EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
Mrs B Esdaile	**AND**	**Avon and Wiltshire Mental Health Partnership NHS Trust**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT BRISTOL **ON** **22 to 30 April 2024**

EMPLOYMENT JUDGE **J Bax**
MEMBERS **Mrs C Monaghan**
Mr K Ghotbi-Ravandi

Representation

For the Claimant: **Mrs B Esdaile (in person)**
For the Respondent: **Mrs Twomey-Calder (counsel)**

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that:

1. **The claims of detriment for making protected disclosures are dismissed.**

2. **The claim that the Claimant was constructively unfairly dismissed, including that it was automatically unfair dismissal for making a protected disclosure, is dismissed.**

REASONS

1. In this case the Claimant, Mrs Esdaile, claimed that she had been constructively unfairly dismissed and/or automatically unfairly dismissed and subjected to detriments for making protected disclosures.

Procedural background

2. The Claimant notified ACAS of the dispute on 1 September 2023 and the certificate was issued on 13 October 2023. The claim was presented on 16 November 2023.

3. On 6 March 2024, the Claimant provided further information about her claim.

4. At a telephone case management preliminary hearing on 18 June 2024 the issues were discussed. At that stage, the Claimant relied upon 11 allegations of breach of the implied term of trust and confidence, 10 alleged protected disclosures and 10 allegations of detriment. The Claimant was asked to consider the allegations and confirm whether any of them were no longer pursued. By correspondence dated 30 June 2024 the Clamant reduced the number of allegations. A further draft list of issues was prepared.

5. At a case management preliminary hearing on 5 August 2024, the refined list of issues was discussed and agreed and the final hearing was listed.

The issues and procedural matters.

6. The issues to be determined were discussed at the start of the final hearing. The Claimant, in her witness statement, had referred to the dismissal of grievance and the grievance appeal as being the final straw and prompting her resignation. These matters had been in the original list of issues and removed as allegations by the Claimant and relied upon as supporting matters. The Claimant wanted to rely on them as breaches of the implied term of trust and confidence. The Respondent said it was in a position to deal with the grievance because a witness was being called in that respect. However in relation to the grievance appeal it did not have a witness to give that evidence. It was agreed the Respondent would ascertain whether it could call a witness to deal with the appeal issue and the matter would be discussed at the start of the second day. At the start of the second day the Respondent said it could not call the appeal officer, however it would consent to the inclusion of the grievance appeal if an adverse inference was not drawn from not calling the witness. The Claimant agreed to this proposal and the allegation was included.

7. Discussion took place about the first alleged detriment in the list of issues (In the summer of 2021, the Freedom to Speak Up Champions (Liz Bessant and Natasha Easter) failed to take any action), which pre-dated the protected disclosures. The Claimant confirmed that it was not being relied upon as an act of detriment or an allegation of breach of the implied term and it was only relied upon as background.

8. In relation to the protected disclosures the Claimant said that the information tended to show that there had been a breach of a legal obligation or the endangering of health and safety. She confirmed that she was not saying it tended to show a miscarriage of justice. The Respondent disputed that any protected disclosure had been made

9. The issues were confirmed to be as follows:

    a. Whether any of the detriment claims were presented out of time and whether time should be extended.

    b. The alleged protected disclosures were:
        i. On 5 October 2022, the Claimant emailed Jason Everett, stating that she was concerned about the 'active hampering of social work practices, roles and interventions over a prolonged period of time by Polly Sturgess, which [his] email seemed to endorse'. The Claimant set out that Polly Sturgess was repeating behaviours that she had already expressed to him and that Ms Sturgess did not appreciate or understand the differences between social work and clinical practice and how they worked together to provide a proper service for service users. ("PD1") (health and safety)
        ii. At a meeting on Monday 7 November 2022 attended by Kelsey Greenaway, Steve Smith, Lou Stephens and other team members, the Claimant expressed an opinion relating to staff satisfaction and morale, which was contained in a published national survey and which was by inference critical of the Trust. ("PD2") (Health and Safety and provision of service)
        iii. On 14th June 2023 at the disciplinary hearing, the Claimant made submissions that Polly Sturgess did not like social workers and that she had become, without any need, her de facto line manager in Devizes. The Claimant explained the difficulties created by the co-existence of psychiatric nursing and social work and that her suspension was a waste of taxpayer's money and that her requests for meetings were ignored. The Claimant explained that Polly Sturgess had driven the disciplinary process and that the arrangement of work and the understanding between different disciplines was not working and of course setting out the Polly Sturgess' improper motivation was in issue. ("PD3") (health and safety and provision of service)
        iv. The Claimant raised a significant grievance about the disciplinary process, its motivation, the involvement of Polly Sturgess, the absurdity of the allegations, the lack of proper

investigation and my line management by Polly Sturgess and stating, “these matters are hugely important to me and so they should be for the Trust”. (“PD4”) (Legal obligation in relation to the disciplinary process and health and safety)

v. On 2 July 2023, the Claimant wrote an email to Christina Jeffries and Carl Kneeshaw setting out her concerns that the allegations against her were without foundation. The decision of the disciplinary panel was that elements of her role (seeing clients in locations other than a clinical setting and consequential expenses) needed to be explored and resolved and to the Claimant’s knowledge these matters remain unresolved. (“PD5”) (health and safety)

The Claimant said that they tended to show a breach of a legal obligation, health and safety was endangered.

c. The alleged detriments were:

i. In November 2022, Louise Stephens informed the Claimant by email that a complaint had been made about her comments on staff satisfaction and morale. Louise Stephens also stated that other comments that the Claimant had made about Polly Sturgess’ management and the need for a meeting to discuss her concerns about Polly Sturgess were capable of bringing the Respondent into disrepute and could be treated as a conduct matter. This Claimant states that this reflected the culture of bullying by the Respondent as she was unable to speak out even when in contact to the Freedom to Speak Up Champions.

ii. On 11 November 2022, the Claimant was suspended on four false allegations that were found to have no evidence to support them despite the lengthy investigation. The Claimant was exonerated at the Disciplinary Hearing on the 14th of June 2023. During these disciplinary proceedings the Claimant was socially isolated from colleagues and friends who had any connection with the Respondent.

iii. Lesley Grundy failed to properly investigate the disciplinary allegations against the Claimant and did not explore the motivation behind the Claimant’s suspension or the link between her disclosures and detriment. Ms Grundy did not identify and analyse the evidence as borne out at the Disciplinary Hearing on the 14th of June 2023.

iv. In July 2023, Christina Jefferies and Carl Kneeshaw proposed that the Claimant return to work in the same situation with no scheme of work for social work/psychiatric care in place and no plan for Polly Sturgess to be the subject of any form of education or censure and her fear that further intimidating and derogatory comments would be made and further spurious

discipline was highly likely. The Claimant states that the Respondent failed to provide a plan for a safe return to work.

d. The allegations of breach of the implied term of trust and confidence for the constructive dismissal claim were:
    i. From August 2021, Polly Sturgess assumed direct line management for the Claimant and subjected her to a level of scrutiny and criticism that was unnecessary and humiliating. In particular, Ms Sturgess frequently questioned details of the Claimant's AMHP duties and the legal agreement that was in place to allow the Respondent and the Claimant to fulfil this role. Ms Sturgess unilaterally removed the Claimant's ability to input data into the electronic rota on 31st August 2022 which excluded the Claimant and made her role difficult. In challenging the Claimant's expense claim between September and November 2022, Ms Sturgess was unpleasant, didactic, and hectoring in tone. The Claimant submits that she was being bullied by Ms Sturgess.
    ii. In October 2022, the Claimant requested a meeting with Polly Sturgess to discuss the situation with a view to seeking a solution, which was refused. The Claimant states that this was contrary to the Respondent's Grievance Policy.
    iii. In November 2022, Louise Stephens (Team Manager) wrote to the Claimant to advise that there had been a complaint from a team member about the Claimant's comments that the Trust was third from the bottom in a national survey about staff retention and morale. The Claimant was advised that discussing her desire to improve working relationships and could be seen as bringing the Respondent into disrepute and could be treated a conduct matter. The Claimant states that her attempts to raise a Public Disclosure were quashed by the Respondent.
    iv. On 11 November 2022, the Claimant was suspended from work as a result of unproven allegations because she had stated her intention to raise a grievance against Polly Sturgess. The Claimant states that an unnecessarily lengthy investigation showed that there was no evidence to support any of the allegations.
    v. The Respondent asked the Claimant to return to work on 19 June 2023 without putting safeguards in place.
    vi. Dismissed the Claimant's grievance
    vii. Dismissed the Claimant's appeal against the grievance outcome.

10. Both parties provided written and oral closing submissions.

11. The amount of time originally estimated for the parties to give their evidence was too short. There was insufficient time for the Tribunal to deliberate and give Judgment within the hearing listing. It was therefore agreed that the Tribunal would deliberate on the last day of the hearing listing and that a written decision would be provided on liability.

The evidence

12. We heard from the Claimant and Ms Taylor and Ms Haverty on her behalf. We heard from Ms Bryant, Ms Sturgess, Ms Bessant, Ms Jefferies, Ms Robertson-Morrice, Ms Stephens and Ms Grundy on behalf of the Respondent.

13. We were provided with a bundle of 879 pages. Any reference in square brackets, in these reasons, is a reference to a page in the bundle.

14. There was a degree of conflict on the evidence.

15. The Claimant's evidence was not easy to follow. The Claimant had a tendency to suggest that matters had been said or done, however when the answer given was probed, it became apparent that she conflated things she had later seen in documents or had thought, rather than things which were said. An example of this was in relation to the discussions about the Claimant's return to work. The Claimant's evidence was that she had been saying a return was unsafe. She said that she had asked for a meeting with Ms Sturgess, HR and managers and for some sort of mediation with Ms Sturgess and for the Respondent to acknowledge unfair treatment of her and the suspension was not based on fact and said that it had been spoken about in meetings. When cross-examined, she accepted that she had not asked for a mediation or a meeting with Ms Sturgess or managers, her evidence became that the only thing she asked for was a meeting with HR.

