Case Number 2602927/2022

EMPLOYMENT TRIBUNALS

Claimant: Ms Sheila Shokuhi

Respondent: University Hospitals of Leicester NHS Trust

Heard at: Leicester (hybrid via CVP)

On: 24 February to 14 March 2025 (reading days on 24 to 26 February, 28 February and 3 March 2025). Chambers on 17, 19 and 21 March 2025

Before: Employment Judge Welch
Ms F French
Ms L Woodward

REPRESENTATION:

Claimant: In person, supported on the first attended day by Mr and Mrs Ferris, her friends

Respondent: Mr T Sheppard (Counsel)

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

Detriment for making protected disclosures

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

Automatic Unfair Dismissal

2. The complaint of automatic unfair dismissal for making protected disclosures is not well-founded and is dismissed.

Unfair Dismissal

3. The complaint of unfair dismissal is not well-founded. The claimant was not unfairly dismissed.

Breach of contract

4. The complaint of breach of contract in relation to notice pay is not well-founded. The claim is dismissed.

5. The complaint of breach of contract in relation to wages for the period 25 July 2022 until 8 August 2023 is not well founded. The claim is dismissed.

Approved by

Employment Judge Welch
26 March 2025

Judgment sent to the parties on:

…31 March 2025……

For the Tribunal:

……

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

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

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

REASONS

Background

1. The Claimant presented a claim against the respondent on 8 December 2022 following a period of ACAS early conciliation which took place from 3 October 2022 to 14 November 2022.
2. The claimant bought claims for unfair dismissal, automatic unfair dismissal for making protected disclosures, public interest disclosure detriment and wrongful dismissal.
3. Following an agreed stay of the proceedings whilst internal processes were finalised, the case came before Employment Judge Fredericks-Bowyer for a private preliminary hearing on 18 January 2024. At that hearing, the respondent's draft list of issues was agreed by the claimant's Counsel and the claimant was ordered to provide further details for insertion into the list of issues within 14 days from the date of the hearing. The parties were ordered to provide the Tribunal with an agreed list of issues within 7 days of the sending of the Case Management Orders.
4. A further preliminary hearing for case management was held on 29 November 2024, before Employment Judge Adkinson. The claimant had continued to receive advice prior to the hearing but attended the preliminary hearing representing herself. At this hearing, the parties agreed that the list of issues (appearing at page 311 in the bundle for the preliminary hearing) correctly reflected the issues arising from the claims before the Tribunal with one amendment to paragraph 3.1.4 to replace "(this is a non-exhaustive list)" with "Jenna Nelson".
5. After the hearing, the claimant made an application on 11 December 2024 to amend the agreed list of issues. She attached to this application an amended list of issues

with comments. The proposed amendments included no changes to the protected disclosure relied upon for her automatic unfair dismissal and detriments claims. This application was referred to Employment Judge Adkinson, who refused the claimant's application on 7 February 2025. He considered the application an attempt to amend the claim itself which required permission, for which she had not applied and did not have.

6. The respondent made an application to the Tribunal on 19 February 2025, requesting that the issue of whether the claimant's alleged disclosure made on 13 November 2019 amounted to a protected disclosure should be considered as a preliminary matter when the parties attended the hearing on 27 February 2025.

7. The claimant was ordered to confirm whether she objected to the application by Monday 24 February 2025. The claimant objected on that date principally on the grounds that the application was made very late, and she believed this was an attempt to derail her preparations for the final hearing. The parties were told that this would be discussed at the start of the attended hearing.

8. As previously agreed, the parties did not attend on the first three days, which had been designated as a reading time for the panel. As the panel had been provided with electronic bundles totalling over 16,000 pages, together with 14 witness statements totalling over 380 pages, this time was needed, and further time was allocated for reading as set out below.

9. It had been agreed that the hearing would dispense with the need for physical bundles providing that the respondent attended the hearing with appropriate means for the witnesses to be able to access the electronic bundles. The panel and the witnesses

used written copies of the witness statements, but electronic copies of the bundles. References to page numbers within this Judgment refer to page numbers in the agreed bundles.

The hearing

10. The parties attended on Thursday 27 February 2025 and the respondent had brought along physical copies of the witness statements for the witness table and a preloaded electronic device with the agreed bundles on it. All parties and witnesses attended the Tribunal. One of the members was only able to attend remotely, and she did so via CVP. This caused no issues, other than on the morning of Tuesday 4 March 2025, when a National problem with CVP meant that we were unable to continue with the hearing and the parties were sent away until the afternoon.

11. At the start of the hearing, the panel heard from both sides as to whether it was appropriate to consider the respondent's application to decide the issue of whether there had been a protected disclosure as a preliminary matter before commencing with hearing the evidence on the full case.

12. Having heard from both parties, the panel decided that it was in accordance with the overriding objective to consider whether the claimant had made a protected disclosure on 13 November 2019, prior to hearing evidence in respect of the other aspects of the claim.

13. Having heard evidence from the claimant, and submissions from both parties, the Tribunal decided that the claimant had not made a protected disclosure, and therefore her claims for automatic unfair dismissal and detriment for having made protected

disclosures were dismissed; reasons being given orally at the time, they are not repeated here.

14. Following this, the list of issues was amended and agreed with the parties reflecting the panel's decision. The remaining issues to be determined by the tribunal were therefore agreed as follows:

"1. The claimant is pursuing the following claims:

1.1 Unfair Dismissal – S 98 Employment Rights Act 1996;

1.2 Wrongful dismissal.

Legal Issues

2 Unfair Dismissal – s 98 Employment Rights Act. All 1996

2.1 what was the reason or principal reason for the claimant's dismissal? Was it a potentially fair reason? (ERA 1996, s 98 (1), (2)). The respondent relies upon the potentially fair reason of conduct.

2.2 Did the respondent act reasonably in the circumstances, including its size and administrative resources, in treating the alleged misconduct as a sufficient reason for the claimant's dismissal? (ERA 1996, s 98 (4)). In particular, did the respondent form:

2.2.1 a genuine belief that the claimant was guilty of misconduct alleged on reasonable grounds?

2.2.2 After such investigation as was reasonable? (BHS v Burchell [1978] IRLR 379).

2.3 Was dismissal essential within the range of reasonable responses open to the respondent? (ERA 1996, s 98(4))?

2.4 Did the respondent follow a fair procedure? (ERA 1996, s 98(4))

2.5 The claimant relies on the following as amounting to procedural unfairness:

2.5.1 The respondent failed to establish the facts of each case (ACAS Code 5-7);

2.5.2 The claimant was suspended for a significant period of time to the extent she was de-skilled (ACAS Code – 8);

2.5.3 despite informing the respondent of an inability to attend a disciplinary hearing, it went ahead (ACAS Code 13-17);

2.5.4 The claimant was not accompanied at the disciplinary meeting (ACAS Code 13-17);

2.5.5 The claimant appealed and the appeal was not heard without unreasonable delay, it was not impartial and the claimant was not informed of the result of the appeal hearing as soon as possible (ACAS Code 26-29);

2.5.6 The claimant sought to provide information and was not able to during the course of the appeal hearing (ACAS Code 12)

3 Wrongful dismissal

3.1 did the claimant have a contractual right to be reinstated from the date of dismissal (25 July 2022) until the date that the outcome of the appeal by way of rehearing was communicated to her (8 August 2023)?

3.2 If so, what salary and/or benefits were owed to the claimant during this time?

Jurisdiction

Time Limits

4 Did the claimant submit a claim before the end of the period of three months beginning with the effective date of termination, taking into account the effect of the 'stop the clock' provisions in respect of early conciliation? (ERA 1996, ss 111 (2) (a), s207B).

5 If not, was it not reasonably practicable for the claimant to submit the claim in time? (ERA 1996, s 111(2)(b)

6 if so, did the claimant submit a claim within such further period as was reasonable? (ERA 1996 s 111(2)(b))."

15. It was agreed that the hearing would consider liability, and it was noted that the list of issues would require amendment in respect of remedy, should any of the claimant's claims succeed.

16. In light of the dismissal of the claims for automatic unfair dismissal and detriment for making protected disclosures, we revisited the timetable for the hearing. The respondent confirmed that it now intended to call 5 of its witnesses as opposed to the 13 it would have called had the whistleblowing claims continued.

17. We offered the claimant the opportunity to give evidence first or second, there being no objection from the respondent. The claimant confirmed that she wished the respondent's witnesses to give evidence first, but requested time to prepare for this, as she had understood that she would give evidence first. It was therefore agreed that the parties would not attend on Friday 28 February 2025 to give the claimant sufficient opportunity to prepare her questions for the respondent's remaining 5

witnesses. As the respondent's first witness, Mr Furlong, was due to be in surgery on Monday 3 March 2025, the parties agreed that they would also not attend on this day, thereby affording the panel more time to read and/or do alternative work and more time for the parties to prepare their case. It was agreed that the case would recommence on Tuesday 4 March 2025. One of the respondent's witnesses was unable to attend during the second week of the hearing, and a timetable was therefore agreed which enabled her evidence to be heard in the third week of the hearing. This meant that we were able to adjust the hearing days to accommodate the claimant's requests for additional time to prepare. Also, we were able to agree to the claimant's requests to adjustments to the start and finish times during the hearing, particularly when the claimant said she was exhausted.

