollington did consider and addressed the claimant's disclosures when conducting his appeal.

134. Mr Tollington was also satisfied from the chronology Mr Victor provided, that he understood the claimant made her disclosures after Ms Waite moved to the Northern Line. He also considered any lack of clarity made no material difference to the outcome.

135. The claimant is critical of Mr Tollington's conduct of the appeal because she says he focused his questioning on her performance rating. Mr Tollington's response regarding this aspect of the appeal (see paragraph 28 of his witness statement) was as follows:

Whilst one significant effect of the alleged victimisation was said to be her performance rating and lack of progression so in my view it is relevant to have considered this, my response is structured mainly around the grounds for appeal presented.

136. Therefore, Mr Tollington's position is that he considered the claimant's performance rating because it was relevant to her grounds of appeal, and so he considers it was appropriate for him to do so. Accordingly, he stands by his conduct of the appeal and his conclusions, and maintains that he considered the claimant's grounds, and reached his conclusion based on the evidence.

137. Having considered Mr Tollington's letter of 13th March 2023 and his written and oral evidence, I find that he did deal with the claimant's performance rating. I consider the claimant's performance rating as raised by her in her grievance was relevant to the subject matter of the appeal, and it was therefore appropriate that Mr Tollington deal with this.

138. Mr Tollington also deals with the deficiencies or omissions in the annual performance review. He notes that Mr Victor dealt with these, and made recommendations regarding the need for improving communication regarding performance.

139. The claimant states Mr Tollington did not consider evidence relating to the performance review in *"the original grievance".* I take this to be a reference to the grievance she e-mailed to Mr Dent on 1st August 2022, as there is only one grievance that is referred to in this case. However, as stated, Mr Tollington did

deal with the performance review, he also addressed the deficiencies: he noted Mr Victor recommended Mr Manuel and the claimant receive further guidance on the My Journey system, and that the claimant's rating should be upgraded to *"I am achieving."*

Events Subsequent to the Appeal

140. The claimant was dissatisfied with the conduct of the appeal, and e-mailed Mr Dent to complain about this on 30th March 2023. She chased Mr Dent for a response on 20th April 2023, and having received no substantive response from him, she e-mailed again on 22nd May 2023 to set out her position in light of Mr Tollington's decision in respect of her appeal. She writes:

This is the situation:

- *My 2018 disclosures were not investigated.*
- *The career detriments that I predicted would result indeed materialised from May 2022.*
- *My grievance has not been properly investigated; The appeal hearing did not address that. I complained to you on 30th March 2023 (soon after the appeal outcome) about this, then chased a response on 20th April, which I still await.*
- *A bogus and highly insulting "readiness status" continues to sit in my journey.*
- *My GP has now diagnosed stress arising from all this. I am now requesting re-investigation as a matter of urgency by an appropriate grade.*

141. Mr Dent's response is dated 25th May 2023, and begins with an apology for the delay in responding fully to her 30th March 2023 e-mail. As to the substance of her complaint, he writes:

I have reviewed the report and outcome of your bullying and/or harassment complaint conducted by Roy Victor and the subsequent appeal conducted by Peter Tollington, both of whom are accredited managers and suitably qualified to deal with this matter under our procedures.

While you may not like the decisions made, I am satisfied that both grievance and appeal hearer gave due consideration to any impact your previous complaint may have had on your current complaints.

Roy Victor's report findings make reference to this in some detail specifically section 4.2 page 10. Peter Tollington's appeal outcome deals with this in his first finding set out on page three of his response.

In your subsequent e-mail to me on 22 May 2023 you have asked for a re-investigation into your situation which I am declining for the following reasons.

- *Your 2018 disclosures were investigated, this was undertaken by Martin Boots as you reference.*

- *I believe your grievance was properly investigated based on the review I have undertaken.*

Moving forwards, I can see that the grievance outcome references action to be taken in respect of your My Journey status which I will arrange to be moved forwards.

…

The starting point for this would be getting a development plan in place for you to move your career forwards.

142. The claimant was dissatisfied with Mr Dent's handling of the disclosures, including his response to the outcome of the appeal, as set out in his letter above. The claimant is critical of Mr Dent's response. She says that his response contradicted the assurance the claimant had been given in 2018 that her applications for career progression would be treated fairly and on merit. This assurance is referred to in Mr Boots' letter to the claimant dated 20th December 2018 (see paragraph 55 above).

143. I have considered Mr Dent's letter, and I do not find that he has contradicted the previous assurance the claimant was given. It follows he could not give an assurance that she would secure promotion, merely that any application for promotion would be dealt with fairly, and her disclosures would not adversely affect her applications. Mr Dent does not expressly refer to that assurance, but he does deal with whether her previous complaints may have had any impact on her current complaints relating to her applications. I take this to be Mr Dent confirming that Mr Victor and Mr Roy both considered whether the claimant's previous complaints as contained in her 2018 disclosures, affected whether she was selected for the temporary and permanent TOM positions. Mr Dent states he is satisfied that they both gave this due consideration. As stated above, both Mr Victor and Mr Tollington concluded there was not a connection between her disclosures and the decisions made regarding recruitment to the TOM posts.

144. The claimant e-mailed Mr Dent on 5th June 2023 regarding a number of issues arising from his 25th May 2023 letter. Amongst these, she asked why Mr Dent asked Ms Owen to provide the claimant with feedback based on the My Journey data, when the claimant had submitted a complaint challenging the accuracy of that data. Another point the claimant raised was seeking clarification regarding the development plan Mr Dent had referred to in his letter. Mr Dent acknowledged the claimant's e-mail on 5th June 2023, and provided a substantive response on 14th June 2023. However, the only point he addressed was in relation to the development plan.

145. In his witness statement, Mr Dent says he believed he had responded to all the points raised by the claimant in her e-mail sent on 5th June 2023.