16. The Claimant's evidence in relation to when she raised various matters was also inconsistent and unclear, examples of this included when she said that she had a conversation with Ms Bessant about culture, which changed from the summer 2021 to after she moved teams and then that she could not recall the date. There was a similar issue in relation to when she said she anonymously raised concerns with the CQC, in that her first witness statement suggested it was when she moved teams in October 2021 and her second statement suggested it was in June 2022. The Claimant had produced an introductory document in April 2024 which suggested she had raised concerns with the CQC after she was suspended in November 2022, but in oral evidence said it was in the wrong place. She said in the same document she approached the CQC again after the dismissal of her appeal, however in oral evidence she said she did this between the grievance outcome and the grievance appeal.

17. The Claimant's evidence, both documentary, in her witness statement and orally was often vague. She did not set out specific details of what she said was or was not done. For example, she would say there was a history, without explaining what it was, that things were unsafe without explaining why, that she had been bullied without saying what had constituted it.

18. As consequence of this the Claimant's evidence was difficult to understand and only limited assistance was gained from the documents in the bundle. We were not satisfied that the Claimant had an accurate recollection of what happened and that she was often mistaken or that she had subconsciously conflated matters in her mind, in particular about what she was telling the Respondent at the times in question. We accepted that she was trying her best and there was no intention to mislead us.

19. The Claimant suggested that Ms Sturgess was evasive in relation to why the Claimant left her band 7 role. We did not accept that suggestion. The Claimant never really questioned her about specific incidents, despite prompting and Ms Sturgess denied that there had been incidents between them that would have caused the departure. We considered that Ms Sturgess answered the questions she was asked and that her evidence was consistent with the documents in the bundle.

20. We did not consider that Ms Stephens was a strong witness, she was nervous and at times vague. She came across as lacking in confidence, as demonstrated by the things she referred to Ms Sturgess when managing the Claimant. Although she was vague there was some documentary evidence which was consistent with what she was saying, albeit there was nothing from Mr Smith about the complaint he made.

The facts

21. We found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

22. The Claimant was an Approved Mental Health Practitioner ("AMHP") and a registered social worker. In past she had worked for the Respondent in various band 7 roles before leaving and working for a local authority as an AMHP.

<u>Policies of the Respondent</u>

23. The Respondent's grievance policy included the following matters:

a. It may be that although a manager has followed a correct process and the outcome is reasonable, nonetheless a person may feel aggrieved. The Grievance Policy is not designed to address matters of 'reasonable management action': whereby the concern is that an employee simply did not want something to change, however reasonable the change. The types of issues not usually covered by the Grievance Policy include:
    - Disagreements on matters of professional judgement;
    - Normal supervision leading on to disciplinary processes / any disciplinary action (unless there is a demonstrable flaw in how the Disciplinary Policy has been applied).

   The only exceptions are where individuals can demonstrate a policy has been misapplied (if the policy has an appeal mechanism that process will be used rather than a grievance).
b. Participation in mediation was voluntary.
c. Stage 1, informal resolution provided: "Efforts will be made to deal with grievances informally wherever possible please talk to your line manager if you are aggrieved, explaining the concern and outlining what outcome you wish to achieve. Should the concern relate to your line manager, then please discuss this with the HR team who will facilitate finding a suitable independent manager."

24. The Respondent's disciplinary policy included:
    a. Suspension was a neutral act and was not a disciplinary sanction.
    b. A suspension risk assessment form must be completed.
    c. The investigator must have no previous involvement in the matters under investigation.
    d. The investigator will gather evidence to allow them to compile and submit an investigation report.
    e. Following a disciplinary hearing, the individual may appeal if they believe the disciplinary policy may have not been properly applied.

25. The Respondent's Freedom to Speak Up (Whistleblowing) Policy provided for situations when employees wanted to raise concerns about risk, malpractice or wronging. The examples included, "Concerns about a bullying culture (across a team or organisation rather than individual instances of bullying)": It also stated that, "This policy is not for people with concerns about their employment that affect only them - that type of concern is better suited to our grievance policy." There were Freedom to Speak Up Champions under the policy, those people were a network of staff across the Respondent who could give independent and impartial advice to staff and signpost them to relevant information, policies and people. The Champions were volunteers and were given time to undertake that role. There was also a Freedom to Speak up Guardian, who worked alongside senior Trust leaders to promote a culture that is open and transparent and allows staff to speak up. Employees could also approach the Guardian, who

would discuss the concern and find out what the employee wanted to do next. The Speak Up Champion can also refer the concern to the Guardian. The Guardian, with the employee's consent, can escalate the concern to appropriate managers for investigation. The only time consent is not required is when there was a serious patient concern. If matters are raised they are recorded in the Speak Up App or confidential electronic or hard copy files.

The Claimant's Band 7 role

26. On 15 January 2020, the Claimant started new employment with the Respondent as a Band 7 Team manager in the South Wiltshire Intensive Service at Fountain Way Hospital, Salisbury.

27. This role involved responsibility for the operational management of the team, including managing the roster and staff supervision. She worked alongside a Band 7 Senior Practitioner who managed the clinical aspects of the service.

28. The Claimant's line manager from December 2020 was Ms Bryant (nee Easter), Access Service Manager for the Wiltshire Locality. Ms Bryant was also a Freedom to Speak Up Champion under the Freedom to Speak Up policy. At all material times Ms Bessant was the Freedom to Speak Up Guardian. Mr Everett was the Operations Manager.

29. In August 2021, it was agreed that the Claimant would be seconded to Wiltshire County Council ("WCC") for a minimum of 2 days a month to work in their Social Services Department as an AMHP. This was work the Claimant enjoyed and it enabled her to maintain her qualification and keep up her skills. A formal secondment agreement was entered into between the Respondent, WCC and the Claimant [p148-155].

30. The Claimant had a peer, Ms Sturgess, who was the Band 7 Team Manager for the Sarum Community Mental Health Team. Their roles interlinked, in that the teams would be involved with the same service users and they would attend weekly meetings. During this time Ms Sturgess was asked to cover the Primary Care liaison Service for a couple of months and at that stage she shared an office with the Claimant. Ms Sturgess had no line management responsibilities for the Claimant.

31. On 5 July 2021 Mr McInnes was seconded to the Claimant's team as a Band 7 Senior Practitioner.

32. The Claimant's witness statement suggested that at weekly meetings Ms Sturgess made disparaging remarks about AMHPs. However no details were provided, in the Claimant's witness statement or in oral evidence,

about what was said in meetings, when it was said or any specific details. The Claimant, despite prompting did not question Ms Sturgess about this. Ms Sturgess, in her witness statement said that they had the odd professional disagreement, but they were approached with respect and she considered they worked well together. We did not accept that disparaging remarks were being made about AMHPs at the weekly meetings.

33. In October 2021, the Claimant attended a meeting chaired by Ms Sturgess in relation a service user who had been involved with the services of both of their teams for and in which a transfer from the community to hospital could have been better. The Claimant's witness statement referred to there being five workers from Ms Sturgess's team and the Claimant being present. The Claimant went on to say that Ms Sturgess was critical of her decision making and suggested, without providing specifics, that she had made a mistake in sending a social worker to do an assessment rather than a nurse and she had failed in her role as a Team Manager; she said this was bullying. The Claimant, in evidence, said that she had pushed back and defended the work the social worker had done. The Claimant suggested in the cross-examination of Ms Sturgess that there had been incidents in Salisbury, but did not suggest specific incidents. Ms Sturgess denied that there was any untoward behaviour in when the Claimant was in her Band 7 role. The Claimant was invited to consider whether she had put everything in relation to the allegation 1 in respect of the constructive dismissal claim, however she did not seek to ask further questions. We were satisfied that there was meeting at which a sub-optimal transfer of a service user was discussed and its purpose was to establish what had happened and what could be learnt from it. The Tribunal was not referred to any documentary evidence in support as to what had been said at the meeting. It was significant that Ms Bessant and Ms Bryant denied that this incident was raised with them and that Mr Everett in his investigation interview said that complaints had not been raised about Ms Sturgess and they only related to Mr McInnes. We were satisfied that what had occurred with the service user was discussed, however we were not satisfied that Ms Sturgess acted as the Claimant's line manager or acted in a humiliating or bullying manner. We did not accept that Ms Sturgess said she had failed as a manager.

<u>Whether concerns were raised by the Claimant about Ms Sturgess with Ms Bessant and Ms Bryant.</u>

34. The Claimant's original case was that in the summer of 2021 she raised concerns with Ms Bryant and Ms Bessant about Ms Sturgess and that they did not take any action. The Claimant's witness statement said that she raised complaints but nothing was done. Ms Bessant and Ms Bryant both gave evidence that the Claimant did not raise concerns about Ms Sturgess with them. The following events occurred.

35. In July 2021 Ms Bessant agreed to deliver training on professional behaviour and patient safety to the Wiltshire Locality. Ms Bryant e-mailed the teams, including the Claimant's team and said it would take place on 10 November 2021 and put the team managers in touch with Ms Bessant to arrange freedom to speak up sessions in their team meetings. Ms Bessant had arranged a session with the Claimant's team in the summer of 2021, however it was cancelled because of a lack of availability of members of the team. The Claimant informed Ms Bessant that the training could not go ahead and there was not any discussion about concerns the Claimant had.

36. The Claimant cross-examined Ms Bryant on the basis that she had raised safety concerns about Mr McInnes. Ms Bryant's evidence, which we accepted, was that there was a disagreement about what constituted a safety concern, in that Ms Bryant did not think it was a safety concern to allow staff to go home to write up notes as this had been common in other teams during the pandemic. The Claimant made it clear she did not want to work with Mr McInnes and asked Ms Bryant to get rid of him. When Ms Bryant asked why, the Claimant did not give a tangible response and said that she did not like or trust him. We accepted that Ms Bryant did not have concerns about Mr McInnes competence as a practitioner, although she was aware that he was a new manager and needed support.