18. As stated, due to a national problem, we started hearing evidence after lunch on Tuesday, 4 March 2025.

19. We heard evidence on behalf of the respondent from:

    16.1 Andrew Furlong, respondent's Medical Director and Consultant Paediatric Orthopaedic Surgeon;

    16.2 Clare Teeney, respondent's Chief People Officer and Disciplinary Appeal panel member;

    16.3 Simon Barton, Deputy Chief Executive and Appeal panel chair;

    16.4 Julie Hogg, Chief Nursing Officer and Disciplinary Hearing panel chair; and

    16.5 Peter Dawson Consultant Colorectal Surgeon, External Disciplinary Panel Member.

20. On behalf of the claimant, we heard from the claimant herself.

21. All witnesses attending to give evidence had provided a written witness statement and gave evidence on oath. They were subjected to questions from the other side and the panel.

22. Additionally, we were provided with written witness statements from the following individuals on behalf of the respondent, who did not attend to give evidence, to which we attached such weight as we considered appropriate, recognising that the evidence was not sworn evidence on oath, had not been tested by cross-examination and some were unsigned:

    a. Dr Andrew Currie, Consultant Neonatologist;
    b. John Jameson, Responsible Officer, Deputy Medical Director and Consultant Surgeon;
    c. Jenna Nelson, People Partner;
    d. Dr Collette Marshall, Case Manager, Deputy Medical Director, Consultant Surgeon;
    e. Jonathan Walters, Barrister, Independent Investigator;
    f. Diane Pugh, Director of Impartial HR and Independent Investigator;
    g. Professor Mary Mushambi, Case Manager, Associate Medical Director, Consultant Anaesthetist; and
    h. Moira Durbidge, Executive Director of Quality, Transformation & Efficiency Improvement – grievance manager against case managers.

Findings of fact

23. The claimant was employed as a Consultant in breast surgery with an interest in Oncoplastic and reconstructive surgery [taken from her employment contract] from 1

February 2009 until her summary dismissal from the respondent's employment on 25 July 2022.

24. There was clear evidence before the Tribunal that there were no issues or concerns with the claimant's clinical work as a Surgeon, and she had, in fact, been awarded three Certificates of Excellence during her employment with the respondent. These resulted in additional payments to the claimant, which she retained until 12 March 2022.

25. The claimant's contract of employment [1A/263] which had been signed on behalf of the respondent, but had not been signed by the claimant, provided general mutual obligations which included confirmation that "*we work in a spirit of mutual trust and confidence*" and agreement to "*cooperate with each other*" and "*to maintain goodwill*".

26. As with every Consultant, there was a contractual obligation to have an agreed Job Plan setting out main duties and responsibilities.

Relevant policies

27. The claimant's contract of employment contained an obligation "*to comply with [the respondent's] Policies and Procedures as may from time to time be in force*".

28. The respondent had a disciplinary policy and procedure [1A/194]. This provided at paragraph 5 [1A/198] the right to representation, which included, in exceptional circumstances, the right to be accompanied by a friend not acting in a legal capacity where an individual was not a member of a recognised trade union or professional organisation and was unable to be represented by a colleague.

29. The disciplinary procedure included a definition of Gross Misconduct as:

"… conduct of such a serious nature that it indicates that the employee no longer

intends to be bound by his or her duties or calls into question the confidence the [respondent] must have in an employee. Gross misconduct may result in dismissal…" The procedure went on to say at paragraph 16 [1A/208] that dismissal may be appropriate where it is a case of gross misconduct or "*where it is found that there has been a fundamental breakdown in the mutual relationship of trust and confidence required between [the respondent] (as the employer) and the employee.(Summary Dismissal)*".

30. The disciplinary policy also contained a right of review/appeal against disciplinary sanctions at paragraph 18 [1A/210]. For first written warnings, there is a right to review, which could either confirm/uphold the original decision or downgrade or cancel the original decision. Where the sanction was a final written warning or dismissal, there was a right of appeal, which needed to be made within seven working days of the date of the disciplinary hearing. The policy confirmed at paragraph 18.2.1:
"*The lodging of an appeal will not suspend the notice of dismissal. The employee will be compensated for any loss of earnings incurred from the date of the dismissal to the date of re-instatement if the appeal succeeds. (Except in circumstances where they are re-engaged)*."

31. In cases of appeal against dismissal, there were three possible options provided by the disciplinary procedure. Confirmation of the original decision, re-instatement of the individual with effect from the date of dismissal, or re-employment/re-engagement of the individual from a date following the appeal hearing.

32. The appeal procedure against final written warnings and dismissal [1A/228] confirmed that the Director of Human Resources (now called Chief People Officer) would set up

an appropriate appeal panel. It provided that the individual appealing had the right of appearing personally before the appeal panel, either alone or accompanied by an accredited representative of a trade union or professional organisation or by a fellow work colleague.

Background facts

33. The Breast Unit had been dysfunctional due to the behaviours of individuals working within it for several years prior to the claimant's dismissal.

34. In 2014, a former Consultant colleague within the Breast Unit raised a complaint of unacceptable behaviour by the claimant. The colleague resigned and brought an Employment Tribunal claim against the respondent. The claim was ultimately settled in January 2016, and this caused the claimant significant upset as she felt that she had not had the opportunity to answer the allegations against her. The claimant found this very hard to accept, and it appeared to us that this detrimentally affected the claimant's working relationship with the respondent.

35. In December 2014, the claimant stood down with immediate effect as Head of Service of the Breast Unit, which was accepted by the respondent on 11 December 2014. She continued as a Consultant within the Breast Unit.

36. At the relevant times, the Breast Unit appeared to have a large number of staff within it, including 7 consultants and one associate specialist breast surgeon.

37. The dysfunctional nature of the Breast Unit was evidenced by the numerous grievances raised between colleagues and investigations that followed. These grievances appear to have been investigated at various stages prior to the ones resulting in disciplinary action. These earlier grievances/ investigations resulted in no

formal action being taken against any of the individuals concerned as evidenced by the following:

a. An investigation of the claimant in accordance with the terms of the Trust's Conduct, Capability, Ill Health & Appeals Policies and Procedures for Medical Practitioners in line with Maintaining High Professional Standards in the Modern NHS framework (MHPS) was carried out. This was case managed by Dr Peter Rabey, and investigated by Dr Nicholas Moore between 2014 and 2015. This resulted in no formal action being taken against the claimant;

b. An investigation in 2016 to 2018 under the anti-bullying and harassment policy and procedure (the Natrass-Davies investigation) which resulted in no formal action against the individuals who the claimant complained about. This grievance raised by the claimant concerned:

    i. the delay and instructions leading to the mediation meeting chaired by John Jameson and the nature and conduct of the meeting on 18 April 2016;

    ii. the grievance against Kevin Boyd; and

    iii. The failure of the claimant to be promoted to the Cancer Centre Lead against Matt Metcalf;

c. An investigation of the claimant under the MHPS case managed by Dr Tim Bourne and investigated by Dr Samantha Jones in 2018-19 (the Bourne-Jones investigation) about her alleged conduct during a multi-disciplinary

team (MDT) meeting on 22 March 2018. This resulted in no formal action being taken against the claimant.

38. These grievances, and the claimant's dissatisfaction with their outcome, led to the Motraghi report, which will be referred to below.

39. The dysfunctional nature of the department in which the claimant worked was further evidenced by a review carried out by CC McLaughlan Associates Limited into the working relationships and dynamics within the Consultant surgeon body within the Breast Unit. This report, referred to as the McLaughlan report, was dated 28 May 2016 [1B/661].

40. The report identified that the consultant body within the Breast Unit, which included the claimant, was "*exhibiting the five accepted behavioural signs of a dysfunctional (pseudo) team*." The report did not name any specific individuals as being responsible for this, although Dr Currie later stated in a meeting with Mr Walters on 23 November 2020 that the claimant, Mr Krupa and one other named consultant were worse than others [1D/22]. Dr Currie went on to say during this meeting with Mr Walters, "…*Privately [Clare McLaughlan] did actually say to me that … from …what she saw of the way people were behaving … ultimately the only long term solution might be if that (sic) one of the individuals would leave the department*."

41. The report identified that mediation would be beneficial, although this does not appear to have been actioned at this time and the Breast Unit appears to have continued as before.

Informal warnings

42. It was clear that the claimant had been informed in writing about what was expected from her in respect of communications and professional behaviour. A letter was sent by Dr Currie to the claimant on or around 23 May 2018, which the claimant confirmed in her evidence before the Tribunal was in almost identical terms to one sent by Mr Furlong on 3 January 2019, [6A/109] which set out expected behaviours from the claimant. In particular, it stated:

"*Communication*

It is expected that you will communicate professionally, courteously and appropriately with your colleagues and other staff working within the service and CMG.

Professional behaviour

It is expected that all consultants will behave in a professional and responsible manner in the work place. This includes constructively engaging with colleagues and the rest of the department. I have listed the UHL Trust Values and Behaviours below as a reminder.

UHL NHS Trust Values and Behaviours

As a reminder, it is important that all staff work in line with the UHL values and behaviours detailed as below;"

43. Mr Furlong sent a further email on 18 June 2019 [6A/148] which stated: "*Please give careful consideration to the tone and content of your emails in advance of sending them. It is important that any communication is in line with the Trust values*."