146. The claimant says that Mr Dent refused to answer her question regarding Ms Owen's feedback.

147. I find that Mr Dent's e-mail sent on 14th June 2023 did not address the claimant's query about why Ms Owen was asked to use the My Journey data. However, I find no evidence that this was a refusal. In other words, I accept Mr Dent's account that he believed he had dealt with all the points the claimant had raised, although I consider Mr Dent's belief was genuine, it was nonetheless mistaken: his 14th June 2023 letter does not deal with feedback. The reasons for my finding are, firstly, that Mr Dent's response does not expressly decline to deal with this point. In some e-mail exchanges where he considers it is not appropriate to deal with or revisit an issue he expressly says so, but he did not say that here. Secondly, my overall assessment of Mr Dent's engagement with the claimant's correspondence is that he has done the best that he can to address the claimant's concerns whether directly or by delegating certain aspects to others to deal with. I accept there has sometimes been a delay in Mr Dent responding, but in his role as Director of Customer Operations, he would have many demands on his time, and as he states, he receives numerous e-mails. He has nonetheless exchanged multiple e-mails with the claimant, and I find that is inconsistent with someone who would deliberately refuse to respond to one aspect of a particular e-mail. Finally, Mr Dent later addressed the claimant's underlying point in his subsequent e-mail sent on 2nd July 2023 (see paragraph 149 below) and his witness statement (see paragraph 150 below), which again, I find inconsistent with someone deliberately refusing to deal with this issue.

148. The claimant e-mailed Mr Dent on 25th June 2023, again asking why he asked Ms Owen to use the My Journey data.

149. Mr Dent responded by an e-mail sent to the claimant on 2nd July 2023, intending to address what he considered was the claimant's underlying complaint that assessing TOM secondment applications using the My Journey data adversely affected her prospects. The substantive parts of Mr Dent's 2nd July 2023 e-mail read:

While I understand the stress this matter has caused you, I cannot keep responding to matters that have already been dealt with in the grievance outcome.

However, I can reconfirm Roy Victor has dealt with this and I have copied his findings below.

With regard to the use of My Journey to decide who would cover the TOM position, this was made by R for the immediate cover and for the more formal cover, Amy Owen did this using My Journey data. The process that is to be used to identify talent was signposted to all in the team. Looking at the performance ratings alone, C was rated by herself as achieving, her manager believed that she was being supported and a lower rating was awarded. If I take C to be at her best rating of achieving this is still lower than those other applicants she was competing with, they were rated as Advancing and had fully adopted the My Journey process. Hence why I do not believe that C has been negatively affected from a secondment opportunity perspective even though I have found that the My Journey process was carried out ineffectively and that regular feedback on C's

performance was not clear or signposted that C's performance needed improving. Again, conscious of the optics with an ongoing complaint against her, R2 was not part of this process and removed herself from the decision-making process. It is for this reason that the historic issues and whistleblowing are not considered as reasons for non-selection, the persons deciding on the successful applicant were not part of the historic incidents and were basing their decisions on the My Journey data in front of them.

150. In his written evidence Mr Dent acknowledges that the claimant may have hoped for a more direct response. He also states that while the claimant had complained about the My Journey process before the TOM secondment selection process began, he notes a decision had not yet been made regarding her complaint. He adds that, based on Mr Victor's conclusions, any deficiencies in the My Journey process would not have affected the prospects of her being selected for the secondment.

151. In my judgment, Mr Dent's 2nd July 2023 e-mail addressed the claimant's underlying concern about the secondment selection process. However, it did not directly address the claimant's question about why the My Journey data was used when assessing her TOM secondment application. That was directly addressed in Mr Dent's witness statement for these proceedings. But Mr Dent's e-mail expressly states he found Mr Victor had dealt with this point, and he quoted the relevant extract of Mr Victor's report in his e-mail. I consider this explains why Mr Dent concluded that the grievance and appeal process had already dealt with the claimant's concerns.

152. The claimant was not satisfied with the response in Mr Dent's 2nd July 2023 e-mail, so escalated the matter: on 13th July 2023 she e-mailed Andy Lorde, the Commissioner of TfL (appointed by the Mayor of London). After chasing for a substantive response, on 11th August 2023, she received an e-mail from Glynn Barton, the respondent's Chief Operating Officer, and Mr Dent's line manager.

153. Mr Barton's e-mail begins by stating Mr Dent had reviewed the claimant's grievance dealt with by Mr Victor, and her appeal dealt with by Mr Tollington. Mr Dent informed the claimant his review was carried out on an exceptional basis. Mr Dent dealt with the claimant's follow-up concerns in his e-mail of 2nd July 2023.

154. Mr Barton's e-mail continues:

While I appreciate that you might not like the outcomes you received, the appeal concluded the internal process. On an exceptional basis, Mr Dent agreed to review that process which he has done. We cannot keep revisiting your complaint. In any event, we respect that you have chosen to pursue some of your issues in the Employment Tribunal.

As others have said throughout this process, including Mr Dent, we very much want to work with you to enable you to pursue your career further within TfL and provide support you may need to move on from these matters. The senior leadership of your line has changed and you now no longer work with those who you believe previously hindered your career progression. You now report to a train

operations manager who I can see from recent Yammer posts is extremely committed to development and I am confident can fully support you.

I consider that it is important that you now focus on moving forward with your career and employment with TfL and we will therefore not engage with you on any further correspondence regarding this matter.

155. I find Mr Barton's response provides a clear explanation as to why the respondent considered it was not appropriate to take the matter further, which I find to be an accurate outline of the various steps the respondent has taken to deal with the claimant's grievance.

THE LAW

156. Whistleblowers are protected from suffering any detriment from their employer as a consequence of making a public interest disclosure of alleged wrongdoing.

157. Sections 43A and 43B of the Employment Rights Act 1996 deal with qualifying and protected disclosures.

158. They read:

43A - Meaning of protected disclosure

In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

43B - Disclosures qualifying for protection

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

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

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

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

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

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

(f) that information tending to show any matter falling within any one

of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

159. By section 43C, a qualifying disclosure made to an employer is protected.

160. Only those disclosures that meet the statutory requirements set out in section 43B qualify for protection. There are five requirements to satisfy section 43B, which were summarised by HHJ Auerbach in Williams v Michelle Brown UKEAT/0044/19/00, as set out below.