37. In the summer of 2021 there was an issue within South Wiltshire primary care with sickness absence, which was affecting the ability to process referrals. Ms Bryant had asked if the Claimant's team had spare capacity and asked Mr McInnes to try and arrange for a Band 6 to be sent there for a couple of weeks. Ms Bryant was then on leave. Mr McInnes had tried to do this, however it had not been possible.

38. On 17 August Ms Bryant received an e-mail from Mr Everett, Operations Manager, saying there had been a meeting between the Claimant and Mr McInnes to talk about relationship challenges and referred to allowing writing up at home and in relation to trying to arrange a Band 6 to cover in South Wiltshire. Mr Everett wanted to discuss it Ms Bryant.

39. We accepted Ms Bryant's evidence that prior to this she was unaware of the Claimant having any difficulties with her colleagues. Ms Bryant enjoyed working with the Claimant's and Ms Sturgess' teams and thought they were both open and friendly. She was also very grateful for the work the Claimant did and considered she was committed to the team and worked many hours.

40. In cross-examination, the Claimant was asked about what she was raising with Ms Bryant and it was suggested it related to Mr McInnes and not Ms Sturgess. The Claimant said it was largely about Mr McInnes but she raised other issues, but she could not remember what they were. Ms Bryant, in cross-examination, did not accept that the Claimant raised anything about

Ms Sturgess, including about the meeting in October 2021, but said the issues raised were about Mr McInnes. We accepted that if the Claimant had raised that she was being bullied by Ms Sturgess, Ms Bryant would have sought HR advice and signposted the Claimant to try and resolve it. We accepted Ms Bryant's evidence that she was passionate about dealing with bullying and harassment and that she was alert to it as a result of being a Freedom to Speak Up Champion. The evidence of Mr Everett, in the subsequent disciplinary investigation, was that concerns were not raised about Ms Sturgess at this time. We preferred Ms Bryant's evidence and accepted that the Claimant did not raise any concerns with her about Ms Sturgess and that her observation had been that Ms Sturgess had always been professional.

41. Towards the end of September 2021, Ms Bryant heard that the Claimant had wanted to move to a job at North East Wiltshire Community Mental Health Team ("NEW CMHT"). On 1 October 2021 Mr Everett e-mailed the Claimant and said he understood that she wanted to move and take a role as a Band 6 care co-ordinator and if she wanted to move he was happy to liaise with HR. We did not accept the Claimant's evidence that the meeting with Ms Sturgess in October 2021 was the reason why she wanted to move. The Claimant had already made that decision. The Claimant's move was later confirmed.

42. The Claimant, in her witness statement said that she spoke to Ms Bessant shortly before she left her band 7 role and she reported Ms Sturgess' bullying actions and that Ms Bessant gave the impression that she thought the Claimant was overreacting. The Claimant's oral evidence was that this took place at a Teams meeting after she moved to the Band 6 role and she could not remember if it was before or after 1 December 2021. The Claimant's document about the list of issues [p89] suggested it took place in the summer of 2021. Ms Bessant did not accept that there was such a conversation. The following matters were of assistance with resolving the conflict of positions.

43. On 4 October 2021, the Claimant informed Ms Bessant by e-mail that she was leaving the team and moving to a new role and therefore she was not able to attend a team meeting on 10 October 2021. Following a reply by Ms Bessant, the Claimant said that she was going to a Band 6 post in NEW CMHT and that, 'Let's just say the culture and values here aren't what I had expected.' Ms Bessant asked if she was doing an exit interview because it would be good feedback and said a lot needs to be done about the culture and work is starting about that. The Claimant did not explain what the 'culture' was that she was referring to. We accepted Ms Bessant's evidence that her reference to culture was a general reference to culture across the whole trust. We did not accept that it was with particular reference to the Claimant's team or the teams it associated with.

44. The Claimant responded by saying that she had a sort of exit interview with Mr Everett the previous day. Her issue amongst others was that Natasha Easter (Bryant) had decided someone should be a given a second chance and she had created a band 7 role for him, but to keep that between themselves. Ms Bessant said that she would arrange a face to face meeting and a call prior to that.

45. A teams meeting was arranged with the Claimant and Ms Bessant on 1 December 2022. Ms Bessant was rushed to hospital on 27 November and was an inpatient for 10 days. The Teams meeting did not happen. Ms Bessant returned to work in January 2023 and tried to contact the Clamant, who said that everything had resolved.

46. The Claimant cross-examined Ms Bessant on the basis that she said she left because she felt bullied, the atmosphere was oppressive and people were fearful. The Claimant did not refer to these mattes when she gave evidence. Ms Bessant rejected the suggestion that these matters were raised with her and we accepted if such matter had been raised she would have followed it up. We accepted Ms Bessant's evidence that they did not have a Teams meeting because she was hospitalised. We rejected the Claimant's evidence that she raised any concerns with Ms Bessant about Ms Sturgess, the e-mail she sent referred to Mr McInnes only and they never had a Teams meeting. We did not accept there was such a conversation and accordingly Ms Bessant could not have been dismissive.

Events following the Claimant's move on 18 October 2021

47. In mid-October 2021 arrangements were made for the Claimant to move to a different role. The Claimant had a meeting with Mr Everett. Her evidence was that she had said the reason was to escape bullying by Ms Sturgess. The Tribunal was not referred to documentary evidence supporting this assertion. Mr Everett, in his interview as part of the subsequent investigation, denied that such a conversation took place and said that the reason related to Mr McInnes. What Mr Everett said was supported by the e-mails sent by the Claimant at the time, as referred to above. We rejected the Claimant's evidence in this respect.

48. On 18 October 2021, the Claimant moved to a Band 6 role as Care Co-ordinator/Recovery Specialist practitioner in NEW CMHT. She was based at Green Lane. Her line manager was Ms Stephens, Team Manager, who had responsibility for 20 to 30 staff. On a day to day basis, the Claimant was supervised by Mr Mckenna, Senior Practitioner. The Claimant worked alongside senior practitioners, Mr McKenna and Ms Duxbury, who provided clinical supervision to the team. We accepted Ms Stephens evidence that

the Claimant told her the reason she had left her previous role was a falling out with Mr McInnes.

49. The role of Care Co-ordinator must be carried out by a registered professional (nurse, social worker or occupational health). It involves meeting with service users with severe mental health needs in the community, to check on their well-being and treatment and to enable and assist them to meet their daily health, social care and well-being needs.

50. When the Claimant started in the Band 6 role she continued to carry out her AMHP work. We accepted that the Claimant worked in excess of her contracted hours, for which she did not seek time off in lieu. The Claimant's evidence was that she was happy in this role. We accepted Ms Stephens evidence that there were two incidents in February 2022 where the Claimant raised her voice at her, however this was resolved. Ms Stephens found the Claimant intimidating.

51. On 16 May 2022, Ms Sturgess was promoted to a Band 8a role and became the Community Service Manager. She became the line manager of Ms Stephens. Ms Sturgess did not have a significant amount of interaction with the Claimant's team because her role was focused on supporting management with operational and procedural matters. No concerns about the Claimant's clinical management were raised with her.

Was the Claimant's role questioned?

52. The Claimant's case, in her witness statement, was that in late summer 2022, Ms Sturgess started to question her AMHP times and queried the secondment agreement and asked to see it. Further that Ms Sturgess also questioned the AMHP manager, Mr Mitchell about the hours she as working and how she spent her time between the two teams. The following matters were relevant.

53. In late August 2022, Ms Stephens and Ms Sturgess reviewed the NEW CMHT rota. Ms Stephens informed Ms Sturgess that the Claimant carried out a number of AMHP visits for Wiltshire Council to enable her to maintain her AMHP skills. Ms Stephens was not aware of the details of the arrangement, it was something which had already been agreed and we accepted that she did not have a copy of the document.

54. Ms Sturgess checked the roster to see how regularly the AMHP shifts were scheduled, there were 2 to 3 AMHP shifts a month, but sometimes they were twice in a week. Ms Sturgess was concerned about the impact on the Claimant's CMHT caseload. She was told by Ms Stephens that the Claimant was logging the shifts on herself. We accepted that it was not usual practice for Band 6 employees to have editing access to the roster within a CMHT

environment. The Claimant had been granted access when she was a Band 7. Ms Stephens checked whether any other Band 6 staff were able to access the roster and found no other Band 6 had such access.

55. On 30 August 2022, Ms Sturgess e-mailed Mr Everett to check what had been agreed. She asked if he knew what the agreement was and said,

"*I understand we are "paid" for her time that she completed AMHP work during normal CMHT working hours, but I'm guessing that money goes somewhere central rather than back into the team?*

Is there an agreed number of shifts per week/month?

I've been reviewing the roster and it seems there's 2-3 shifts allocated to AMHP work per month, but at times this is twice in a week and I'm conscious of the impact this could have on managing a B6 caseload within CMHT.

I think we need to keep an eye on this, but I'm not sure of the boundaries/rules. Any ideas?" [p182]

56. The Claimant's oral evidence was that she was the only AMHP in the team and Ms Sturgess had made her a priority and there had not been a problem raised for 12 months. She said she was not saying Ms Sturgess should not have asked or that she was not entitled to do so, but that it felt personal and focused on her and was a tool to bully her with.

57. Mr Everett told Ms Sturgess that he did not know what the arrangement was. Ms Sturgess replied by e-mail dated 31 August 2021, that Ms Stephens did not know what the arrangement was because she was not involved in setting it up, but she had been told that the arrangement had been for about 1 AMHP shift a month. Ms Stephens had informed Ms Sturgess the number of shifts had been increasing but was not sure how to address it. She queried whether Mr Mitchell, Head of Service for Mental Health Social Care at WCC, was the best person to approach. Ms Sturgess proposed to remove the Claimant's access to the editing of the roster and said she did not feel comfortable with the Claimant having access to it. She thought a maximum of 2 AMHP shifts per month was reasonable and that dates should be obtained in advance and given to Ms Stephens so CMHT admin could put them on the roster. This was to ensure that Ms Stephens had operational oversight of staff. She also considered it would avoid data protection issues.