44. On 23 January 2020, Mr Furlong sent a letter to the claimant updating her on the status of investigations [6B/15]. It included the following:

"*Email correspondence*

I have previously written to you on several occasions regarding the tone and content of your email correspondence. I find it necessary, in view of recent email correspondence from you to others (which I have been copied in to) and emails sent directly to me, to raise this issue again and request that you consider the volume of emails sent to a recipient, the tone and content of those emails. An example is your email to me sent on 9th January 2020 timed at 19:49 which I found inappropriate. Please reflect on the content before you send the email, whether multiple issues can be raised in one email and consider whether a conversation with the individual would be more suitable."

45. Additionally, Mr Furlong sent an email to the claimant on 29 September 2020 [7/73] saying, "*I would strongly encourage you to run future communications through your BMA rep as was agreed and offered … to try and take some of the emotive language out of your emails*".

46. Hazel Wyton, Chief People Officer of the respondent, sent an email to the claimant on 8 October 2020 [7/197] saying, "*I am disappointed to receive your recent emails and the tone in which you write*."

47. Mr Furlong sent a further letter to the claimant on 16 October 2020 [3/773] relating to alternative secondment roles with other NHS Trusts. In it he addressed in the penultimate paragraph of this letter:

"*Finally, I will need to consider your behaviour regarding your email and text communications and in particular, but not limited to, the tone and language used in your communication following our meeting of 30 September 2020 with Hazel Wyton. I*

have previously advised you regarding your email communication and I understood that at the meeting on 30th September, we had agreed with your representative that communication in relation to the ongoing matters could be channelled through him. I am disappointed that you have not done so and have continued to communicate in a manner not consistent with Trust values and I must now take advice as to whether this should be considered in accordance with our Disciplinary procedures."

48. From around May 2019 the working relationships within the Breast Unit had not improved and the conflict between the Consultants had not been resolved.

49. The claimant raised a number of Datix's from around June 2019. The Datix system is a patient safety system used to report an incident to alert the respondent to risks and provide guidance on preventing potential incidents that may lead to avoidable harm or death. They are not meant to raise complaints about colleagues' behaviour unless this is likely to impact upon avoidable harm or death. Grievances about other aspects of behaviour not impacting upon avoidable harm or death should be subject to the respondent's grievance procedure.

50. Andrew Furlong reviewed the Datix's in mid-June 2019, and confirmed his view that those raised by the claimant were not an appropriate use of the Datix system. [6A/145]. However, he emailed Dr Dan Barnes (Deputy Medical Director) to request that he provide an independent oversight of the Datix's the claimant raised to ensure that appropriate action was taken in respect of patient safety issues.

51. In early July 2019, Kelly Lambert emailed Dr Currie to raise a complaint about the claimant's repeated unprofessional behaviour which she said had been ongoing for approximately 18 months.

52. Additionally, from around the same time, there were discussions within the Breast Unit, including with the claimant, about how to improve its team dynamics. It was agreed that mediation would be arranged between key members of the Breast Unit team, including the claimant, Dr Krupa, Dr Currie and Ms Lambert. This was ultimately arranged for 14 November 2019.

53. On 30 October 2019, the claimant raised a grievance against Kelly Lambert [6A/370] later confirming that she did not wish to continue with mediation with Ms Lambert [1B/1384].

54. The claimant raised a further grievance against Dr Currie on 13 November 2019 [1B/592]. This was relied upon by the claimant as her protected disclosure but was found not to be a protected disclosure, as stated above.

55. The individual mediation sessions went ahead on the morning of 14 November 2019, however the group mediation session did not go ahead and the mediation was a failure.

56. Eventually, there were grievances raised by the claimant against 11 of her colleagues dated between late 2019 to Spring 2020. Some of the complaints dated back several years. Additionally, there were 4 consultants within the Breast Unit who brought grievances against the claimant, namely Ms Lambert, Ms Osborn, Mr Krupa and Mr Qassid.

57. The respondent decided that all of the grievances raised by and against the claimant were to be considered by an external independent investigation under the respondent's anti-bullying and harassment policy.

58. The claimant's clinical concerns raised via the Datix system were to be separately investigated by a clinician, who was best placed to review them. The claimant was asked to provide Dr Dan Barnes (Deputy Medical Director) with any other Datix referrals she wanted to be considered by 24 December 2019. An email confirming this was sent to the claimant on 7 January 2020 [3/602].

59. A review of the Datix's submitted by the claimant was undertaken by Mr Mark Sibbering, although this does not form part of the issues before us.

60. The claimant was not clear on why her complaints were split in this way, although we accept that it was entirely appropriate for the Trust to investigate alleged incidents of misconduct and behaviours separately to clinical concerns. The latter would need to be reviewed by a medical expert, which was not required for the former.

Meeting 19 December 2019

61. Following a request from the claimant, she met with Mr Furlong and Hazel Wyton, Chief People Officer, on 20 December 2019 to discuss ongoing issues within the Breast Unit and comments that the claimant was feeling unsafe. This meeting discussed the possibility of looking for a secondment elsewhere as a supportive measure, which the claimant appears to have been very receptive to. The email sent confirming the discussion made clear that this would not be an exclusion and any secondment would be by mutual agreement.

Walters investigation (ABH)

62. Dr Marshall had been asked by Mr Furlong to be the Case Manager in respect of the investigation into the grievances brought by and against the claimant under the anti-bullying and harassment policy of the respondent. She appointed Mr Walters, a

Barrister, who had not undertaken any work for the respondent prior to the investigation, to investigate the grievances brought by the claimant against a number of her colleagues, and grievances brought against the claimant by Kelly Lambert, Lisa Osborn, Jaroslaw Krupa and Omar Qassid.

63. It took from January to May 2020 for the complainants (the claimant, Ms Lambert, Ms Osborn, Mr Krupa and Mr Qassid) to clarify their complaints to form the basis of the terms of reference for Mr Walters' investigation.

64. The initial terms of reference for the investigation were expanded upon, with the agreement of the respondent, to ensure that the investigation captured all the concerns raised by the claimant.

65. It was clear that Mr Walters undertook an extremely thorough investigation into the multiple grievances raised by and against the claimant, which resulted in a report dated August 2021 [1B/ 23-476]. This included 36 hours of meetings with the claimant on 11 separate occasions over a period of 8 months, in addition to interviews with numerous individuals within the Breast Unit. Mr Walters undertook further investigations during or around April 2021, which the claimant considered impacted his partiality. We do not accept that to be the case.

66. The report concluded that the claimant's working relationship with many of her colleagues within the Breast Unit had completely broken down, that there was a "*marked reluctance*" on the part of Dr Currie, in particular, to take positive action in relation to matters raised as concerns by the claimant or others, and matters should have been investigated sooner. We agree with his finding.

67. It went on to say at paragraph 7.12 [1B/475] that, "…*In [the claimant's] mind, [she] is a victim and a number of individuals are responsible for her alleged ill treatment.* [The claimant] *does not accept she has any culpability for the state of the working relationships she has with a number of people within the Breast Unit at UHL. I have found otherwise. The evidence I have obtained points very much to [the claimant] being the root cause of much of the difficulties with the working relationships and workplace conflicts*."

Pugh Investigation (MHPS)

68. Mr Furlong told the claimant in October 2020 that an investigation was to commence into the tone and content of the claimant's communications to various individuals, including himself, Tina Larder, Mav Manji (UHB) and Hazel Wyton. Dr Marshall was again appointed to case manage this process.

69. In December 2020, Dr Marshall appointed Diane Pugh from Impartial HR Limited to undertake an investigation under MHPS into concerns involving the claimant. Nine communications (being mainly emails, but also text messages and one voice recording) from 23 December 2019 until 15 October 2020 [3/145] were to be considered, including the circumstances surrounding the communications.

70. Again, we are satisfied that the investigation by Ms Pugh was thorough and included 3 meetings with the claimant herself. A report dated August 2021 was provided by Ms Pugh [3/1].

71. This report found [3/141] "*The evidence gathered suggests [the claimant's] tone and behaviour within her communications demonstrate unprofessional practices which if proven could demonstrate persistent and repeated patterns of communication that*

directly contravene Trust Values and Behaviours. Despite guidance given, both verbal and written, the behaviours within her communication appear to have continued and therefore could demonstrate Gross Misconduct which is for consideration by the Case Manager."

Desk top review by Ms Motraghi

72. During January to May 2020, the claimant made clear that she wished to have other matters investigated namely, "*an external investigator to look into all investigations I have been put through*." Dr Marshall therefore arranged for a desk top review of the earlier processes by Ms Nadia Motraghi, a Barrister who had carried out no previous work for the respondent, but who had experience of regulatory and employment matters. This report [1A/322] considered the reasons for the investigations, the respondent's decision to commission them, the veracity of the investigations and the outcome of those investigations.

73. The report concluded that there had been three such investigations, as set out in paragraph 37 above.

74. The Motraghi report on 8 September 2020 [1A/377] concluded that the reasons why the claimant had been involved in the three investigations were understandable and appropriate in context. It was critical of a shortcoming in the handling of the claimant's interview in one of the investigations. However, this did not affect Ms Motraghi's overall conclusion.