161. Firstly, that the disclosure must be a *"disclosure of information"* made by the worker bringing the claim. There is no additional requirement that the claimant must have had a reasonable belief that the information disclosed, and any allegation contained in it, were substantially true. Therefore, it will not always be necessary to determine whether the employee believed that the disclosed information was correct or not. However, the determination of the factual accuracy of the disclosure may be an important tool in determining whether the worker held the reasonable belief that the disclosure tended to show a relevant failure *(Darnton v University of Surrey [2003] IRLR 133).*

162. Secondly, the worker believes the disclosure tends to show a 'relevant failure' in one of five specified respects; or deliberate concealment of that failure. In other words, the worker's belief must be genuine. The definition is concerned with what the worker believed at the time when they made the disclosure, not what they may have come to believe later on *(Dodd v UK Direct Solutions Limited at para 55 [2022] EAT 44).*

163. Thirdly, in addition to being genuine, the worker must also reasonably believe that the disclosure tends to show a relevant failure in one of the five specified categories at section 43B(1)(a) to 43B(1)(e). Reasonableness involves applying an objective standard to the personal circumstances of the discloser. Amongst the five categories at section 43B(1)(a) to 43B(1)(e), two are relevant in this case. They are disclosures that tend to show a failure to comply with a legal obligation (section 43B(1)(b)). Although Tribunals should consider the particular wrong that the claimant alleges they believe has been breached, there is no requirement that the worker should expressly accuse the employer of acting in breach of a legal obligation, or identify a particular legal obligation in the disclosure. Also relevant are disclosures that tend to show the health and safety of any individual is being or is likely to be endangered (section 43B(1)(d)). The nature of the health and safety danger needs to be specified, but this can be done in general terms (see *Fincham v HM Prison Service EAT 0925/01).*

164. Fourthly, at the time of making the disclosure, the worker believes the disclosure is made in the public interest. Again, this belief must be genuine.

165. Finally, the worker's belief that the disclosure is made in the public interest must be reasonable. What amounts to a reasonable belief that disclosure was in the public interest was considered by the Court of Appeal in *Chesterton Global Limited v Nurmohamed [2018] ICR 731.*

166. Underhill LJ, giving the leading judgment, refused to define *"public interest"* in a mechanistic way, but provided the following fourfold classification of relevant factors as a *"useful tool":*

166.1 The numbers in the group whose interests the disclosure served – although numbers by themselves would often be an insufficient basis for establishing public interest.

166.2 The nature and the extent of the interests affected – the more important the interest and the more serious the effect, the more likely that public interest is engaged.

166.3 The nature of the wrongdoing – disclosure about deliberate wrongdoing is more likely to be regarded as in the public interest than inadvertent wrongdoing.

166.4 The identity of the wrongdoer – the larger or more prominent the wrongdoer, the more likely that disclosure would be in the public interest.

167. Section 47B of the Employment Rights Act 1996 prohibits an employee being subjected to any detriment on the grounds of having made a protected disclosure. And by section 48 an employee may present a claim to the employment tribunal where these provisions have been breached. So far as is relevant, sections 47B and 48 state:

47B – Protected disclosures

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

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done-
(a) by another worker of W's employer in the course of that other worker's employment, or
(b) by an agent of W's employer with the employer's authority,
on the ground that W has made a protected disclosure.

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

48 - Complaints to employment tribunals

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

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

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

168. There is no statutory definition of the term *"detriment".* However, in *Jesudason v Alder Hay Children's NHS Foundation Trust [2020] IRLR 374*, the Court of Appeal stated: *"It is now well established that the concept of a detriment is very broad and must be judged from the viewpoint of the worker. There was a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment."* However, according to the unreported first instance decision of *Chattenton v City of Sunderland City Council ET Case No.6402938/99* it may be difficult for an employee to show she has suffered detriment where she has been treated no differently to others.

169. In addition to the employee being subjected to detriment, the detriment must be on the ground that the employee made a protected disclosure. In *Harrow LBC v Knight [2003] EAT/0790/01,* the Employment Appeal Tribunal held that:

> *It is thus necessary in a claim under s 47B to show that the fact that the protected disclosure had been made caused or influenced the employer to act (or not act) in the way complained of.*

170. And in Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL the House of Lords stated an employee may be subjected to detriment even where there are no economic or physical consequences resulting from the employer's deliberate act or failure to act.

171. In Osipov v Timis [2017] EAT, Simler P summarised the proper approach to inference drawing and the burden of proof when considering causation as follows (at paragraph 115):

> *"(a) the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.*
>
> *(b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them …*
>
> *(c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found."*

CONCLUSIONS ON THE ISSUES

172. I have applied the above law to the findings of fact that I have made in order to answer the questions raised by the list of issues, and in so doing, I provide my conclusions on those issues as set out below.

Time Limit

173. At paragraph 20 of its amended grounds of resistance, the respondent states that any complaint about something that has happened before 12th May 2022 has been brought outside the statutory time limit of 3 months.

174. The claimant's position (see paragraph 5 of her witness statement), is that the earliest detriment she relies on was on 13th May 2022, meaning her claim is in time.

175. I agree with the claimant that her claim has been brought within the statutory time limit set out at section 48(3)(a), correctly identified by the respondent as being 12th May 2022.

The Disclosures

Did the claimant disclose information

176. It is common ground that the claimant sent Mr Dent the e-mail referred to at paragraph 49 above, and that it contained the information set out at paragraphs 21.1(i) to 21.1(vii) above.

Did she believe the disclosures of information were made in the public interest

177. In broad terms, the claimant maintains her disclosures are in the public interest because the respondent is funded by taxpayers, and its operations impact public safety, particularly in respect of those who use its services and whom it employs. In respect of each of the disclosures relied on, the claimant has identified the statutory basis on which the disclosures are said to qualify for protection, as set out below.