58. Mr Everett agreed to remove the Claimant's editing access to the roster and was not sure why she had it. He suggested that John Mitchell should approach the Trust for extra shifts rather than the Claimant having to do that.

59. Ms Sturgess e-mailed the Claimant on 31 August 2022 about the roster. She explained that changes to the roster should only be made by manager/senior practitioner/allocated administrator within CMHT. It was not usual for staff to adjust it themselves because operational oversight was needed to ensure the service was covered. The Claimant was told she would still be able to view the roster. Ms Sturgess also raised that it was noted shifts had not been allocated for her on 27 July and 5 August 2022, which she said, "mean that you are showing in a deficit of hours currently, which I am pretty sure can't be right." The Claimant was asked to let Ms Stephens know which hours she worked so the roster could be adjusted.

60. In cross-examination the Claimant said that the checking of her hours, so the roster could be adjusted, was kind. She was not bothered who put the information on the roster, but it was the process and personality involved. She did not take issue with the tone of the e-mail but said she was surprised there was not a conversation with her about it. We accepted Ms Sturgess' evidence that she wanted to restrict access to personal details of staff and to ensure operational oversight by the Team manager. Further no other Band 6 had such access in that team or the other teams managed by her. We accepted Ms Sturgess' evidence that Ms Stephens did not know how to address the issue and she had tried to support her manager. She was trying to find a solution to the operational issue which had been raised.

61. The Claimant replied saying she was aware access was discretionary, but she was aware other band 6's had access. She said it was implied her honesty and integrity was being questioned [p185]. In cross-examination the Claimant said she had not changed the times of her hours and when it was put that there was no such suggestion in the e-mail she said that Ms Sturgess was questioning the number hours she was doing as an AMHP. However she also saw the e-mail as offering protection.

62. Ms Sturgess replied and said that was not the case and it was about Ms Stephens and the senior practitioners having oversight as to what was booked and ensuring the service was covered appropriately. She said she was sure that the Claimant always ensured that cover for her caseload was sorted. She thanked the Claimant for bringing to her attention that other Band 6s had access and said she was asking Ms Stephens to review and adjust it. The Claimant responded by saying that she still believed there was an implication of trust and questioning integrity. Ms Sturgess replied that she was not questioning her integrity and that, "*Within CMHTs there is no requirement for band 4/5/6 staff to have access to health roster or make changes themselves as this is managed by the management team and dedicated admin staff. It's important for the management team to have oversight to ensure service provision, and my understanding is that currently AMHP shifts are put onto the roster by you without Lou having*

oversight of this. I'm sure that you always ensure cover for your caseload is sorted, but I think it's important for Lou to have a better oversight of this in general so that she can pre-plan as there may be things occurring in the team that you aren't aware of in your role."

63. The Claimant's oral evidence was that she was being targeted because no-one else was an AMHP. We accepted Ms Sturgess' evidence that she was trying to bring the e-roster access in line with the rest of the team and to ensure that Ms Stephens could log the shifts and have oversight of the roster for planning purposes.

64. On 1 September Ms Sturgess asked Mr Mitchell to clarify the arrangement. He said it provided for her to be seconded to the council for no less than 2 days per month to complete AMHP shifts. The details of the shifts were received in advance. If the AMHP team was short-staffed he did ask the Claimant if she could support, but she mostly declined due to CMHT commitments. If she was quiet doing AMHP work she did CMHT work. If her AMHP shift ran over he could not pay her overtime and she could not do TOIL, due to the small number of shifts she did. He expected she would take it back in her CMHT hours. Ms Sturgess e-mailed Mr Everett and said she was concerned on the impact on CMHT if she used TOIL in CMHT to take back TOIL she had accrued in another service. Ms Sturgess asked him if he had a copy of the contract and whether he was happy with the TOIL arrangement [p194].

65. On 2 September 2022, the Claimant e-mailed Ms Stephens and said that her AMHP shift the day before ran from 8am to 9.45 pm and asked for it to be added to the roster. Ms Sturgess accepts that with AMHP work if you are half way through an assessment when a shift ends, it has to be competed and you cannot stop working. Ms Sturgess was concerned that the Trust was paying the Claimants' wages for the two shifts, but there did not appear to be an agreement in place as to which organisation should account for the TOIL. She raised this with Mr Everett who asked the head of service at Wiltshire council to query the arrangements for in relation to reimbursement for the Claimant's time.

66. The Claimant was cross-examined on the basis that the managers needed to know the nature of the agreement in relation to TOIL, she did not answer the question. The Claimant said that she had never claimed TOIL before and only did after her access to the roster had been removed. We accepted Ms Sturgess' evidence that she considered it was appropriate for her to have a proper understanding of the agreement and how it operated in practice, due to the overarching impact it could have on CMHT service provision. The Claimant's evidence was that her job had been made more difficult because trust had gone with the Respondent.

Frist expenses claim

67. On 24 September 2022, the Claimant submitted an expenses claim for £123.21 [199-202], for expenses incurred in July which included amounts for groceries and dog food. This followed her taking a vulnerable service shopping after he had been discharged from hospital. She said in evidence that she decided to submit the claim because goodwill with the Trust had waned.

68. Expenses claims are normally approved by Team Managers or Senior Practitioners. The claim was larger than usual for other team members and Ms Stephens asked Ms Sturgess to review it, because she did not feel she had authority to sign it off. Most expenses claims related to mileage incurred visiting patients in the community, however the Claimant had not claimed for mileage. Hot drinks would not normally be purchased for service users unless it had been agreed and included in the care plan, and this was an unusual expense. Coffee shops and public spaces were not considered to be ideal for meeting service users due to the need for confidentiality. If a service user required groceries the team could assist with referrals to foodbanks and give help with applying for crisis loans, but they would not be expected to buy groceries. If there were concerns about the ability of a service user to look after their needs or buy groceries this might result in a safeguarding referral.

69. Ms Sturgess reviewed the claim and marked matters approved in green, and matters which could not be approved in pink. Yellow meant it could be approved with clarity and blue related to a day on which the Claimant was not working. She e-mailed the Claimant on 26 September. She asked for a rationale for the grocery shopping and for food bought alongside drinks. She assumed drinks in cafes were part of therapeutic activity, but said they should not cost more than £5. She added that she would not expect this to be a usual activity in the longer term as drinks in cafes are usually part of therapeutic recovery therapy, rather than a regular meeting venue [p205].

70. The Claimant said in cross-examination that she accepted Ms Stephens had involved Ms Sturgess, but she would have expected Ms Stephens to have a conversation with her first. Her evidence was changeable as to whether or not she thought this was micro-management at that time. We accepted Ms Sturgess' evidence that she was not acting as a de facto manager, Ms Stephens had escalated the expense claim to her for her to deal with.

71. On 27 September 2022, the Claimant responded, copying in Ms Stephens and Mr Mitchell. She said she was purchasing food for someone lacking insight into their mental state, who was not claiming benefit and did not have family support. Another user had their driving licence suspended and she

had taken him shopping. She referred to the Stafford Report and said it referred to patients being failed by a system which ignored the warning signs and put corporate self-interest and cost control ahead of patients and their safety. She also said that social workers have a fundamental belief in empowering service users and work whenever possible towards the goal of engagement rather than delivering interventions. Going for drinks was a therapeutic activity and were part of the methods and techniques social workers use to forge engagement. She did not think it was unreasonable to buy a food item for someone on a limited income. She said that the public purse was not served by a Band 8 and Band 6 having to spend so much time in justifying the purchase of a piece of cake [p204-205].

72. Ms Stephens considered that while the Claimant might have had the best of intentions. Ms Stephens thought she was going beyond the remit of her role, potentially setting expectations of service users and not using time and resources appropriately, when there were other mechanisms in place.

73. Ms Sturgess responded to the Claimant's e-mail. She said she had discussed the matter with payroll and Mr Everett to explore the boundaries of relevant policies. The Claimant's desire to help service users with financial difficulties was acknowledged, but it was not the agreed method of support and they usually recommended exploring options such as food banks, crisis loans and a last resort team petty cash for basic items. The types of expenses would not be agreed in general and needed to be agreed with a Team Manager in advance. The same applied to more expensive beverages or food when completing therapeutic activity. Payroll had confirmed that the Trust was not obliged to pay for food or drink until the staff member was away from work for more than 5 hours. The Claimant was told on this occasion her claim would be signed off in full, however "moving forwards: drinks purchased as part of therapeutic activity were limited to £5 per drink and no food." There should be a clear need for such intervention and if it was not clear, to discuss it in supervision. No food should be purchased and if there was a need to support a food purchase it should be discussed with the management team in advance to explore other options.

74. The Claimant said in cross-examination that she was not suggesting it was inappropriate to review and determine the expenses. She was concerned that there was a focus on her, the communication had been by e-mail only and she should have been spoken to.

75. The Claimant considered that Ms Sturgess was not acting within the policy. We accepted Ms Sturgess' evidence that the expenses policy was very broad and did not have limits in the amounts, this was because it applied to the whole Trust and given the range of teams, putting thresholds in place would be unworkable. Discretion was therefore given to management under

the policy. Ms Sturgess had been advised by payroll what was normal across similar teams in the Trust.

76. Following this Ms Stephens spoke to other team members in team meetings to make sure they were acting in the same way. We accepted that other team members had not made claims of the type made by the Claimant and they had been claiming in line with what had been advised by payroll.

77. The Claimant responded by e-mail dated 29 September 2022, querying whether head of payroll and Ms Sturgess could make policy. She said formal policy guidance would be of assistance. She said core values of social work were being unreasonably questioned and undermined and her personal belief was the public purse was served by a service user developing a sense of worth and a belief in their ability to function in the community.

78. We accepted Ms Sturgess' evidence that she did not consider it was for the Claimant to determine how public funds were spent and that if every care co-ordinator bought drinks, groceries and food for service users it would create a huge burden for the NHS.

79. On 29 September 2022, Mr Wiltshire (Head of Social Work) wrote to the Claimant. He said that when a service user is struggling, an expenses claim is not the right process to use. The extent to which it was OK to buy food/drink in a café as part of therapeutic engagement had been longstanding genuine issue. They should be avoided to discourage dependency and agreement in advance with the line manager seemed reasonable [p212].