75. The claimant provided additional evidence and Ms Motraghi was commissioned to consider additional information. She provided a final report with an addendum on 2

November 2020 [1A/306], which confirmed that the new material did not cause her to change her original conclusions.

Secondments / alternative roles

76. As stated, the claimant indicated that she was interested in a secondment away from the Breast Unit, as she did not feel that this was a safe place for her. She was asked by Andrew Furlong to provide details of which NHS Trusts she would be interested in pursuing for a secondment of approximately 12 months, whilst the investigations were carried out.

77. The claimant indicated that she would prefer to go to London, since she had family there, and it was therefore agreed that this would be explored. Imperial College, London (Imperial) was interested in seconding the claimant to a Breast Consultant role at its hospital. The respondent was to continue paying the claimant's salary during any such secondment.

78. The claimant was clearly initially happy with this arrangement and confirmed in an email dated 22 January 2020 that she was in full agreement with it. The claimant left the respondent to commence the secondment with Imperial on 28 February 2020. The claimant appeared to begin to have reservations about going to Imperial around mid-March 2020, which coincides with the start of the Covid-19 pandemic. The placement was ultimately not successful, and Professor Urch sent a letter withdrawing the secondment offer on 29 April 2020 [3/657] saying, *"[the claimant] has a greater need than we can meet, her behaviours and interpretations of welcoming meetings, her demands for limited time in London and need for accommodation have been unexpected not tolerable within the resources of the team*."

79. With the claimant's agreement, an alternative secondment was sourced with University Hospitals Birmingham (UHB). The claimant was happy to go there initially, as she was familiar with the hospital, having trained there. There were discussions about the secondment in May and June 2020, and it was confirmed to UHB that there were no competency issues with the claimant's practice and that the secondment was being pursued as a supportive measure.

80. The claimant commenced the secondment with UHB on 6 July 2020. Unfortunately, this secondment was also unsuccessful, and resulted in emails from the claimant which formed part of the disciplinary investigation against her and will be referred to below.

81. There were further discussions about a possible secondment for the claimant with University Hospitals Coventry and Warwickshire (UHCW). There seemed to be mixed messages from the claimant about whether she wished to go on this secondment. She raised some reservations, but acknowledged that she was told that no one could force her to go there. Ultimately, the claimant confirmed to the respondent on 14 October 2020 [3/769] that she did not want to go to UHCW and queried why her workload and desk was being given to "*a complete stranger*". The claimant informed UHCW on 15 October 2020 that she did not wish to go.

82. The claimant indicated that she would return to her desk the following week, although did not do so. On 16 October 2020, Mr Furlong wrote to the claimant [3/773], and included in that letter confirmation that she should not return to the Glenfield site on Monday 19 October 2020, and that a safeguarding risk assessment would be

undertaken, as the claimant had indicated on multiple occasions that she did not feel safe in the working environment.

83. Mr Furlong wrote again to the claimant on 22 October 2020 [3/776] to confirm that there would be a further investigation into her behaviour, tone and language and that the case manager would be Dr Marshall (the Pugh investigation referred to above).

84. From March 2020, the claimant never returned to her role as Consultant within the Breast Unit until her dismissal.

85. The claimant agreed to carry out alternative duties, as she wished to contribute to the efforts against Covid-19. Therefore, she consented to work in the vaccination hub at the Leicester General Hospital from 3 January 2021. It appeared from the statement of Dr Marshall that the claimant had in fact only worked 11 days from January to April 2021, something which the claimant was unable to confirm in evidence. However, there was evidence within the bundles that the claimant continued to provide some support to the vaccination hub until 27 August 2021.

86. From this time, it was agreed that the claimant would continue to receive her full pay, despite not attending the Breast Unit, and was given this time to work on the various internal processes, investigations and/or appeals. She was not required to undertake any additional duties during this period.

87. We do not find that the claimant was suspended at any point between October 2020 and her dismissal. There was no formal suspension at any time. We note that she was told not to attend the Glenfield site, due to her concerns about not feeling safe, until a risk assessment had been undertaken. She could, however, attend the site to undertake supporting professional activities on Saturdays and to complete an audit of

her practice. Permission was required to attend at other times [3/774]. We are satisfied that the claimant was not going into the Breast Unit to carry out any work, and that it had been agreed that she would work at the Vaccination Hub and was then granted time away from the Hub (at her request) to work on her internal processes which were ongoing at this time. There was evidence within the minutes of the preliminary hearing on 8 June 2022 [3/1218] of the claimant asking that "*going forward..my 40 hours will be delivered here in [the office provided to the claimant*]".

88. We are satisfied that the claimant was given a significant period of time to prepare her case for the disciplinary hearing whilst on full pay.

Grievance against Dr Marshall

89. The claimant submitted a grievance against Dr Marshall on 9 March 2021 [2/157]. Due to this, the case management of the claimant's ABH and MHPS investigations were transferred over to Professor Mushambi on an interim basis, although never in fact returned to Dr Marshall. There was an appropriate handover between the case managers.

90. Professor Mushambi wrote to the claimant on 3 September 2021 [7/89] confirming that the reports had been received in respect of the ABH and MHPS investigations, and that she required a minimum of 4 weeks to make her decision. On 18 October 2021 [6B/806], she wrote again to enclose a copy of the ABH report prepared by Mr Walters and confirmed that as the claimant had a right of appeal against the report, it would be premature for her to make a decision about whether to proceed to a disciplinary hearing or not.

91. On 26 October 2021, the claimant raised a grievance against Professor Mushambi [7/99]. It was decided that Professor Mushambi would remain as the interim case manager for the claimant's case, however, the decision on whether to proceed to disciplinary action was halted until the grievances about Professor Mushambi and Dr Marshall and the claimant's appeal against the ABH report had concluded. This understandably caused significant delays in the process.

92. The outcome of the grievances against Dr Marshall and Professor Mushambi was received on the 20 January 2022, which partially upheld one of the approximately 30 allegations relating to one aspect which does not concern the unfair dismissal or wrongful dismissal claims.

93. The claimant's appeal against the Walters report was submitted on 24 December 2021 and was over 900 pages long. The appeal hearing into the Walters report took place in February 2022, at which Mr Walters attended and was questioned. The claimant was notified on 3 March 2022 that her appeal into the Walters report was not upheld save for one small aspect, namely that Mr Walters should not have decided to consider the context of the former colleague's Tribunal case without informing the claimant of this in writing. However, this made no difference to the substantive conclusions reached.

94. In April 2022, it was confirmed to the claimant that none of the appeals against her grievances against Professor Mushambi and Dr Marshall were upheld.

95. At this stage, Professor Mushambi decided that a disciplinary hearing would be convened in respect of the ABH and MHPS investigations and met with the claimant via Teams on 28 April 2022. She wrote a letter to the claimant on the same day [7/105]

confirming what had been discussed. This letter included the schedule of allegations the claimant faced. It was confirmed that, if proven, the allegations could amount to gross misconduct. This listed the disciplinary hearing on 6 to 10 June 2022. The letter explained that the management statement of case was to be provided by 16 May 2022, and the claimant was told that she would be required to provide any statement of case and documentation by 30 May 2022.

96. The claimant was informed in this letter that she had the right be accompanied at the hearing by a "*friend, partner/ spouse, work colleague or trade union/ defence organisation representative*" in accordance with the respondent's policies and procedures.

97. The disciplinary panel was made up of Julie Hogg, Professor Dawson and Trish Francis. Ms Hogg had only recently joined the respondent's employment, and Professor Dawson was an independent panel member. We find that the panel was an appropriate panel to consider the disciplinary case.

98. In this letter, a pre-arranged Occupational Health (OH) appointment was held for the claimant for 2pm on the same date to enable the claimant to access appropriate support. We found this to be a very supportive action.

99. The claimant says that she had insufficient time in which to prepare her statement of case for the disciplinary hearing. We do not accept that to be the case, since the claimant had already presented a detailed appeal against the Walters report (ABH) (which formed the majority of the respondent's case against the claimant). She had spent considerable time in doing so. The Pugh report was less than 70 pages long

[3/73]. We find that the claimant should have been in a position to complete a statement of case, or at least to provide responses to the allegations against her.

100. We accept that the respondent provided the claimant with support for the preparation of her disciplinary case. A table of support provided by the respondent to the claimant was prepared [6C/799], although the claimant disputed that much of its contents were afforded to her. The claimant contended that insufficient support was provided, however we find that not to be the case. We accept that the table of support was an accurate summary of what had been provided to the claimant.

101. In the run up to the disciplinary hearing, the claimant was clearly engaging with the process. The respondent wrote to the claimant on 21 May 2022 [6C/508] asking for the claimant to explain how the witnesses she wished to call to the disciplinary hearing were relevant to the disciplinary case by 1 June 2022.

102. The claimant sent a series of emails with many email attachments to Julie Hogg on 24 May 2022. The claimant was informed on 27 May 2022, that the panel could not accept the claimant's approach to the disclosure of information for the disciplinary hearing, and that she should provide a paginated and indexed bundle.

103. As the claimant complained about having suffered a hand injury, it was agreed that the claimant would be given access to a data room to upload each piece of evidence and confirm its relevance to the allegations. She did not access this data room.

104. An OH report was received around this time, which did not disclose any specific health needs. We wish to add that the claimant attended OH on a number of occasions throughout her employment, which we found to be a supportive measure.