    177.1 PD1 (John Doyle announcing someone had made a protected disclosure): breach of a legal obligation not to collude in fraud by false representation.

    177.2 PD2 (Margaret Waite input false information to misrepresent her work to secure a higher band of performance-related pay and overtime pay): breach of a legal obligation not to commit fraud by false representation.

    177.3 PD3 (Kieron Dimelow inflated staff attendance figures to increase his bonus pay): breach of a legal obligation not to commit fraud by false representation.

    177.4 PD4 (Ms Waite and Mr Dimelow discriminated against Steve Ostrich and Rob Hallinan on the grounds of their perceived disabilities): breach of a legal obligation under the Equality Act 2010.

    177.5 PD5 (Train Operator Ali due to the level of aggression previously exhibited and him being in possession of a knife): breach of an employer's legal obligation to its employees and the public under the Health and Safety at Work Act 1974.

177.6 PD6 (Mr Dimelow gave the claimant a false performance rating and failed to carry out an assessment of her safety-critical role): breach of an employer's legal obligation to its employees and the public under the Health and Safety at Work Act 1974.

177.7 PD7 (Ms Waite failed to correctly categorise a 'Signal Passed at Danger' ('SPAD'), even though SPAD reporting must be accurate to prevent reoccurrence and the consequent risk to train operators and passengers): breach of an employer's legal obligation to its employees and the public under the Health and Safety at Work Act 1974.

178. At paragraphs 22 to 22.1.2 of its amended grounds of resistance, the respondent deals with whether the disclosures are qualifying disclosures as follows:

22. The Respondent does not admit that the Claimant's complaint to Nick Dent of 27 April 2018 constitutes a qualifying disclosure within the meaning of section 43B of the Employment Rights Act 1996. In particular:

22.1 The Respondent does not admit that the Claimant made a disclosure of information which she reasonably believed tended to show a relevant failure (i.e. a matter falling within paragraphs (a) to (f) of section 43B (1). In particular, the Respondent denies that the Claimant disclosed information which she reasonably believed tended to show that:

22.1.1 The Respondent had failed, was failing or was likely to fail to comply with any legal obligation to which it was subject; and/or

22.1.2 The health and safety of any individual had been, was being or was likely to be endangered

Or that any of the above were being or were likely to be deliberately concealed.

179. In his skeleton argument, Mr Salter adds that the respondent disputes the claimant had a reasonable belief that the disclosures were in the public interest *"in light of the inordinate delay in making this disclosure."* (see paragraph 25 of the respondent's skeleton argument). Mr Salter also argues the disclosures were made in breach of the respondent's whistleblowing policy.

180. In my judgment, the respondent's grounds or arguments provide an insufficient basis to conclude the disclosures are not qualifying disclosures. My reasons are based on the 5 requirements set out in *Williams v Michelle Brown* (see paragraph 160 to 165 above), which in my judgment, are met.

181. Firstly, the respondent does not dispute the claimant made disclosures of information, nor does it criticise the disclosures as failing to provide sufficient factual content.

182. Secondly, the claimant has identified the provisions at sections 43B(1) which she believes applies to each of the disclosures. Regarding PD1, PD2 and PD3, the claimant has, in general terms, stated the legal obligation which she says has been breached. I remind myself that a general reference to a legal obligation is

sufficient, and the claimant's disclosure makes clear the wrongdoing she is alleging. In respect of PD4, the claimant specifies the legislation said to be breached, which corresponds to the allegation of a breach of the Equality Act 2010. Similarly, the allegations that violent behaviour of an employee on public-facing duties, a failure to properly assess those employed in safety-critical roles, and the failure to correctly report SPADs, are all matters which in my judgment tend to show the health and safety of any individual was likely to be endangered.

183. Thirdly, I accept that the claimant reasonably believes the above matters tend to show a relevant failing because each allegation corresponds with a credible legal obligation, even though in some instances the claimant has identified the obligations in general terms.

184. Fourthly, I consider the claimant genuinely believes these disclosures are made in the public interest. I have taken into account the time that has elapsed between the matters the disclosures relate to and the claimant making the disclosure potentially undermines her position. However, on the balance of probabilities, I accept the claimant's oral evidence that she was hesitant to make the disclosures because Mr Boyle had previously identified a whistleblower. Her evidence that Mr Boyle had done so was not challenged.

185. Finally, I also find the claimant's belief was reasonable. In the claim form the claimant states the disclosures are in the public interest because they relate to expenditure, by way of employees' performance-related pay and bonuses, which are paid out of public funds. I consider the public would have a legitimate interest in know whether public funds are being misused. I also consider the public have a legitimate interest in knowing the respondent, which is a public body, is complying with its legal obligations, and that the health and safety of individuals, including service users and employees, is not endangered. In my judgment, these are credible, and therefore reasonable, matters of public interest, and I consider the claimant's belief in that regard to also be reasonable.

186. It is common ground that if the disclosures are qualifying disclosures they are protected, because the claimant made the disclosures to her employer.

DETRIMENTS

Did Steve Manuel conduct the claimant's end of year performance review within the correct window, between 4 April 2022-13 May 2022

187. For the reasons stated at paragraphs 72 to 74 above, I find that Mr Manuel did conduct the claimant's end of year performance review, including by holding a review meeting on 4th April 2022.

188. I note Mr Victor's conclusions regarding certain deficiencies in how the review was conducted, but he nonetheless concluded the review was carried out. I have dealt with these deficiencies at paragraphs 196 to 198 below.

Was the claimant subjected to any detriment

189. As I have found the 2022 performance review was carried out, it follows I do not consider the claimant was subjected to any detriment as a result of the alleged failure to carry out the review. To the extent she was or was not subjected to any detriment as a result of the deficiencies in the review process, that is dealt with at paragraphs 196 to 198 below.