80. On 29 September 2022, Mr Everett wrote to the Claimant and said that Ms Sturgess and Mr Wiltshire were right in relation to expenses and there was a national policy which dictated it. Expenses of that nature would fall outside of the remit of a claim and she could find herself out of pocket. He said he would not enter into an e-mail debate about it. It was about utilising reasonable funds and they should be agreed in advance. He thought she had been given clear guidance around the boundaries of what was reasonable. As far as he was concerned the matter was a drawn to a conclusion.

Further e-mails in September 2022

81. On 27 September 2022, the Claimant asked for a social worker for clinical supervision and raised again that her social work values and principles were being overly questioned and undermined.

82. Ms Sturgess responded by saying:

"*For context, the supervision offered via CMHT management falls within 2 areas:*
1. Management supervision with team manager – looking at HR matters.
2. Caseload / clinical supervision with Snr Prac – looking at plans for the whole caseload, ensuring plans are moving forward in a recovery focussed manner.
It is important for CMHT managers to take the lead with these supervisions so that there is a clinical and operational oversight of the caseload and we can ensure the quality and productivity of the service. For this reason, I'm afraid we cannot agree for your caseload supervision to fall to someone outside of the CMHT management team.
I note that you receive AMHP supervision, which I anticipate is with a social work colleague. Would it be reasonable to ask that social work supervision is part of this alongside the specific AMHP focus? If not, then you are by all means welcome to arrange some separate clinical supervision from a social work colleague.
I am conscious that you have made reference to your values and principles being questioned and diminished. Please can I be clear that this is not the case from the perspective of myself or the CMHT management team. We all value the multi-disciplinary team which we have and see positive benefits from having a wide range of disciplines working within the team.
I am aware that we have had to address some process & procedure issues recently and as such you may have been left feeling challenged but I need to be clear that the purpose of these reviews has been to ensure the service operationally safe and that all staff are working within the same boundaries. None of the reviews or changes which have been undertaken have had a focus on you specifically or questioned your work ethos. I am sorry if you have felt otherwise."

83. We accepted Ms Sturgess' evidence that it was not her role to organise AMHP supervision, but that she had said the Claimant was welcome to arrange some with a social work colleague.

84. The Claimant replied and said she believed her professional values and integrity were being questioned.

<u>The Claimant's request for a meeting with Polly Sturgess in October 2022</u>

85. The Claimant consulted her union. On 1 October 2022 she sent an e-mail to Ms Sturgess and Mr Everett saying in light of recent e-mails and associated matters that she had been advised to invite them to a meeting with the aim of finding a resolution before registering a formal grievance. In cross-examination Ms Sturgess said that she would make the assumption that it was about the expenses claims and the roster access.

86. On 3 October 2022, Mr Everett replied and said that the advice given about claiming an expense was factually correct and he did not understand how the that would constitute a threshold for a grievance. She may disagree with the position but he had checked with the Exchequer who had concurred. The original expenses were honoured and she was given reasonable advice. He was not clear why he was being asked to attend a mediation and why it could not be addressed with her line manager. The Claimant then confirmed she wanted a meeting.

87. On 5 October 2022 at 0814, Ms Sturgess e-mailed Mr Everett and said she was doing a caseload review and was not planning to respond to anything outside of that unless it was urgent. She offered to e-mail HR for advice. Mr Everett replied, "I know stuff!". We accepted that Ms Sturgess was in the middle of a priority case review, which would take a few days, and she thought Mr Everett was dealing with the request. She interpreted Mr Everett's reply as knowing that she was busy.

88. Mr Everett e-mailed the Claimant and said he was still unclear as to what she was aggrieved about and his e-mail related to expenses and not social work practice. He had suggested a meeting with the lead social worker. He said he was happy to attend a meeting and asked the Clamant for more detail and they would then find a mutually convenient date.

89. Mr Everett sought advice from Mr Bunce, HR Business Partner. On 5 October 2022 at 1318, Mr Bunce advised that it was not unusual for an employee to want a meeting with their line manager and a manager above this would normally be with the modern matron or service manager, which he thought was Ms Chandler. He suggested a meeting to try and resolve it from becoming a formal grievance process could be beneficial to highlight and address concerns, before it escalated to a more formal process. This advice was not discussed with Ms Sturgess.

90. A meeting was not arranged. Mr Everett e-mailed the Claimant on 10 October 20212 and said he had already suggested she met with the social work lead. It was not appropriate it escalate it to him at that stage and he suggested she arranged a meeting with them or her line manager, Ms Stephens. The Claimant had a supervision session with Mr McKenna that day and said she was finding the relationship with Ms Sturgess challenging and it was a throwback to when they were both managers in South Wiltshire and she was taking out a formal grievance [p230].

<u>e-mail on 5 October 2022 to Mr Everett (PD1)</u>

91. On 5 October 2022 at 0906, the Claimant sent an e-mail to Mr Everett, copying in Ms Sturgess which said,

"There is a history of me feeling that Polly has been unreasonable which has been around my social work status and associated working practices. I came to you and discussed this last year at the time when I moved to the CMHT to discuss this in part of a wider discussion. Polly appears to be repeating these behaviours now that she is in her current post. I believe that she is micro managing me as has been evidenced in recent weeks with my AMHP role and ways of working, and is not being mindful, respectful and accommodating of professional differences. Instead she seems to be actively blocking these. Recent e mails have reinforced my thinking."

She ended by saying she had a room booked for 13 October if he was able to meet. Ms Sturgess did not respond to the e-mail.

92. The Claimant relied upon this e-mail as a protected disclosure. Her evidence was that it tended to show that Ms Sturgess was being unreasonable about social workers and associated practices and said it hampered delivery. When questioned about thee-mail not referring to those matters she responded by saying she could not add to something. When questioned about it not referring to service users she said it was in the e-mail trail before, about what she was doing. She said taking into account the e-mail trail before and the expenses claim that she felt Ms Sturges e-mail in response did not take into account risk and she had been talking about an individual who had no insight and capacity to make a decision in her e-mail dated 27 September to Ms Sturgess and Ms Stephens and she had referred to the Stafford report. This e-mail had been in response to Ms Sturgess asking for the rationale for the expenses claim.

Meeting on 7 November 2022 (PD2) and the e-mail which followed

93. On 7 November 2022, there was a team meeting on Teams, attended by the Claimant, Ms Greenaway, Mr Smith and Ms Stephens. Others were also present, including student nurses. Before Ms Stephens joined the meeting there was a discussion. The Claimant's evidence was that she had recounted she met a friend who said there had been a national survey of NHS trusts in relation to recruitment and retention, AWP was fourth from bottom and they discussed that morale was generally low in the teams they were in. She suggested they maybe needed a discussion as a team to make sure they were all feeling OK and maybe support each other in aspects they were not happy about. The conversation stopped when the meeting started. Ms Stephens' evidence was that as she joined the meeting the Claimant was speaking and she thought she heard the Claimant say that she only liked people on her team, the Trust was not good with relationships and it was third lowest.

94. After the meeting Mr Smith, Community psychiatric nurse, called Ms Stephens and said he was very uncomfortable with the comments made by

the Claimant and asked her to address it. Ms Greenaway, Mental Health Practitioner, also telephoned Ms Stephens and said she was concerned about what the Claimant had said. Ms Stephens then e-mailed Ms Greenaway, and asked her to set out what happened. Ms Greenaway said that the Claimant had said a union rep friend had told her from a survey undertaken about relationships with senior managers the Respondent was third from bottom for their staff being unsupported by their senior managers. When Ms Greenaway said that was not her experience, the Claimant said it was hers [p250].

95. The Claimant relied on what she said as a protected disclosure and said that it related to health and safety. In cross-examination she said it related to morale and it was a concern because if morale was low it affects the work of the team. If a care co-ordinator has low morale and is trying to juggle limited resources there was risk as it could cause a lack of communication, she said she had been threatened with a conduct charge. When challenged that the e-mail had not been sent at that time, she said she had been closed down. The Claimant said that when working with people who are high risk low morale could impact on the quality of care to service users. When questioned about her not saying about the implications of low morale on the team the Claimant said that she was closed down and she did not get the opportunity to and she did not say it out loud. When questioned about how she was closed down she could not remember what was said and it was something along the lines of 'let's start the meeting'. In the Claimant's further information dated 6 March 2024, she said that she had said that the trust was third from bottom in a national survey about staff retention and morale.

96. Ms Stephens. In cross-examination, said that she did not hear any mention of staff morale and that there was a tense conversation between the Claimant and Ms Greenaway about a survey. She then received two complaints. We accepted Ms Stephens evidence that she received two oral complaints. She did not know Ms Greenaway was about to become the team manager.

97. We did not accept that the Claimant said that team morale was low or make any reference to there being a risk to service user care. We concluded that the information provided by Ms Greenaway at that time was most likely to be accurate as to what was said.

98. We accepted Ms Stephens' evidence that she thought the team was happy, on the basis of the regular supervisions and staff surveys. She had not heard from discussions with other Band 7s, that staff were talking about sickness absences or had low morale.

99. After the meeting Ms Stephens sent the Claimant an e-mail, which said:

"*Further to the team brief this morning, I wanted to raise my concerns regarding the nature of the tail end of the conversation I came in on where I overheard you saying that AWP were the 3rd worst employer in the country. I have subsequently also received a complaint about this from a colleague in the team.*
Whilst I am aware that you have frustrations at present, please may I remind you that conversations of this nature could be viewed as bringing the trust into disrepute and be viewed as a conduct matter. I am aware that you have also been discussing with colleagues both in AWP and outside in relation to a potential grievance, which again is not in keeping with the trust values. I am unsure if you have discussed this in detail with Chris, as your supervisor.
I believe that you have supervision coming up this week, if you would like to discuss this further with me, or Mandy please do not hesitate to contact us. I will need to get more information from those present at the meeting as to the nature of the conversation , but felt it appropriate that I share with you the concerns being raised."