105. A preliminary hearing was scheduled to take place on 8 June 2022 and the disciplinary hearing was scheduled for 14 to 16 June and 27 to 29 June 2022.

106. At the preliminary hearing, for which a list of issues had been sent to the claimant [3/1227], the claimant attended without being accompanied [Minutes start 3/1197]. It was not possible to go through everything set out in the agenda. The panel became concerned over the claimant's wellbeing and arranged for a referral to OH.

107. The claimant sent an email to Trish Francis of the panel from her personal email address to say that she needed to take time off the following week on 9 June. Trish Francis replied to the claimant's personal email to inform her that a letter had been sent to her work email address on 10 June regarding the outputs from the Preliminary Hearing.

108. The claimant attended the appointment with Professor Kaul, OH, although she did not release the report to the respondent at this time. She confirmed to OH that she would respond when she was well enough [6C/749]. OH confirmed that it was Professor Kaul's usual practice to inform an employee that non-release of the OH report may not help the individual, as the panel may decide to proceed without it.

109. Unbeknownst to the panel, the claimant sent a copy of her unsigned fit note to the PA to Professor Kaul, OH on 17 June 2022 [6C/767]. The email said that the claimant had been signed off sick for 2 weeks but did not say that the claimant would not attend the disciplinary hearing. Instead, it said that she would be assessed again on 27 June 2022. This was not forwarded to the panel. We can understand that, as had the PA done so, the claimant would have rightly had cause for complaint about this. The

claimant did not contact anyone from the panel itself or follow the normal procedures for reporting sickness absence.

110. On 21 June 2022, the panel wrote to the claimant confirming that the hearing would go ahead.

111. As the panel had not heard from the claimant, it tasked Professor Mushambi with contacting the claimant, which she attempted to do on 23 June 2022, leaving a message on the second attempt, as evidenced by her email to OH on 24 June 2022 [6C/748]. The claimant said that she had two calls where the number was withheld, although the claimant failed to answer the question as to whether she had received any messages. In any event, the claimant did not call back.

112. On 24 June 2022, the panel contacted OH confirming that they hadn't heard from the claimant since 17 June 2022, noting that she was not on authorised annual leave, nor notified the respondent that she was on sick leave, and asking for any advice in absence of the OH report. Professor Kaul, OH confirmed that the claimant had been in touch with her GP, and that she was in contact with her family, that they may wish to contact her next of kin or possibly ask the police to carry out a home visit. It did not refer to the fit note provided to his PA on 17 June 2022.

113. The claimant did not attend the disciplinary hearing on 27 June 2022. We find it surprising that the panel did not attempt to call the claimant on the day of the hearing, however, it is clear that they did not. The panel decided to go ahead. 7 witnesses attended and it was clear from the minutes that they were questioned by the panel. The claimant considers that some of the questions put by the panel, particularly by

Professor Dawson were leading and inappropriate, although we do not accept that to be the case and found him to be an honest witness.

114. It is understandable why the respondent proceeded with the disciplinary hearing, since there had been no request to postpone it, there was no underlying health issue as far as the panel were aware, and no contact from the claimant.

115. The claimant sent her fit note to Trish Francis, of the panel, on 4 July 2022 [6C/762]. The panel were informed that the claimant had already sent this fit note to the PA of Professor Kaul.

116. Ms Francis, on behalf of the respondent checked the fit note's authenticity by calling the Doctor's surgery. Despite this being confirmed, the panel decided to go ahead with its deliberations and from 4 to 18 July 2022 met between 3 and 4 times. We find it surprising that they did not at this point consider inviting the claimant to a further hearing, particularly as it was clear that the claimant was now engaged with the process and was corresponding about the disciplinary hearing. Nor did the panel consider sending any questions,or ask the claimant for any responses to the allegations prior to coming to its decision.

117. The panel requested the statements and/or transcripts from the Walters investigation for Dr Currie, Simon Pilgrim and Kevin Boyd, who were 3 of the individuals the claimant wanted to call to the disciplinary hearing.

118. The panel concluded that all 96 allegations were upheld, and that the claimant should be dismissed for gross misconduct. They found that the tone and content of emails amounted to harassment and bullying and, cumulatively and collectively, amounted to gross misconduct. It found that the claimant did, on the occasions cited in the

Appendix to the dismissal letter, behave in an unprofessional and, at times, aggressive manner towards colleagues and in meetings with colleagues. It found that the claimant used abusive language in front of or directed at others on several occasions. It held that the claimant had on numerous occasions exhibited unwarranted hostility/ animosity towards Ms Lambert and Mr Krupa. The panel decided that the claimant had on a number of occasions refused to work collaboratively with colleagues in the patients' best interests. It upheld the allegation that the claimant had made unfounded threatening and /or improper allegations about colleagues, often copied to others and therefore potentially damaging their reputation and used the Datix system as a weapon. It found that the claimant sent a disrespectful text message and an email to employees of UHB, and whilst they did not consider that these constituted gross misconduct in isolation, when considered alongside the other allegations, amounted to gross misconduct. Finally, the panel found that the claimant gave untruthful evidence in the Walters investigation.

119. The panel recognised that each allegation if considered individually and in isolated circumstances, may not amount to gross misconduct warranting summary dismissal. However, it concluded that when considered cumulatively and collectively, the allegations were of sufficient seriousness to undermine the relationship of trust and confidence between employer and employee. Having determined that the behaviour amounted to gross misconduct, the panel considered whether there was any mitigation. It noted that the claimant had denied that her behaviour was inappropriate, unreasonable, rude and hostile, and that there was no recognition of the impact of her behaviour, and/or any remorse. The panel also considered whether there was an

underlying health condition, but had decided in light of the occupational health reports that there was not. Consideration was given to alternative sanctions, but these were not considered appropriate. The decision therefore confirmed that the claimant would be dismissed without notice or payment in lieu of notice on grounds of gross misconduct.

120. The panel had a Teams' meeting with the claimant on 25 July 2022 to give her the outcome, and it was noted that the claimant remained calm and professional throughout.

121. The dismissal outcome letter was sent to the claimant on the same date [3/1122] and set out the reasons for the panel's decision.

122. The disciplinary panel referred the matter to the respondent's responsible officer, Mr Jameson at the time, to consider whether it was necessary to refer this matter to the GMC. It was decided by Mr Jameson that a referral should be made, having taken advice from the GMC employment liaison officer.

123. The GMC decided no action should be taken against the claimant on 9 January 2023 [6C/923]. The GMC provided a letter to the claimant which said, "…*we note that your appeal against the disciplinary outcome was not upheld*.". We accept the respondent's evidence that no one from the appeal panel informed the GMC of the outcome before it was made. Whilst we accept that the letter from the GMC refers to a disciplinary appeal, we consider that the GMC may have been referring to an alternative appeal since there had been numerous internal processes going on.

124. The claimant appealed the decision to dismiss her on 15 August 2022 [4/10]. The minutes of the disciplinary hearing were provided to the claimant on 16 August 2022

and the claimant was given further time to provide her grounds of appeal. The claimant's solicitor sent letter enclosing grounds of appeal on 9 September 2022 [4/20].

125. An appeal panel was convened. This contained individuals who were not known to the claimant and who had no knowledge of her.

126. A preliminary hearing was held to discuss the arrangements for the appeal on 2 November 2022 [minutes 5/2]. A letter following on from this was sent on 10 November 2022 [6C/902] which enclosed the minutes of the preliminary hearing.

127. A review appeal hearing took place on 15 to 16 November 2022. Following this hearing it was decided that there should be a full rehearing. Mr Barton gave evidence that this was decided on 17 November 2022, but this was not told to the claimant until 23 March 2023. The respondent said that the reason for this was due to settlement negotiations taking place before Christmas and the claimant's wish not to hear until after Christmas. Also, that Mr Barton's mother had died in the early part of 2023 resulting in compassionate leave and annual leave, thereby delaying the process.

128. The claimant was told on 23 March 2023 that there would be a complete rehearing [5/114], as the panel felt it unfair to dismiss the claimant in her absence, given she later showed evidence of being unwell with stress and anxiety at the time of the disciplinary hearing. The appeal panel made clear that they were not criticising the disciplinary panel, as that panel did not have all the relevant medical information at that time.

129. The respondent did not reinstate the claimant following the appeal review hearing in November 2022. Mr Barton gave evidence that the panel considered that they were

not required to reinstate and were aware that if the appeal hearing was successful, the claimant would receive back pay from the date of dismissal to her re-instatement following the appeal rehearing.

130. The appeal rehearing took place between 22 and 24 May 2022 before the same appeal panel. The claimant was offered legal representation at this rehearing, but attended without being accompanied. Not all of the witnesses who attended the original disciplinary hearing attended the appeal rehearing. Lisa Osborn and Richard Power were unable to attend and provided written statements.

131. During the hearing, the claimant was given the opportunity to question the witnesses who attended (some of whom could not be questioned directly by the claimant). She also had an opportunity to discuss her revised statement of case which she had provided on 19 May 2023 [4/2433]. It is clear that not every one of the allegations was discussed specifically in the appeal rehearing. However, we are satisfied that the claimant had an opportunity to say what she wanted to say about the allegations before her both in her written statement of case and during the hearing [4/2335 and 4/2342].