If so, was it done on the ground that she made a protected disclosure

190. This point does not require determination as I have found the annual performance review was carried out, and therefore the claimant was not subjected to detriment as a result of a failure to carry out her review.

Steve Manuel and Margaret Waite's decision on or around 13 May 2022 to prevent the claimant from applying for a secondment

191. I found at paragraphs 77 to 81 above that Ms Waite asked Mr Manuel to select which Trains Manager should be selected for the secondment because he had recently carried out the Trains Managers' performance review. I therefore found that it was Mr Manuel, and not Ms Waite, who selected Mr Phelps.

192. I also found at paragraph 80 above that because the secondment was not advertised, this prevented the claimant from applying for the position.

Was the claimant subjected to any detriment

193. In my judgment, the claimant was not subjected to any detriment as a result of being prevented from applying for this position. I take into account that Mr Phelps was selected from a pool of the Trains Managers which included the claimant. Therefore, having regard to *Chattenton v City of Sunderland City Council ET Case No.6402938/99*, on the balance of probabilities, she is unlikely to have been subjected to detriment, because she was not treated any differently to all other Trains Managers in the selection pool.

If so, was it done on the ground that she made a protected disclosure

194. In any event, if the claimant being prevented from applying for the position subjected her to a detriment, I consider that was not on the ground of her protected disclosure for a number of reasons. Firstly, where a secondment is for 13 weeks or less, the respondent's policy allows the selection to be made without advertising the position. Secondly, the respondent states a replacement TOM was required quickly, which made an open competition impractical. Thirdly, the fact that the claimant was treated no differently from other Trains Managers in the selection pool, supports the conclusion that any detriment was not on the grounds of the claimant's protected disclosures.

195. Essentially, there were operational reasons why the respondent did not advertise this secondment, and in doing so, it acted in accordance with its policy. I do not consider that decision was caused or influenced by the claimant's protected disclosures.

Mr Manuel inputting a negative performance rating and negative review notes on to the claimant's performance record on or around 6 June 2022 and a further negative performance rating and negative review notes on 13 June 2022

196. I concluded that Mr Manuel did not input any information on the claimant's My Journey data on either 6th or 13th June 2022. However, I accept Mr Victor's conclusion that the *"I am being supported"* performance rating Mr Manuel gave the claimant was unduly negative given his communication with the claimant regarding her performance was not adequate. It's for this reason that Mr Victor's recommendation that the claimant's performance rating be updated to *"I am achieving"* was implemented.

Was the claimant subjected to any detriment

197. I also consider the claimant was subjected to detriment as a result of Mr Manuel awarding the lowest rating of *"I am being supported"*, instead of the *"I am achieving"* rating that later substituted this. I consider the original lower performance rating falls within the broad definition of being considered a detriment, from the claimant's viewpoint.

If so, was it done on the ground that she made a protected disclosure

198. However, I do not consider Mr Manuel's unduly negative performance rating was given on the ground that the claimant had made a protected disclosure. I accept his evidence that he genuinely considered the *"I am being supported"* rating to be appropriate. My reasons are that it was common ground he enjoyed a good working relationship with the claimant. He was not the subject of any of the disclosures, and therefore would have no reason to subject the claimant to a detriment on the grounds of the disclosures. Furthermore, Mr Manuel stated he was aware the claimant had made a complaint, but he was not aware of the details of the complaint until the 27th April 2018 Outline of Events document was shown to him as part of these proceedings. Therefore as he was unaware of the detail of the disclosures, I find it unlikely these would have caused or influenced the performance rating he gave the claimant.

Mr Manuel inputting an equivalent negative performance rating on the claimant's performance-related pay with wording that she was receiving remedial help, on or around 3 August 2022

199. My findings of fact and reasons are set out at paragraphs 86 to 91 above, which state I find the letter was a standard letter generated by HR. Therefore, I do not consider Mr Manuel input the information, as alleged.

200. It is also noted at paragraph 89 above, that the parties agreed the contents of the letter would not impact the claimant's pay.

Was the claimant subjected to any detriment

201. I have concluded Mr Manuel did not input the information on the 3rd August 2022 letter, instead, I have found the letter was generated by the respondent's HR department. However, in my judgment, I consider the letter subjected the claimant

to detriment within the broad definition of the word, because of the low performance rating and the reference to her receiving support.

202. I also accept the agreed evidence that the letter would not affect the claimant's pay. I nonetheless consider it is detrimental, and I note that in accordance with *Shamoon*, economic detriment is not required for the purposes of section 47B.

If so, was it done on the ground that she made a protected disclosure

203. The letter itself, is a standard letter generated by HR and sent to the respondent's employees. It was not sent to the claimant alone, and it was sent to her for the legitimate purpose of notifying her of her annual salary. I have found the letter was generated by HR, and consider it's not the claimant's case that anyone in HR are amongst the individuals who she says have subjected her to detriment on the ground of her protected disclosure. This further supports my conclusion that HR sending out the standard letter was not caused or influenced by the claimant's protected disclosures.

Ms Waite, Mr Dent and Ms Owen's Decision on 23 September 2022 to reject the claimant's expression of interest for a second secondment

204. My findings at paragraph 99 above are that Ms Waite was not involved in selecting the second secondee: she had recused herself from the selection process due to the claimant's outstanding complaint against her. Therefore, Mr Dent requested Ms Owen select the secondee, but he was not involved in the selection decision himself.

205. It follows from my findings, that I consider Ms Owen made the decision to reject the claimant's application, and that neither Ms Waite nor Mr Dent made the decision to reject her application.

Was the claimant subjected to any detriment

206. I consider Ms Owen's decision amounted to a detriment, because the claimant did not gain the recent experience of holding the TOM position that the secondment offered.