100. The Claimant's evidence was that she was told that what she said about the survey was a conduct issue. We accepted that she was told there was a possibility of a conduct matter and not that it was. We accepted that she was surprised at receiving the e-mail.

101. We accepted Ms Stephens evidence that it had been reported to her that the Claimant had been expressing her dislike of management inside and outside of the organisation. She was aware that the Claimant had been discussing about raising a potential grievance. Ms Stephens considered that if there were concerns about management there were appropriate channels by which the Claimant could have raised them. Ms Stephens was concerned that raising matters with people outside of the Respondent could bring it into disrepute. We also accepted that she had responded to two colleagues who had said they were uncomfortable in the meeting.

102. Ms Stephens forwarded the e-mail to Mr Everett and Ms Sturgess as she felt it fell outside of the conduct and behaviour expected of employees.

<u>The second expenses claim and subsequent disciplinary proceedings</u>

103. At the end of October/beginning of November 2022 the Claimant submitted an expenses claim for the months August, September and October 2022. There was an increase in the number of expenses for coffees claimed. The claim was for about £150. On 1 November 2022, Ms Stephens asked the Claimant to resubmit the claim with the service users' initials added, the Claimant had not identified the service users on her claim form. The Claimant then resubmitted the claim, which included some further

claims. Ms Stephens thought the increasing numbers of claims was unusual. The expenses claims were escalated to Mr Everett. Ms Stephens was then asked to review the claims.

104. On 4 November 2022, Mr Everett e-mailed Mr Bunce, copying in Ms Sturges and Ms Stephens, in relation to the second expenses claim by the Claimant. He confirmed he had said to Ms Stephens, that it had been queried whether it might tip into fraud and had been told there was no harm in asking Counter Fraud for advice. Ms Stephens and the team were trying to work out who the service users were to look at the days. Mr Bunce, replied that a conversation with counter-fraud might be helpful.

105. Ms Stephens carried out an audit on the second expenses claims and discovered that the claims did not match with the notes on RIO, for example that the address recorded on RIO did not match the expenses claim. Some receipts did not match the diary and in some respects the receipt did not tally with what was recorded in the patients' clinical diaries. Ms Stephens provided Mr Everett and Ms Sturgess the breakdown on 4 November 2022. Ms Sturgess then spoke to counter-fraud and was told that it could constitute fraud on the basis that money was being claimed inappropriately, however the amount would not be significant enough to warrant criminal prosecution. Ms Sturgess was advised to review the claims internally and also to look back at previous claims, even if they had been approved. Ms Sturgess was cross-examined on the basis that the second claim had not been approved and therefore there could not be a fraud. We accepted that Ms Sturgess had taken advice from counter fraud and had been advised that it might have breached the threshold and it warranted investigation. She also considered that the form had been submitted by the Claimant with the expectation that it would be paid.

106. Ms Stephens then carried out an audit of the July expenses. She noted that there appeared to be a disconnect in the claims, which were mostly for coffee in coffee shops and the Trust recording system which said the visits were home visits. There were also two claims that the RIO diary had not recorded visits on the day of the receipt provided.

107. On 7 November 2022, Ms Stephens sent to Mr Everett an analysis of the expenses the Claimant had submitted for July 2022 and said that they had been approved but probably should not have been [p241]. We accepted that the Fraud team had advised that the earlier expenses should be looked at again and that on undertaking the deeper dive she had realised the receipts did not tally with the electronic diary and some days did not match with the patients' clinical diaries.

108. A decision was taken to investigate the expenses claims. Ms Stephens inputted information into a suspension risk assessment [p253-

258]. In the e-mail attaching the draft risk assessment Ms Stephens referred to the Claimant having moved about a bit and having left under difficult circumstances. We accepted Ms Stephens evidence that this was with reference to the situation with Mr McInnes. Ms Stephens, in relation to risk to other colleagues and risks of witnesses being manipulated, referred to the Claimant acting outside of Trust values by speaking negatively about the management team and AWP as a whole both inside and outside of her team. She considered that conversations had the aim of obtaining support from colleagues to back up her view. We accepted Ms Stephens' evidence that she was aware the Claimant was speaking to people outside of the Respondent and that two people in the team had complained on 7 November 2022. Ms Stephens also set out that the Claimant was likely to continue to try and obtain support, that witnesses could be manipulated and that she could use her influence over service users on her caseload to back up her views, if they were to be interviewed as witnesses. It was also recorded that a similar expense claim had been submitted and addressed by management, but the Claimant had continued to claim in the same way and the level of claims had escalated. Further that there had been mis-management of the Claimant's diary entries, in that the entries suggested she was in a different place to the expenses claim, and there was a risk of the behaviour continuing. It was also recorded that if service users needed to be approached as part of the investigation, it would make the Claimant's ability to carry out some aspects of her job very difficult. It was not considered that only allowing the Claimant to undertake paper work was not appropriate and in any event there would not be much paperwork to complete without doing other aspects of the job.

109. The risk assessment was then reviewed by Ms Sturgess. Ms Sturgess and Mr Bunce signed off the risk assessment on 10 November 2022.

110. Ms Sturgess decided that the Claimant should be suspended pending an investigation into: (1) possible misappropriate of funds, (2) possible theft, (3) possible breach of conduct standards, and (4) possible inappropriate relationships.

111. The Claimant challenged Ms Sturgess about the reasons for suspension and suggested that she had augmented the description of what happened to Counter Fraud. We accepted Ms Sturgess' evidence that there were multiple lines in the expenses claims and she was advised that it could constitute fraud. We accepted that she considered that the possible inappropriate relationships was based on that the service was meant to be a recovery service and it was important for service users not to build a dependency upon it. There was a need to limit expenses to where there was a therapeutic need and which was recorded. We accepted Ms Sturgess' evidence that she did not think the allegations were spurious and

that she was concerned that the amount of claims had escalated after she had given guidance and that there was a disparity between the claims the records in the RIO diary and service user notes. There appeared to be disparities between where the expenses were incurred, where the service user was or the time at which they were incurred. Ms Sturgess also considered that there had been an impact on other staff in that concerns had been raised with management about comments the Claimant was making. Ms Sturgess was concerned about the risk of service users or other potential witnesses being manipulated to provide a potential alibi. There were also concerns about the Claimant's record keeping, given the disparity between the expenses claims and Trust's records. We accepted Ms Sturgess' evidence that she did not think it was appropriate to discuss the issues with the Claimant before suspending her, due to the seriousness of the concerns and the risk of remaining in post and of potential inappropriate relationships. She did not consider it was appropriate to do this until the concerns were clarified.

112. We accepted Ms Sturgess' evidence that the allegation of breach of conduct standards related to the Trust values and was contingent on the allegations of theft and inappropriate relationships. In other words that if the other allegations were made out there was a breach of conduct standards. She had been advised to include this by HR.

113. We accepted Ms Sturgess' evidence that alternatives were considered. Ms Sturgess did not consider other alternatives were appropriate because the Claimant had worked with individuals in other teams and there would have been difficulty in her completing an administration only role without contacting service users or potentially compromising the investigation.

114. On 11 November 2022, Ms Sturgess, accompanied by Ms Duxbury (senior practitioner), met the Claimant to suspend her whilst the investigation took place. The Claimant was provided with a letter confirming the suspension and the allegations being made [p343-345]. Attached to the letter was the suspension risk assessment. The Claimant was informed that the suspension was a precautionary measure and not a disciplinary sanction. During the suspension, her AWP contact was Ms Duxbury. The letter stated in relation to the investigation that, "*Information and discussions regarding this matter are confidential and should only be discussed with your representative, the Case Investigator or me. Any breach of confidentiality will be treated very seriously and will be investigated also; this may result in formal disciplinary action*."

115. In cross-examination the Clamant accepted that the allegations were serious. She said that although there were inconsistencies it did not mean it was theft. She suggested that the information the suspension was based

upon was too narrow and involved a lack of communication with her and service users before suspending. She said it was very damaging to be accused of gross misconduct when she had not done anything. We rejected the Claimant's suggestion, she was effectively suggesting that the investigation should be completed before suspension.

116. The Claimant suggested that the investigation was commenced to prevent a grievance being raised against Ms Sturgess. The suspension letter did not say that the Claimant could not raise a grievance. We accepted that the Claimant could still have raised matters with HR and the prohibition on discussing matters related to the investigation. Ms Sturgess was the case manager and at that time there was not a grievance which had been raised against her. We accepted Ms Sturgess' evidence that the suspension related to the potential misappropriation of funds and potential inappropriate relationships.

117. Under the disciplinary policy there was a requirement to review the suspension every 2 weeks. This was done by Ms Sturgess, as commissioning manager, until Ms Moore took over the role on 23 January 2023. The Claimant's evidence was that Ms Sturgess should not have carried out the reviews, however she accepted that when she raised her concern with Ms Grundy, that Ms Sturgess was replaced quickly.

118. At the time of suspension, the Claimant said that Ms S Jefferies was her union contact. At some stage, the Claimant became unhappy with her representation and asked for Ms Sturgess not to send anything to Ms S Jefferies. The Respondent's practice was to send the union letters about suspension so they could see the process was being followed. On 23 November 2022 Ms Sturgess asked Mr Bunce whether the suspension review letter should be sent to Ms S Jeffries. Mr Bunce replied saying that Ms Sturgess had been asked not to send anything to Ms S Jeffries and he would forward it to her in confidence.

119. In the suspension letter a provisional hearing date for a disciplinary hearing was set on 20 January 2023. This was later postponed due to the investigation taking longer than anticipated.

<u>The investigation</u>

120. Ms Grundy was appointed to investigate the allegations in relation to the Claimant's Band 6 care co-ordinator role. She was sent the terms of reference on 11 November 2022 together with a document called information for investigator [p332-336]. The terms of reference required Ms Grundy to ascertain the details of the allegations and liaise with the commissioning manager about any clarification or amendment of the allegations. She was required to gather any relevant documentary evidence

and interview relevant witnesses and informed that witnesses may be accompanied. She was to produce a report, but it was not her role to make conclusions on the allegations other than to say whether there was a case to answer. Should she think that additional or different allegations should be made Ms Grundy had to refer it to the commissioning manager. Ms Grundy was provided with additional information that on the day the Claimant was suspended she spoke to a colleague about her suspension, who had then told Ms Duxbury about it.