132. We are satisfied that the appeal panel carefully considered each of the allegations, as reflected by the outcome letter, which decided to fully uphold 64 of the 96 allegations and partially uphold 2. This meant that they did not uphold 30 of the allegations before it.

133. The decision was taken by the panel that the claimant's behaviour in respect of the allegations they upheld amounted collectively to gross misconduct sufficient to justify

summary dismissal. Simon Barton confirmed that he was particularly concerned with allegation 17 (see below).

134. The panel considered whether there were any alternatives to dismissal, but found there to be no tenable alternative. The outcome letter dated 8 August 2023 [5/278] made clear the reasons for the panel's decision. We accept that the decision was not predetermined, nor was it made prior to the appeal rehearing taking place.

Conduct by the claimant investigated by the Walters and/or Pugh reports forming part of the disciplinary process against the claimant

135. There were 96 allegations against the claimant relating to her behaviour spanning a number of years. The first one being from Spring 2014, although this allegation was later not upheld by the appeal panel.

136. We do not consider it appropriate or necessary to make findings in respect of each of the 96 allegations which the claimant faced as part of the disciplinary process, or indeed, the 66 allegations which were upheld, or partially upheld, following the appeal rehearing.

137. Instead, we focus our findings on some of the allegations which were considered as part of the disciplinary hearing, or appeal hearings, and which were upheld by both. This does not mean that we have not looked at the other allegations, but we find it unnecessary to detail findings of fact in respect of each of them. In the main, with one exception, we have focussed our findings on the more recent allegations. The exception being allegation 17 from 14 March 2018 referred to below.

138. The allegations the claimant faced, were formulated by the respondent in its Management statement of case into eight themes as follows:

a. Sending emails to colleagues that were unprofessional and inappropriate in all the circumstances (and effectively weaponising emails as a tool for communication);
b. Behaving in an unprofessional and at times aggressive manner towards colleagues and in meetings with colleagues (which has impacted on them);
c. Using abusive language in front of or directed at others on several occasions;
d. Unwarranted hostility / animosity towards Ms Lambert and Mr Krupa, the effect of which behaviour is that it has damaged or destroyed the professional working relationships concerned;
e. Refusing to work with others in the Trust's patients' best interests (seemingly placing greater value on personal convenience, grudges and perceived slights);
f. Making unfounded threatening and / or improper allegations about colleagues often copied to others and therefore potentially damaging their reputation;
g. Behaving rudely and unprofessionally in respect of healthcare professionals at another NHS Trust to which she was seconded; and
h. Giving untruthful evidence in an investigation (Jonathan Walters*) which goes squarely to integrity.

139. We use for the purpose of this Judgment the numbering of the allegations as contained within the disciplinary and appeal hearings.

Allegation 17

140. This was considered by both the disciplinary panel and the appeal panel to be one of the most serious allegations against the claimant. The allegation was that on 14 March 2018, during a conversation in the canteen with Natalie Dalgetty, the claimant swore and spoke in an aggressive manner about her feelings towards her colleagues. During the conversation, it was alleged that she said:

    a. she did not like it when Ms Dalgetty referred to her colleagues as "kind" when offering to help and that it pissed her off as they should just do their "fucking job";
    b. that she hated Mr Krupa so much that she would "stab the bastard if [she] could.";
    c. She referred to not attending the weekly multi-disciplinary team meetings as they made her angry and she just wanted to throw chairs at people or walk in there with a sharp object; and
    d. that she would take down anyone who sided with Mr Krupa.

141. The panel was concerned that this allegation had not been dealt with at the time, despite being very serious and by the time it was considered, had occurred some years before. We did not hear direct evidence from Natalie Dalgetty about the conversation, although we did see the file note made by Ms Dalgetty [1D/929]. The claimant's evidence was that there had been a heated conversation on 14 March between herself and Ms Dalgetty, but she denied saying the words attributed to her. The claimant's version of events appeared to be supported by Ms Dalgetty's email sent to the claimant following their meeting on 15 March 2018, which made no

reference to the specific allegations which were the subject of the disciplinary hearing. In the appeal rehearing, Ms Dalgetty stated that she needed to build a professional working relationship with the claimant, and therefore did not refer to the matters causing her concern in her email to the claimant after their discussion on 14 March 2018. She also referred to not wanting to make the claimant "*angry again*" [5/153]. We are satisfied that Ms Dalgetty informed Gaynor Webb, her new line manager, of the incident when Ms Webb took over the General Manager role.

142. We have seen the notes of the meeting between Mr Walters and Ms Dalgetty on 4 September 2020 [1C/21] where she confirms a "*quite frightening*" incident with the claimant which she documented. Ms Dalgetty confirmed that she created the file note the next day, something which Mr Walters confirmed in his report was verified on interrogating the document. Ms Dalgetty said that she intended to send the file note to her line manager, Cathy Chadwick, but there was no evidence that she had in fact done so, and Cathy Chadwick could not recall this incident when asked by Jonathan Walters on 25 May 2021 [1D/1415]. Despite this, and on the balance of probabilities, we find that the conversation did take place as set out in the file note prepared by Ms Dalgetty very close to the incident itself.

Allegation 19

143. On 10 April 2018, Susan Orgill complained to Mr Krupa, Ms Dalgetty and Dr Currie that the claimant had appeared extremely agitated during a clinic on 5 April 2018 and was, "*very vocal using abusive language*" [1B/2544]. In the appeal rehearing, Ms Orgill confirmed that the claimant said, "*I'm the only one that fucking well works hard in this place, and none of my other fucking seven fucking consultants don't work hard*

as much as me" (sic). We find that this event took place despite it being denied by the claimant in her statement of case [4/2439].

Allegations 58 and 63

144. The claimant sent an email to Lisa Osborn on 31 October 2019 [6A/402] attaching the claimant's grievance against Kelly Lambert and the culture that she said had been causing her stress and damage to her reputation. Towards the end of this email, she stated, "*I do not like how I am being treated and starting to deal with the lack of engagement and the serious nature of the events around me with this process.*

Do not dismiss this one. I mean it."

145. Lisa Osborn replied, acknowledging the claimant's grievance and providing information on the mediation planned for 14 November 2019, and the support available to occupational health and counselling services. In response to this, the claimant sent a further email to Lisa Osborn on 7 November 2019 [6A/401] stating that, "*I DO NOT wish to have mediation with Kelly at this point in time….. No more protecting individuals with titles only. Let them taste what they put me through for once.*

I have had more difficult times than this. I do not need any help."

146. We find these emails to be threatening.

Allegation 81

147. The claimant sent an email to Mr Furlong on 9 January 2020 [3/603]. The allegation relating to this email said that it contained disrespectful and derogatory comments. We agree with that categorisation by the respondent.

148. The message included: *"Kelly Lambert feeds on flexing her muscles at any given opportunity… You all at the top are feeding this culture. I know it must be enjoyable to be adored by the women you call leaders. If only you can all see what the other women think of them. You are setting precedent to our future female doctors, some of whom saw my treatment today and no doubt learnt what gets you to the top and what behaviours are currently being punished at UHL. God help us all in our old age if we get there*."

Allegation 84

149. The claimant sent an email to Lisa Osborn, copied to Mr Krupa on 22 January 2020 [1B/2259] in response to an email from Lisa Osborn to the individuals working in the Breast Unit informing them that the claimant would be leaving the Department on 1 February 2020, initially for a period of 9 to 12 months. The response from the claimant, which we consider to be threatening said, "*Please can I see the manner in which you are planning to explain this before sending it out.*

If there are any public misrepresentations. I will have no choice but to be public about my side of the story. The full story. I still have [M's] email if you are wondering."

Allegation 87

150. Following a perfectly reasonable email from Lisa Osborn to the claimant on 28 February 2020 [1B/2275], which queried whether the claimant had managed to identify the data that she would like to take on her secondment with her, and in which she confirmed that she was chasing an external hard drive for her, the claimant replied to Lisa Osborn, copied to Mr Furlong, Dr Currie, Mr Adler (the Chief Executive of the respondent), Mr Jameson (the Responsible Officer), the Deputy Medical Director and

the Director of Safety and Risk. In this reply, she said, "*It is kind of you to acknowledge that time is running out for me… I will return when I am treated as a senior clinician with respect, but any other self-respecting individual would expect from a professional organisation aiming to become the best.*

When I came to help with the [former consultant in the breast unit]'s case, I knew I was putting myself in harm's way as [the] majority of his claims against Richard Power and Matt Metcalfe were accurate. If I'd known that John Jameson was assisting [Mr Krupa] and [M's]" attacking me during the case, I would have played it differently. Lesson learnt."

151. We find this response to be wholly inappropriate and unprofessional.

Allegation 88

152. The claimant sent an email to Tina Larder, CMG, HR lead on 9 June 2020 [3/692] copied into Mr Furlong, the HR business partner, the Deputy Director of Human Resources and the Director of People and Organisational Development which said, "*Making friendships at work so that your friends help you bend your rules that you impose on others is not management or leadership. It's called corruption*."

153. We consider that this was making unwarranted, unfair, undermining statements as set out in the list of allegations for the disciplinary process.