If so, was it done on the ground that she made a protected disclosure

207. I do not consider Ms Owen's decision was on the ground of the claimant's protected disclosure for a number of reasons. Ms Owen was not the subject of the disclosures, and the claimant (and Ms Waite) had sufficient trust in her impartiality to agree to her being an intermediary after their 2019 mediation. Additionally, Ms Owen has provided a credible explanation of the basis on which she made her selection (see paragraph 97), which is supported by her contemporaneous e-mail regarding her decision. In my judgment, Ms Owen's decision was not caused or influenced by the protected disclosures, instead I consider her decision was based on those matters set out in the written evidence.

Feedback on being unsuccessful based on false performance rating on 23 September 2022

208. It is common ground that Ms Owen based her selection for the further secondment position on the My Journey data, and so logically, the feedback she gave was also based on that data. Ms Owen also states that had she been aware the claimant's grievance challenged that data, she probably would have asked for more information about the grievance. In the event, unaware of the detail of the grievance, Ms Owen based her decision and feedback on the My Journey data, which showed the claimant's original *"being supported"* performance rating.

209. Because this rating was subsequently amended and upgraded, it means Ms Owen's assessment and feedback was based on an inaccurate rating. However, as previously stated, I do not consider the original performance rating was given in bad faith, so to that extent, it was not *"false".* I have already stated that I consider Mr Manuel genuinely considered that the *"I am being supported"* rating accurately reflected an appropriate rating, and given my reasons (see paragraph 75 above).

Was the claimant subjected to any detriment

210. Although the claimant's performance rating was not false, I have found it was inaccurate, so I have considered whether it subjected the claimant to detriment. I have concluded that it did not. That is because although the claimant's application was assessed, and feedback was given, on the basis of a performance rating that was lower than the one eventually awarded to her, it's unlikely to have affected her prospects of being selected. That is because Ms Owen states that irrespective of her performance rating, in My Journey, the claimant had given no detail or reasons which evidenced that she was meeting objectives.

If so, was it done on the ground that she made a protected disclosure

211. If I am wrong and the claimant was subjected to detriment, I nonetheless consider Ms Owen using the (inaccurate) My Journey data to provide feedback was not done on the grounds that the claimant made a protected disclosure. Ms Owen gave the feedback, and says she had no knowledge of the disclosure, and so it cannot have caused or influenced her. Furthermore, Ms Owen was not the subject of the disclosures, and was regarded by the claimant to be sufficiently impartial for the claimant to agree to Ms Owen acting as an intermediary between her and Ms Waite. Therefore, in all the circumstances, I do not consider the disclosures were the grounds for Ms Owen dealing with the claimant's application and feedback in the way that she did.

On or around 3 October 2022 Ms Waite entered the claimant's workplace contrary to established practice that parties involved in an investigation avoid contact where possible during a grievance and in breach of the post-mediation agreement

212. I have found that Ms Waite entered the claimant's workplace without giving the claimant advance notice, and for that reason, I consider her visit was in breach of the post-mediation agreement.

Was the claimant subjected to any detriment

213. I also find that from the claimant's viewpoint, that would have amounted to a detriment, because it was contrary to the post-mediation agreement.

If so, was it done on the ground that she made a protected disclosure

214. However, I do not consider that Ms Waite entered the claimant's workplace without giving prior notice on the ground of the protected disclosure for a number of reasons. Firstly, Ms Waite has said that she considered the mediation to be void because the claimant had brought a grievance against her. I consider that is a mistaken view, albeit an understandable one. In my judgment this was a genuine mistake on Ms Waite's part, in that sense, Ms Waite was not deliberately (or wilfully) breaching the agreement.

215. Secondly, Ms Waite's conduct in respect of her dealings with the claimant has otherwise been appropriate. In particular, she was the one who identified the conflict that would have arisen if she had dealt with the selection for the further TOM secondment which the claimant applied for. Finally, aside from the claimant's allegations, which insofar as they relate to Ms Waite, I conclude they are ill-founded, the evidence indicates that Ms Waite has a professional approach to her work. In light of her professionalism, I do not consider the claimant's disclosures caused or influenced Ms Waite's decision to visit the Morden depot without giving the claimant advance notice.

On or around 12 October 2022 the claimant's application for a permanent promotion to the Train Operations Manager position was rejected by a panel consisting of Ms Waite and Dale Smith before the interview stage

216. For the reasons stated at paragraphs 108 to 119, I do not consider Ms Waite played any part in the rejection of the claimant's application for the permanent TOM position. I consider that decision was made by Mr Smith alone.

Was the claimant subjected to any detriment

217. It follows that as I do not consider Ms Waite was part of a panel that rejected the claimant's application, I also consider the claimant has not been subjected to any detriment. There is no basis for finding that the claimant was subjected to detriment as a result of Mr Smith marking her application.

If so, was it done on the ground that she made a protected disclosure

218. As the claimant has not been subjected to detriment, this point does not require determination.

On or around 5 October 2022 Ms Waite misled Roy Victor that the claimant had inappropriately contacted her

219. As stated at paragraph 107 above, I find that Ms Waite did not mislead Mr Victor. I found that because Ms Waite forwarded the claimant's e-mail to Mr Victor, he could see for himself what, if anything, the claimant had to say about the reason for e-mailing Ms Waite.

Was the claimant subjected to any detriment

220. It follows that as Ms Waite did not mislead Mr Victor, the claimant cannot have been subjected to any detriment resulting from Ms Waite's actions.

If so, was it done on the ground that she made a protected disclosure

221. It also follows that, because the claimant has not been subjected to any detriment, this issue does not require a determination.

In respect of the claimant's grievance, on 17 November 2022 Mr Victor issued the outcome. He concluded there was no case to answer, but the investigation failed to consider the claimant's disclosures and whether Mr Manuel or Ms Waite had bullied her as a result

222. This issue raises three points. The first point relates to the outcome of Mr Victor's investigation. It is common ground that Mr Victor found there was no case to answer, which addresses the first point raised by this issue.

223. The second point raised by this issue is whether Mr Victor failed to consider the claimant's disclosure. My finding on this is at paragraph 125, which concluded that Mr Victor addressed the issue of whether the claimant's disclosures affected the recruitment decisions which were made in respect of the temporary and permanent TOM positions. He concluded the disclosures did not.