121. We accepted that she understood her role to be to take down the information from everyone spoken to, collate that evidence and identify where there were disputes. Ms Grundy understood that her role, where there were disputes, was not to determine who was right or wrong. It was not in her remit to draw conclusions and that function was for a disciplinary panel. When she had prepared the investigation report, Ms Grundy was required to submit it to the commissioning manager, for them decide whether the matter should go to a disciplinary hearing. We accepted Ms Grundy's evidence, in response to a question that she was not best placed to investigate because she had suggested matters were considered by someone with clinical experience, that it was not her role to say whether what happened was appropriate or not, that function was for a disciplinary panel, which in this case had two social workers on it.

122. When Ms Grundy received the terms of reference she spoke to Mr Bunce about the additional information. The discussion with a colleague about the suspension was added as an additional allegation. We accepted that it was not unusual for additional allegations to be potentially added during the course of an investigation. She also obtained the job description for the Band 6 care co-ordinator role.

123. There was a delay in arranging witness interviews. This was due to Ms Grundy being on leave between 12 and 30 December 2022 and the Claimant being on leave between 3 and 10 January 2023. We accepted that it was difficult coordinate witness availability during the Christmas and New Year period. We accepted that Ms Grundy worked 3 days a week on the investigation. There were difficulties in ensuring that witnesses were available and any companions for the interviews were also available. Time was also taken in sending out the notes of interviews and for them to be returned. On 16 January 2023, the provisional disciplinary hearing date was pushed back to 21 February 2023.

124. Ms Grundy undertook her investigation: She took evidence from the following people:

a. Ms Stephens on 30 November 2022. Ms Stephens said that contact with service users would only take place in coffee shops in exceptional cases. Buying service users drinks was only allowed in

exceptional and special cases. Any such incidents should be recorded on RIO, including why it was planned in a coffee shop.

b. Chris McKenna on 6 December 2022, who provided the Claimant with clinical supervision. He said that the Claimant did not like Ms Sturgess and she was questioning her contract and had told him that she was considering raising a grievance. He referred to the expenses claims being abnormal.
c. Mr Smith on 3 January 2023.
d. Ms Mannix on 11 January 2023.
e. The Claimant on 18 January 2022. The Claimant said that she put visits in the diary, but it was subject to change and it is always recorded in the progress notes and every week she ensured RIO was up to date. She said if the managers said they were not paying an expense she was OK with it and she had not made a claim for 5 years and wanted the managers to see the work that she was doing. In relation to the groceries she knew at the time that she may or may not be able to claim the cost back. She referred to feeling bullied by Ms Sturgess in a meeting when she was a Band 7 and when Ms Sturgess became part of her management structure she felt she was being treated with disregard and disrespect and there was a continued history. Explanations were provided for the expenses, She said the allegations were made in bad faith. The Claimant asked for Ms Sturgess to be removed as commissioning manager.
f. Mr Everett on 6 February 2023. Mr Everett did not recall the Claimant saying that issues with Ms Sturgess were the reason why she wanted to leave her Band 7 role and said that it was to do with Mr McInnes.
g. Ms Sturgess on 7 February 2023. Ms Sturgess explained that the access to the roster was changed because it can be chaotic if everyone put down their own shifts, the manager needed oversight and it brought the Claimant's access into line with the rest of the team. They had honoured what had been planned for the next month. We accepted Ms Sturgess's evidence in cross-examination that because the Claimant had agreed the AMHP shifts with WCC they did not want to disrupt those services. After the first expenses claim she had given guidance as to the boundaries of such claims including when it was appropriate to buy coffee and the need for them to be care planned. She said that nothing stood out as to specific incidents of the Claimant saying negative things about AWP, she thought the comments about not understanding the social work role were aimed at her. We accepted Ms Sturgess evidence in cross-examination that she had based this on the e-mails sent to her following the first expenses claim. Ms Sturgess referred to being told by Ms Laneley and Mr Murray saying the Claimant had had a pointed conversation about her. We accepted that this took place after the change to the roster.

125. On 23 January 2023, Ms Moore, Clinical Lead for the Wiltshire Locality, replaced Ms Sturgess as commissioning manager. We accepted that Ms Grundy acted promptly when the Claimant raised that she did not want Ms Sturgess to be the manager. She had passed on the request and it was granted. It was not for Ms Grundy to decide whether it was correct to do so. At this time Ms Sturgess took over North and South Wiltshire Primary Care Liaison Services and West Wiltshire CHJMT. She was replaced by Ms Christina Jefferies as Community Service Manager. We accepted that after her interview Ms Sturgess had no more involvement in the process. We also accepted that on 1 December Ms Greenaway took over as Team Manager, when Ms Stephens became a service manager elsewhere and that she also had no more involvement in the process.

126. Ms Grundy also obtained written evidence, in the form of e-mails or statements from, Ms Greenaway, Ms Duxbury, Mr Harvey (CPN), a service user, Ms Laney, Mr Murray. She also obtained documentary evidence in terms of policies, guidance, expense, pool car and supervision records, RIO entries and caseload.

127. Ms Grundy completed her report on 26 February 2023. The Claimant and Ms S Jeffries requested that Ms Grundy obtained evidence from Mr Mitchell, AMHP team leader at the Council. Ms Grundy e-mailed him on 5 March 2023 asking if he would assist. Ms Grundy e-mailed a list of questions and Mr Mitchell replied saying he was off sick. Mr Mitchell replied on 16 March 2023. The Claimant cross-examined Ms Grundy as to why she had not arranged a face to face meeting with Mr Mitchell. We accepted that not all witnesses were interviewed face to face and Ms Grundy had sent him the list of questions and concluded with asking if there was anything else that could assist the investigation. Mr Mitchell said in respect to a question as to if he was aware of any difficulties the Claimant had in performing her Band 6 role: the question was vague and every AMHP will have experienced issues, problems or difficulties and there were no issues prior to the complaint under investigation. He set out that if the AMHP work was light, the Claimant would undertake AWP work and she appeared scrupulous in not short-changing the Respondent. He ended by saying that he knew of nothing that would place the Claimant's honesty and integrity in doubt. Further due to her suspension they also had to suspend her from doing AMHP work.

128. Ms Grundy then finalised her report and in March 2023 sent it to Ms Moore. Ms Grundy summarised the evidence which had been obtained in relation to each allegation in a detailed fashion. She set out where there were disputes in the accounts and summarised what the Claimant was saying. She also set out, under 'mitigation', that the Claimant had said she felt undermined and undervalued as a social worker. She recorded that previous issues raised by the Claimant with Mr Everett had been a factor in

her relocating to the Band 6 role. It was recorded the Claimant said that this was in relation to Ms Sturgess, however she also recorded that Mr Everett said it was in relation to another member of staff. In oral evidence Ms Grundy clarified that this was in relation to Mr McInnes. Ms Grundy also referenced that the Claimant had asked for policies and that although there were polices, she had not been provided with a specific one about the use of expenses within NEW CMHT. She also set out what Mr Mitchell had said about how the Claimant was respected and he knew nothing that would question her honesty and integrity.

129. Ms Grundy set out her summaries and recommendations for the allegations as follows

130. Allegation 1: Each individual item was considered. There were inconsistencies between the claims submitted and information recorded on the RIO system. It could be viewed as the Claimant purchasing food and drinks in coffee shops and cafes with service users as part of an appointment, however it could not be established that she routinely discussed it with anyone at NEW CMHT or recorded it clearly on RIO. The Claimant felt she was working within her social work boundaries, however that differed to how her managers thought a band 6 care co-ordinator should be working within the Respondent. This only seemed to become an issue after she submitted her first expenses claim. She said, "*Whilst there is no evidence to support or refute the allegation, it would appear that there is a difference of opinion between BE and CMHT Management in how she should work as a band 6 care co-ordinator and what constitutes an appropriate use of expenses whilst meeting with service users. This could be viewed as misappropriation of funds given the communication between BE and senior management. However, it would suggest that further exploration would be required in a disciplinary hearing by those with more specialist clinical knowledge, in order to fully understand the appropriateness of using NHS funds in such a manner*."

131. The Claimant suggested that Ms Grundy had not done as thorough an analysis as she herself had done and that she had provided a detailed chronology at her interview and therefore Ms Grundy's conclusions were perverse. The Claimant was cross-examined in relation to this assertion and it was established that she had not produced such a chronology at the investigation stage, but had done so for the subsequent disciplinary hearing. We did not accept that Ms Grundy had ignored critical information in her investigation report. The Claimant accepted in cross-examination that she had told Ms Grundy that she always recorded what she had done on RIO. When challenged, that the records did not match the claims, she responded by saying she did not have access to RIO at the time. We accepted Ms Grundy's evidence that she considered that there was a dispute between the Claimant and other witnesses as to whether she was working in an

acceptable way and that it warranted further examination, this was in part to the Claimant having said that she knew that she may or may not have been able to claim the costs back.

132. Allegation 2. There was no evidence she used funds for her own means. There was evidence that she did not always accurately record correctly the appointments she had with service users, but this did not prove she had acted fraudulently.

133. Allegation 3 (inappropriate relationships): No evidence was found to suggest inappropriate relationships in general terms but she felt it would require greater consideration in terms of working within boundaries, correct use of care plans and SCM structure by someone who has the necessary clinical viewpoint and experience. There were differing views as to how she should work as a care co-ordinator. A hearing would be able to fully explore those issues with relevant professionals to ascertain whether inappropriate relationships had developed due to her working practices.

134. The Claimant was cross-examined in relation to various witnesses telling Ms Grundy that the expenses sought should be exceptional and there was concern about the nature of the relationship developing with service users. The Claimant responded by saying that she was cleared of the allegation. The Claimant suggested that a professional review could have been done earlier in the investigation. We accepted Ms Grundy's evidence that her role was to gather the information about the allegation and then put it in her report so it could be considered by the relevant person and it was not her role to decide whether or not it was appropriate.