Allegation 90

154. A surgeon from Solihull texted the claimant in August 2020 [3/726] asking if she was able to cover a clinic on 4 September in Solihull. He asked her to let him know if she could do this. The claimant's reply referred to her being on annual leave and said, "*I find you texting me about your rota issues inappropriate.*

There is currently a meeting scheduled on 3/9/2020 and until then I am not available for any clinical activities at UHB.

Please do not text me ever again.

Sheila"

155. We find the reply to a reasonable text incredibly rude and unprofessional

Allegation 91

156. The claimant emailed Mav Manji, the medical director at UHB on 10 September 2020 [3/752] in the following terms:

"*Mav*

I have no demands.

All asked for (sic) was some professional courtesy.

Your behaviours observed by me so far are not becoming of a Divisional Director. I have no doubt it is a huge task in this current climate and am sure you will get much more cooperation from your colleagues male, female, black or white if they feel more respected.

As I said at our meeting if this is too much to ask of your organisation I will continue my pursuit of finding a welcoming and respectful environment elsewhere.

I await instructions from my current employer."

157. It was clear from the response to the claimant's email which was sent to Andrew Furlong alone on the 10 September [3/752] that UHB had tried to sort out all of the issues the claimant was experiencing in relation to working for a different NHS Trust. It stated that, "…*Whilst the team here trying to build relationship (sic), her behaviour,*

attitude, the language/ contents of her email means that she is precluding herself from the team…

These individual points may all seem petty and from my perspective a lot of effort has gone into making this work for her. As discussed in our meeting last week I was prepared to put this behind us which has taken a great deal of persuasion from me to the rest of the team with a view to job plan next week. However, as you can imagine from her latest email… our relationship has irrevocably broken and cannot support her placement at UHB further."

Allegation 92.

158. The claimant sent a text message to Mr Furlong on 8 October 2020 [3/762] which said,

"*Mr Furlong For old time sakes (sic) a few man to man words*

Will you tell your mummy Hazel that I am not scared of her or her sorts

Thanks Sheila"

159. Again the claimant accepted that this response was inappropriate.

Allegation 93

160. The claimant left a voicemail message on Mr Furlong's phone on 15 October 2020 at 10.02pm [transcript 3/771]. This was not disputed by the claimant who accepted her message was inappropriate and apologised during her evidence at the Tribunal. The message included:

"*I suspect that, erm, you are busy doing important things like having a drink with a colleague and saying how difficult your jobs are. However, if perhaps on time and on budget, things were done, things wouldn't be as messy as they are right now. I will not be going to Coventry,… and I have, no doubt, absolutely no doubt, that in 2021*

there will be a need for someone who knows what they are doing and putting patients first rather than, who likes who, whose(sic) sleeping with who and whatever. This has gone far enough. I don't know who's doing what at the top but clearly they are not doing the job that needs to be done, so I hope you take this feedback all the way to the top. I don't care if Boris Johnson gets to hear this but from where I'm sitting, it ain't good enough…."

161. This message was highly inappropriate and unprofessional.

General

162. Of the specific allegations set out above, we accept that they all happened. The majority of them were either emails, text messages or voicemail messages. We accept on the balance of probability that they occurred, and some of them were accepted by the claimant as having occurred.

163. We do not, however, find that the claimant was ever alleged to have forged documents or stolen items as part of the disciplinary investigation. We understand that the claimant considered that in checking her unsigned fit note provided on 17 June 2022 was authentic, she believed that the respondent considered that she had forged it. We do not accept that to be the case. The respondent was checking its authenticity as it was unsigned and part of the reason for the absence was obscured. We consider that a number of employers may have done this in these circumstances.

164. We accept that the respondent looked into the claimant's visit to the prosthetic room where implants are stocked, but accept that this did not form part of the allegations against her, and we accepted her explanation for doing this.

Submissions

165. Having been given the option, the claimant decided to provide oral submissions after the respondent's submissions.

166. The respondent had provided an opening outline submission and closing submissions, which had been sent to the claimant and the Tribunal in advance. The claimant chose not to read the respondent's closing submissions, although had the opportunity to do so, had she wished.

167. The respondent's submissions in brief were that the reason for the claimant's dismissal was the potentially fair reason of conduct, or, in the alternative, some other substantial reason, being a breakdown in mutual trust and confidence. In cases of misconduct, the employer has to show that it believed the claimant was guilty of misconduct, had in mind reasonable grounds on which to sustain that belief and at the stage that the belief was formed, it carried out as much investigation into the matter as was reasonable in all the circumstances.

168. The range of reasonable responses test applies to both the decision to dismiss and the procedure by which that decision is reached. A series of acts demonstrating a pattern of conduct can be sufficiently serious so as to undermine trust and confidence and justify summary dismissal: Mbubaegbu v Homerton University Hospital NHS Foundation Trust EAT0218/17.

169. The Tribunal should look at the procedural fairness and thoroughness of the appeal stage and the open-mindedness of the decision maker where there are any prior procedural deficiencies. (Taylor v OCS group Limited [2006] ICR 1602).

170. In relation to the allegation that the claimant was suspended for a significant period of time, to the extent that she was de-skilled between October 2020 until 25 July 2022 (the effective date of termination),the claimant had accepted in cross examination that she was not formally suspended at any point by the respondent. This should lead the tribunal to dismiss this issue. This was the conclusion reached by various individuals as part of the respondent's processes.

171. The respondent had considered each of the allegations, both at the disciplinary stage and the appeal rehearing stage.

172. The disciplinary hearing went ahead as the claimant had not informed the respondent nor occupational health of her inability to attend it. The claimant agreed she could have contacted the disciplinary hearing panel and/or Trish Francis and had not done so. The email to occupational health did not refer to the claimant being unable to attend the disciplinary hearing, and her evidence was that she had arranged an appointment with her GP to reassess the position on 27 June. The respondent acted reasonably in continuing with the disciplinary hearing in the claimant's absence for the reasons set out by Julie Hogg and Peter Dawson in their witness statements.

173. The claimant was not accompanied at the disciplinary hearing because she did not attend and so could not have been.

174. The delay in providing the appeal review outcome was not unreasonable. The respondent's contentions were that for a period there were settlement negotiations taking place and the panel chair's unforeseen periods of leave. Two months to arrange the rehearing was reasonable, taking into account the Easter holidays and the diaries which had to be co-ordinated. There is no evidence whatsoever which

supports the assertion that the disciplinary or appeal panel were not impartial. The decision to hold a complete rehearing could not have been fairer to the claimant.

175. The claimant had been given a full opportunity to put forward evidence relevant to the allegations that she wished to rely on and to present her case.

176. Therefore, there was no doubt that the respondent had a genuine belief in the misconduct alleged. The investigations could not have been more thorough and there was ample evidence before the respondent on which it could dismiss the claimant for gross misconduct. The respondent acted entirely in accordance with its disciplinary procedure in reaching a decision to dismiss, which was clearly within the range of reasonable responses.

177. As regards wrongful dismissal, the disciplinary procedure expressly provides that the lodging of an appeal would not suspend the notice of dismissal. The powers afforded to the appeal panel when the procedure is properly read are only exercisable once a decision on the merits of an appeal have been reached and are discretionary.

178. The claimant provided oral submissions following a break. She responded to some of the points made by the respondent, including:

    a. The nature of her provision of a fit note in June 2022 was completely different to earlier periods of absence. She had been referred to occupational health and Professor Kaul on the instruction of the disciplinary panel. The respondent had the claimant's private email address and telephone number and the hearing went ahead without the claimant's knowledge;

b. The claimant did not have access to the data room until the rehearing in May 2023. Further, that she could not upload documents to the data room. Professor Dawson said that he saw nothing from the claimant in the data room, whereas she had sent 22 emails and a huge number of pages.

c. The transcript of meetings with Mr Walters included reference to a private conversation Dr Currie had with Claire McLaughlan, and this information was never shared with the claimant.

d. Having repeatedly read the policies relating to disciplinary and appeals, the claimant did not understand what had happened to her. The claimant had never been provided with a letter of invitation to a disciplinary hearing. She had never seen one and neither had Professor Dawson.

e. The claimant could not understand how the first table of allegations had been devised, when the transcript of June 2022 was read in full. It was not clear how these allegations had been put to people. Rather, they had been asked how they felt about the claimant and how her return would affect them and discussed the claimant's personal life; something she had not shared.

f. There was a delay from the immediate dismissal on 25 July 2022 to 2 November 2022 for the first of the appeal hearings. The claimant did not know if it was a reasonable delay, although the policy says 15 days.

179. Additionally, the claimant read out her prepared submissions. In brief, these were as follows: The claimant had not always been the villain of the story. When she arrived in 2009, she was a celebrated new colleague with an energy for change. She began

to be looked at as a villain when she was used as a scapegoat following the settlement of her former colleague's Employment Tribunal claim.

180. The claimant did not see that a fair process had been followed. The panel were invited in early June and she was not given the same notifications. The paperwork had been written by a lawyer based on barristers' and HR consultants' reports, with some parts redacted. The list of allegations was sent on 28 April 2022, which the claimant chose not to look at as it was her daughter's birthday, she went on holiday and she felt overwhelmed.

181. The decision had been made by 4 July 2022 without asking the claimant a single question or hearing the claimant's side.