224. The final point raised by this issue is whether Mr Victor failed to consider that the claimant alleged both Ms Waite and Mr Manuel bullied her. I found at paragraph 123 above that Mr Victor dealt with this issue because he states in his report that he found no evidence of any abuse, misuse of power or authority. This means, in accordance with his definition, he found no evidence of bullying.

Was the claimant subjected to any detriment

225. As to whether any of the above points resulted in the claimant being subjected to detriment:

    225.1 Regarding the first point, Mr Victor's finding of no case to answer, I find that from the claimant's viewpoint the outcome itself, which is a dismissal of her grievance, would be seen as a detriment.

    225.2 As to the second and third points, these issues require no further consideration because I have rejected the contention that Mr Victor failed to consider the matters alleged.

If so, was it done on the ground that she made a protected disclosure

226. I considered Mr Victor's investigation report, and I find it was fair and thorough. I also consider that his conclusion is based on a reasonable and fair assessment of the evidence obtained as part of his investigation. This is supported by the fact that Mr Victor identified deficiencies in the way the claimant's 2022 annual performance review had been conducted. It shows that, where appropriate, he

was open to making findings favourable to the claimant, even though he concluded there was no case to answer in respect of her grievance. Therefore, I consider his conclusion that there was no case to answer was based on that evidence, and it was not caused or influenced by the disclosure made by the claimant.

Ms Waite marked the claimant's application for a permanent position but should have recused herself because the claimant had an outstanding grievance against her

227. At paragraphs 114 to 115 above, I found that although Ms Waite did not recuse herself, there was no need for her to do so because Mr Smith alone marked the claimant's application for the permanent TOM position. My reasons for this finding are at paragraph 114 above.

Was the claimant subjected to any detriment

228. Accordingly, the claimant did not suffer any detriment even though Ms Waite did not recuse herself, because only Mr Smith marked the claimant's application. It follows the claimant could not be subjected to any detriment as a result of Ms Waite marking her application, because Ms Waite did not mark it.

If so, was it done on the ground that she made a protected disclosure

229. It also follows that, as the claimant was not subjected to any detriment, this point does not require a determination.

The claimant was not provided with feedback on her application for permanent promotion for over two months, meaning she was out of time to appeal against the decision

230. It is not disputed that the claimant requested feedback by her e-mail sent on 12th October 2022, and that Ms Jales e-mailed Mr Smith's feedback to her, over two months later, on 14th December 2022. The claimant's unchallenged evidence was that by the time she received feedback, she was out of time for appealing against the recruitment decision.

Was the claimant subjected to any detriment

231. In my judgment, any delay in the claimant receiving feedback would subject her to a detriment because it meant she did not have the information she needed to submit a timely appeal against the recruitment decision.

If so, was it done on the ground that she made a protected disclosure

232. I consider the above detriment was not on the ground that the claimant made a protected disclosure. The claimant e-mailed Ms Jales in HR requesting feedback, but Mr Smith said the first time he was asked to provide feedback was in December 2022, at which point he provided the requested feedback. On the basis of Mr Smith's evidence, it seems Ms Jales may not have forwarded the claimant's request for feedback until December 2022. However, if that is the case, I do not consider that was on the ground of the claimant's protected disclosure. Ms Jales

is not the subject of the disclosure. It's unclear to what degree she knew about the detail of the disclosure, but even if she knew about it, it's unlikely a HR professional would subject the claimant to any detriment as a result of protected disclosures, particularly as the disclosures do not relate to her.

233. In his oral evidence, Mr Smith stated feedback is not normally provided to applicants who fail to get shortlisted. It means that by providing any feedback at all, the claimant was treated in a way more favourable than most applicants. As she was treated more favourably than others notwithstanding her protected disclosures, it follows the detriment she suffered was not on the grounds of the disclosures.

234. I also do not consider Mr Smith's actions were on the ground of the claimant's protected disclosure. I accept Mr Smith's evidence that he provided feedback promptly, once he was informed feedback had been requested. Mr Smith knew nothing about the claimant's outline of events document, so it follows, the disclosures would not have caused or influenced the timing of his feedback to the claimant.

During the investigation hearing on 21 February 2023 Peter Tollington failed to consider the claimant's disclosure as part of her appeal, or consider omissions of evidence relating to her false performance review in the original grievance

235. At paragraphs 137 to 139 above, I found that Mr Tollington's letter of 13th March 2023 expressly addressed this issue. And in his witness statement, Mr Tollington also dealt with Mr Victor's findings on this issue. Those findings were that because Ms Waite was not involved in the recruitment decisions for the temporary and permanent TOM positions, she did not victimise the claimant by thwarting her applications for those positions.

236. I also find that Mr Tollington considered the claimant's performance rating, including the omissions, and that the frequency of the informal reviews she received was inadequate. He also referred to the claimant's performance rating that Mr Victor recommended should be amended. Mr Tollington deals with this on the final page of his letter of 13th March 2023 (see paragraph 638 of the Hearing Bundle).

237. Therefore, in my judgment, Mr Tollington did not fail to consider the claimant's disclosure, nor did he fail to consider the omissions of evidence relating to the original performance rating.

Was the claimant subjected to any detriment

238. It follows that the claimant was not subjected to any detriment arising from the alleged failings in the manner in which Mr Tollington dealt with the appeal, because in my judgment, the allegation is not made out.

If so, was it done on the ground that she made a protected disclosure

239. In light of paragraphs 235 to 238 above, this point does not require determination.

Instead, Mr Tollington focused questioning on the claimant's performance review rather than her allegations of victimisation

240. As stated at paragraphs 136 to 138 above, I find that Mr Tollington dealt with the claimant's performance review, however, I also find that he dealt with the claimant's allegations of victimisation. Essentially, like Mr Victor, Mr Tollington concluded Ms Waite was not involved in the recruitment decisions for the temporary and permanent TOM positions. Therefore, they both concluded, she did not victimise the claimant by thwarting her applications for these posts.