182. Mr Walters was no longer impartial by April 2021.

183. The decision to hold a rehearing, which has been painted as an act of kindness, was not. This was not a re-enactment as three out of the seven witnesses didn't attend, and the others who attended gave polished answers. The claimant was stopped at allegation number 44, and not all the allegations had been put to her.

184. The GMC hadbeen told the outcome of the appeal hearing before it had taken place.

185. The claimant had wanted Mr Jameson to attend the hearing to understand the basis on which he labelled her a villain. Throughout the process she had been accused of having a tendency of physical violence, theft and forgery which were not just an attack on her as a professional, but on her as a human being.

Law

186. For ordinary unfair dismissal, the respondent has to prove the reason for the dismissal and that it was one of the potentially fair reasons provided by section 98(1) and (2)

Employment Rights Act 1996 ('ERA'). The respondent relies upon the reason in s 98(2)(b) ERA namely, "conduct".

187. Once an employer has shown a potentially fair reason for dismissal, section 98(4) ERA provides that "*the determination of the question whether the dismissal is fair or unfair ... (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case*."

188. Since this is a misconduct dismissal, we must bear in mind the guidance given by the EAT (approved repeatedly since) in BHS v Burchell. We therefore need to ask the following:

    a. Did the respondent genuinely believe that the claimant was guilty of misconduct?
    b. Did the respondent have reasonable grounds upon which to form that belief? and
    c. Did the respondent carry out as much investigation as was reasonable in the circumstances?

189. The Tribunal must also consider whether the procedure followed by the respondent was reasonable, including whether it complied with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

190. It is necessary for the Tribunal to be satisfied that dismissal was, in all the circumstances, within the range of reasonable responses of a reasonable employer

and that a fair procedure had been followed by the employer (Iceland Frozen Foods Ltd v Jones), as subsequently approved by the Court of Appeal in other cases. This is authority for the well-known proposition that a Tribunal must not substitute its own decision on the reasonableness of a dismissal for that of the employer; rather, the Tribunal must decide, objectively, whether the decision to dismiss was within the range of reasonable responses of a reasonable employer.

Conclusions

191. For the unfair dismissal complaint, we have to consider, firstly, whether the respondent has proven the reason for dismissal and that it was a potentially fair one. Having heard the evidence of Julie Hogg and Peter Dawson (from the disciplinary hearing) and Claire Teeney and Simon Barton (from the appeal hearing), we are satisfied that the reason the claimant was dismissed was because the respondent believed that she was guilty of misconduct.

192. The claimant suggested that the reason for her dismissal related to the various complaints she had made about her colleagues and their work and that she had been made to look "*the villain*". However, we do not accept that to be the case.

193. Therefore, the respondent has discharged the burden of proving a potentially fair reason for dismissal, namely conduct. It is necessary to consider whether the dismissal was fair or unfair in accordance with section 98(4) ERA. It is not for the respondent to prove that it acted reasonably in dismissing the claimant for misconduct, this is a neutral question for the Tribunal to decide.

194. In considering the fairness of the dismissal, we applied the test in BHS v Burchell. Firstly, we considered that the respondent, both at the disciplinary and appeal stages

genuinely believed that the claimant was guilty of misconduct. This was clear from the evidence of Ms Hogg, Professor Dawson (the disciplinary hearing), Simon Barton and Ms Teeney (from the appeal hearing). This is supported by the minutes of the disciplinary and appeal hearings and the outcome letters from both of those.

195. It is then necessary to consider whether at the time the disciplinary panel and/or appeal panel decided that the claimant was guilty of misconduct, they had reasonable grounds for doing so. We find that they did. The reports prepared by Mr Walters and Ms Pugh provided clear evidence on which the panels were able to base their decisions. Additionally, the panels were able to see for themselves the emails, transcripts of messages and text messages, which formed many of the allegations against the claimant. Whilst we note that not every allegation was considered individually within the appeal rehearing, we are satisfied that the claimant had an opportunity both in writing and orally within the three day hearing to say what she wanted to say about the allegations against her.

196. We then need to consider whether the investigation carried out by the respondent was reasonable in all the circumstances. The investigation needs to be within the range of reasonable investigations carried out by an employer in these circumstances. We consider that the investigations carried out by Mr Walters and Ms Pugh were reasonable. It was clear that they had taken many months to investigate and had sought to fully explore the allegations against the claimant, as well as in the Walters investigation, the allegations the claimant brought against others.

197. For these reasons, we find that the investigation conducted by the respondent fell within the range of what a reasonable employer would have done to investigate these matters.

198. We find that dismissal was within the range of reasonable responses open to the respondent in these circumstances. We remind ourselves that we are not to substitute our view, and, for the unfair dismissal claim, it is irrelevant whether or not we would have dismissed in the circumstances. However, we find that an employer acting reasonably may have dismissed the claimant for the misconduct identified by the respondent.

199. We considered whether there were any procedural failures by the respondent, such as to render the dismissal unfair. We had regard to the claimant's assertions in this regard, as set out in the agreed list of issues at paragraph 2.5. Considering each of these:

    a. We do not accept that the respondent failed to establish the facts of each case. It was clear that the respondent fully investigated each allegation and made findings of what it accepted had taken place;

    b. The claimant was not suspended during her employment. Due to feeling unsafe, she agreed to secondments with other hospitals, which unfortunately, did not work out. She then agreed to undertake other roles and then agreed to work on her internal investigations/ appeals whilst being paid. We are satisfied that the claimant was not deskilled;

    c. The disciplinary panel had not been informed that the claimant was unable to attend the disciplinary hearing at the point it decided to go ahead. We do

not accept that informing the PA to the OH specialist of a fit note is sufficient to do this. We consider that the claimant could have informed the panel of her inability to attend and requested a postponement to the hearing, which we consider would have been granted. She did not do so.

It is accepted that the disciplinary hearing went ahead, although we consider that it was reasonable to do so in these circumstances, as at that stage, it did not know of the claimant's fit note nor that she was unable to attend. We do have concerns about the decision of the panel to proceed with its deliberations when it knew of the claimant's illness on 4 July 2022. However, we do not consider that this was sufficient to render the dismissal procedurally unfair;

d. The claimant was afforded the opportunity to be represented at the disciplinary and appeal hearings. She was not accompanied at the disciplinary hearing, as she herself did not attend. She chose to attend without being accompanied at the appeal hearings. We do not accept that this was a procedural failure.

e. There were long delays between the dismissal outcome and the final appeal outcome. Some of this is explained by the decision to hold a review appeal hearing before the rehearing appeal and the time taken between the two. We note the claimant's concerns that the procedures do not provide for this. However, we accept that it is possible to have appeal hearings which either review the decision or rehear the disciplinary. In this case, the claimant had both. We do not find that to have affected the fairness of the dismissal.

The panel was troubled by the long delay to hear the appeal and whether this affected the fairness of the dismissal. We accept that there were good reasons for some of the delays. However, we consider the delay between the review appeal hearing and the outcome that there was to be a rehearing was longer than it should have been and was not best practice. On balance, though, we do not consider that the delays in the appeals affected the fairness of the dismissal. We do not consider that the outcome letter from the rehearing appeal was delayed. The letter would have taken some time to prepare once the panel had considered the documentation relating to the appeal.

Both the disciplinary and appeal panels were, in our view, totally impartial. The individual members were not known to the claimant and on both panels, the Chairs were newly recruited into the respondent's employment.

f. There was no evidence before us that the claimant was unable to provide information to the appeal hearing. We do not accept that she sought to do so and was prevented in some way.

200. In light of our findings, we find that dismissal was within the range of reasonable responses open to an employer, and we find the dismissal to have been fair.

201. Turning to the wrongful dismissal claim, in light of our findings of fact in respect of the specific allegations referred to above, we consider that the claimant had committed gross misconduct justifying summary dismissal. She had fundamentally breached the contract of employment due to her behaviour. We consider that allegation 17 in itself, was an act of gross misconduct. Although, we note that there was a long delay before

the respondent dealt with this, which may have caused the respondent to have waived the breach. However, in the more recent allegations we found to have been committed by the claimant, particularly allegations numbered 93 (voicemail message to Mr Furlong on 15 October 2020) and allegation 81 (email to Mr Furlong on 9 January 2020), were in themselves individual acts of gross misconduct. In any event, cumulatively, we consider that the pattern of conduct from all of the allegations showed a persistent, long standing behaviour by the claimant which justified summary dismissal. We agree with the appeal outcome letter's conclusion where it states: "*[The claimant] exhibited a pattern of persistent, unacceptable, rude and uncooperative behaviour over a significant period of time towards [her] colleagues*". [5/284]

202. Finally, we considered whether the claimant was entitled to receive full pay between her dismissal on 25 July 2022 and the appeal rehearing outcome on 8 August 2023. Having looked at the respondent's policies, we find that there was no breach of contract by the respondent in failing to reinstate the claimant at the appeal stage. There was no contractual entitlement for the claimant to be reinstated, and therefore, no loss can be claimed.

203. All claims are therefore dismissed.

204. We agree with the findings of the Walters report that some of the 96 allegations should have been dealt with much sooner by the respondent. It appeared to us that there was a reluctance from senior management to deal with these difficult issues. The panel find this disappointing and understand the claimant's concerns that she was unaware of some of these issues until the Walters investigation. However, this does

not affect our decision on the fairness of the dismissal, even when considering the delay in handling some of the allegations.