Was the claimant subjected to any detriment

241. Because, in my judgment, Mr Tollington addressing the claimant's performance rating has not jeopardised a proper consideration of her allegations of victimisation, the claimant was not subjected to any detriment.

If so, was it done on the ground that she made a protected disclosure

242. It follows from paragraph 241 above, that this point does not require a determination.

On 13 March 2023 Mr Tollington did not uphold the claimant's appeal

243. There is no dispute about the outcome of the appeal conducted by Mr Tollington: he dismissed the appeal on all grounds.

Was the claimant subjected to any detriment

244. In my judgment, from the claimant's viewpoint, the dismissal of her appeal would be seen as a detriment.

If so, was it done on the ground that she made a protected disclosure

245. In my judgment, Mr Tollington dismissed the claimant's appeal based on his assessment of the evidence, and the claimant's disclosures did not cause or influence his decision to dismiss the appeal. He interviewed the claimant and Mr Victor, reviewed the relevant documentation, addressed each ground of appeal separately, setting out his findings and conclusions in relation to each. Those conclusions are evidenced based, and I consider they fairly reflect his view of the matter. I note he did not unquestionably adopt Mr Victor's findings, but used his own experience to assess the appeal. For instance, he drew on his past experience as a General Line Manager when concluding that it was appropriate that Ms Waite asked Mr Manuel to select the secondee in May 2022. For these reasons, I do not consider Mr Tollington's decision was made on the ground that the claimant made protected disclosures.

Nick Dent's May 2023 e-mail reviewing the claimant's appeal contradicted his assurance to the claimant in 2018 that her applications for career progression would be treated fairly and on merit

246. As stated at paragraph 143 above, I find Mr Dent's letter sent to the claimant on 25th May 2023 did not contradict his 2018 assurance that the claimant's application

for career progression would be treated fairly and on merit. Mr Dent states that Mr Victor and Mr Tollington concluded her previous complaint did not adversely affect her applications, and I find that is consistent with the substance of his 2018 assurance.

Was the claimant subjected to any detriment

247. Because I find Mr Dent has not contradicted his 2018 assurance, it follows I do not consider the claimant has been subjected to any detriment resulting from the alleged contradiction.

If so, was it done on the ground that she made a protected disclosure

248. In light of paragraph 247 above, this point does not require any determination.

On 14 June 2023 Nick Dent refused to answer the claimant's question relating to the feedback she received on her application for Train Operations Manager

249. At paragraph 147 above, I found that Mr Dent's 14th June 2023 e-mail did not address the claimant's question regarding the feedback she received on her TOM application. However, I found Mr Dent did not refuse to address it, but instead, it was an oversight in that he believed he had addressed all the points the claimant had raised.

Was the claimant subjected to any detriment

250. I consider that from the claimant's viewpoint she was subjected to detriment, because at that point, her request for more information about why feedback was given using the My Journey data, was unanswered. The potential benefit to an applicant to receive and understand feedback is apparent. Therefore it follows, to receive a response that fails to address her question regarding feedback would be a detriment.

If so, was it done on the ground that she made a protected disclosure

251. I do not consider that Mr Dent's failure to answer the claimant's question was either deliberate, nor on the ground that the claimant made protected disclosures, essentially for the reasons stated at paragraph 147 above. In my judgment, he has dealt reasonably and fairly in his various exchanges with the claimant, which makes it unlikely that at this stage, his conduct towards her would start to be influenced by the disclosures she had made to him more than 5 years previously.

On 2 July 2023 Mr Dent's e-mail stating matters had been "already dealt with in the grievance outcome"

252. It's plain from Mr Dent's e-mail of 2nd July 2023 that he stated the matter had already been dealt with.

Was the claimant subjected to any detriment

253. I do not consider Mr Dent's e-mail subjected the claimant to detriment, even in the broad sense of the definition. The claimant's disclosures had been reviewed by

Mr Boots, considered as part of Mr Victor's investigation into her grievance, they were considered by Mr Tollington on appeal, and Mr Dent had also carried out an exceptional review. Therefore, I consider Mr Dent was merely stating a fact, namely that the matter had been dealt with.

254. I also do not consider that statement subjected the claimant to a detriment because the background to the e-mail is that the claimant's complaint had been considered by more people than would ordinarily be the case. Once a grievance and any subsequent appeal are dealt with, that would normally exhaust all the respondent's internal procedures. However, in this case, Mr Dent carried out an exceptional (additional) review. Although the outcome of his review was that the matter had already been dealt with, that final review and his consequent statement, would not be a detriment as it is over and above what other complainants would receive.

If so, was it done on the ground that she made a protected disclosure

255. As I have found the claimant was not subjected to any detriment, this point does not require a determination.

Glynn Barton (Chief Operating Officer) response to the claimant's complaint against Mr Dent

256. The claimant has not identified the specific part of Mr Barton's response that she takes issue with in the above assertion. Paragraphs 305 and 306 of her witness statement do not shed any particular light on this, except they suggest that she disagrees with Mr Barton's conclusions about being supported in her career, and finds this *"means nothing"* and *"is of no use".* Mr Barton's e-mail primarily summarises the various stages of the claimant's complaint, and reiterates that all internal processes have been exhausted. He concludes by recommending she focuses on career development.

Was the claimant subjected to any detriment

257. In my judgment, the contents of Mr Barton's response, even on the broad definition, do not amount to subjecting the claimant to any detriment. Like Mr Dent, Mr Barton was essentially providing a factual summary of how the claimant's grievance had been dealt with.

If so, was it done on the ground that she made a protected disclosure

258. It follows that as I do not consider Mr Barton's response subjected the claimant to any detriment, this point does not require a determination.

Conclusion

257. For the reasons stated above, the claimant's claim is dismissed.

Approved By
Employment Judge Tueje
25th February 2025

Sent to Parties**.**
27 February 2025