135. Allegation 4 (taking about her suspension): The Claimant accepted she told a colleague she had been suspended. There was no evidence that it was done with any intention.

136. The Claimant asked if Ms Grundy thought the allegations made against her were malicious. Ms Grundy said that she had no reason to take that from the conversations in her investigation. However she had documented the Claimant's concerns. The Claimant cross-examined on the basis that she had said she felt bullied in a meeting when a Band 7 and the history continued and that was the tone of being victimised. Ms Grundy responded by saying that was not her interpretation. We accepted that Ms Grundy's role was to ask questions and record the answers.

137. The Claimant was cross-examined on the basis that what took place before, would not change how the expenses were analysed. The Claimant said that it was fuelled by it.

138. Ms Grundy did not accept that there was ever a time that she was fearful that the Claimant's suspension had been motivated by other factors. She also did not accept that it was part of her remit to look into the impact on patient care, when she received the Claimant's explanation for the expenses. We accepted Ms Grundy's evidence. Ms Grundy was aware that if someone was suspended they would not have unaccompanied access to RIO. Ms Grundy was aware that the Claimant had intended to raise a grievance, because she had referred to this in her interview. We accepted Ms Grundy's evidence that she thought the Claimant could still have a raised a grievance despite the investigation.

139. The Claimant accepted that Ms Grundy was very helpful in her interview by raising that the Claimant did not want Ms Sturgess to be case manager. She suggested that she had discussed the alleged protected disclosures with Ms Grundy, however she was unable to show where that featured in the meeting notes. She suggested that what demonstrated there had been influence was that Mr Mitchell was not interviewed face to face and she was talking about her experience of culture.

140. We accepted Ms Grundy's evidence that she had not seen the e-mail to Mr Everett dated 5 October 2022. The Claimant in her interview did not inform Ms Grundy of the matters she says were a protected disclosure in that e-mail. In the interview the Claimant made an oblique reference to the meeting on 7 November 2022 and that she had shared what was in the public domain and that it showed that staff retention was the issue in the Respondent and they needed to take care of work life balance. We accepted Ms Grundy's evidence that by the end of the interview she understood that it related to a survey, however she was not motivated by what the Claimant said. It was of note that the Claimant did not tell Ms Grundy about her concerns for health and safety, which she claimed formed part of her protected disclosure.

141. The investigation report was sent to the commissioning manager, Ms Moore, who decided to proceed to a disciplinary hearing.

142. On 20 April 2023, the Claimant was invited to attend a disciplinary hearing on 10 May 2023. The Claimant was informed that it was not intended witnesses would be called. She was told that a sanction could be imposed, which could be up to and including dismissal. She was informed of her right to be accompanied.

143. On 24 April 2023, an e-mail was sent to the Claimant's union representative attaching the disciplinary hearing bundle. A copy was also sent to the Claimant, however it did not arrive. We accepted the Claimant's evidence that her union representative did not send her the bundle and that this was due to an issue relating to confidentiality.

144. On 3 May 2023, the Claimant and her representative were sent a further pack of documents and the hearing was rearranged to 14 June 2023. On 30 May 2023, the Claimant asked the Respondent if her husband could attend the hearing with her if her representative was unavailable and that this was due to Ms Jefferies being on holiday until shortly before the hearing.

The disciplinary hearing, including PD3

145. The Claimant attended the hearing on 14 June 2023, she was accompanied by her union representative Ms Jefferies. The disciplinary hearing was chaired by Mr Mercier, Swindon Clinical Lead, with two panel members. Two of the panel were social workers.

146. At the hearing Ms Grundy provided a summary of the steps she had taken to investigate the allegations, her findings and recommendations for further exploration.

147. The Claimant gave her account and provided a detailed chronology with comments and a statement. The Claimant read out her statement, which included that the suspension and disciplinary process had been driven by Ms Sturgess. The Claimant's evidence was that the following parts were a protected disclosure :

a) *"It is my firm and considered view that Polly Sturgess does not like social workers and does not like me in particular. It was no surprise that she became intimately involved in my management. This was to my disadvantage. I tried to raise a grievance. I wanted a meeting with Polly Sturgess and Jason Everett. 10 days later I was suspended. There is a direct relationship between these events. Polly Sturgess was the Commissioning Manager into this investigation. This investigation and disciplinary process remains extant with the same lame allegations despite a total lack of evidence! I assert that there is a direct relationship between this fact and Polly Sturgess' involvement and desires*."[p677]

b) "*These allegations are spurious and without evidential foundation. This is a total waste of taxpayer time and money. My absence has diminished the care that can be given to our service users."* [p677]

148. The Claimant did not refer to this alleged disclosure in her witness statement. She gave oral evidence that this was giving information that there had been a breach of a legal obligation to have a safe working environment and not induce mental health problems form suspension and bullying. When cross-examined that the document did not say that, she responded by saying that 'if it is taken as truth it was poor treatment of an employee by a public authority'. The Claimant also said that it was a health

and safety responsibility to employees and it was an was a waste of public money and being suspended for 8 months had an impact on her mental health. The meeting notes and statement for the hearing did not set out and we were not taken to any passage suggesting, that the Claimant's mental health or other staff's mental health had been damaged or give any information about how the care to service users had been diminished.

149. The Claimant suggested that it was in the public interest because when the service was run in that way, it compromised delivery to service users and if people are off sick or suspended there are a lot of complex tasks to cover and if staff are tired it will impact on service. This was not included in the statement relied upon by the Claimant.

150. The hearing adjourned whilst the panel deliberated, following which the following decisions were given:

a. Allegation 1 was not upheld. There was no evidence that the Claimant ignored or disregarded the agreement. There was some professional points of view which resulted in unusual ways of working which would need some attention.
b. Allegation 3 was not upheld. There was no evidence of inappropriate relationships in relation to the definitions in the Expected Standards of Conduct Procedure. There were some issues to be address in terms of clarity of role and boundaries.
c. Allegations 2 and 4 were not upheld.
d. The Claimant was told that there would be some recommendations to follow. It was acknowledged it had not been an easy time for the Claimant.
e. It was agreed that the Claimant would have special leave until 19 June 2023.

151. The Claimant said in cross-examination that she could understand what the panel was saying, given the information they had on the day of the hearing.

152. We accepted that during her suspension the Clamant became withdrawn and distressed and that she found the process difficult.

<u>The Claimant's grievance (PD4) and the attempted return to work</u>

153. On 14 June 2023, the Claimant raised a grievance [p685-687]. She said, "*I now raise a grievance in relation to my suspension, the reasons for my suspension, the decision to proceed with a disciplinary hearing and the length of time I have spent on suspension*." She complained that there had been a vengeful and illogical prosecution. She said that Ms Sturgess had commissioned the investigation and suspension and asserted it was vengeful. She said that she had taken a demotion to move away from her.

When Ms Sturgess also moved she said it was apparent that she did not appreciate the value social work can bring and was displeased she had access to the health roster. If it was not vengeance the decision to suspend and investigate was motivated and driven by Ms Sturgess. No detail was given as to why she said it was vengeful. She referred to an absence of support, in that the meeting on 13 October 2022 had not taken place. she said that there was, abuse of trust and failure to investigate the allegations against her and failure to communicate properly and delay. The suspension had caused her massive professional embarrassment as well as emotional pressure.

154. The Claimant relied upon her grievance as a protected disclosure, however in her witness statement, she simply said she had raised a grievance and it was dismissed. The Claimant did not accept that it solely related to the suspension and disciplinary process and said she had referred to vengeance and there would have been a history to that.

155. At the start of the hearing the Claimant informed the Tribunal that the information in the grievance tended to show that there had been a failure to comply with a legal obligation, namely not following policy or procedure and there had been a risk to health and safety. In cross-examination the Claimant said that the part in the grievance which tended to show this was the vengeful act and suspension and investigation which tended to show damage to health and safety and it would have an impact. When it was suggested this was not said in the letter, she responded by saying it may not be in legal speak but there were vengeful acts. When it was suggested she had not said health had been damaged, she responded by saying anyone subject to vengeful acts would have a lasting effect. In the grievance letter the Claimant had not set out which parts of any policies had been breached or said that her health had been damaged. When it was suggested to the Claimant that it was not a public interest matter and was a private matter between her and her manager she replied, 'It might not be like that in legal terms. I was trying to get over that it was about culture and the Trust failing to act appropriately or with regard to psychological wellbeing of an employee and the culture it had was hugely damaging.' She also said that she knew others had been suspended. The Claimant accepted that in her grievance she had only referred to herself.

156. The grievance was acknowledged by Mr Kneeshaw, Deputy Director of People, on 16 June 2023 and the Claimant was asked what resolution she was seeking. Ms Robertson-Morrice, Associate Director of HR, was appointed to consider the grievance.

157. On 16 June 2023, Ms C Jefferies, Wiltshire Community Service Manager, spoke to the Claimant about a return to work. The Claimant said the last 7 to 8 months had been difficult and she needed some time. We did

not accept that the Claimant said that the allegations were false, that she had vulnerability, that the acts had been vengeful or that she had been bullied by Ms Sturgess. We accepted Ms Jefferies evidence that the Claimant said that she was not prepared to return to NEW CMHT. The Claimant did not accept that she had said this, however it was recorded in the e-mail which followed and which was not challenged by the Claimant. It was suggested she could look for transfers or explore the vacancy list. Ms Jefferies said that if the Claimant felt fit to work she suggested a phased return which would not involve interaction with NEW CMHT, with graded hours and completing mandatory training and going through e-mails. They agreed to speak again on 19 June 2023.

158. The Claimant's evidence was that this was unsafe because there was not a plan for her protection if Ms Sturgess contacted her. When it was suggested that the plan could be explored in a phased return she questioned why there could not be one before.

159. We accepted Ms Jefferies evidence that her plan was to undertake a phased return, which normally took about 4 weeks and talk about the next steps.

160. On 19 June 2023, the Claimant met Ms Jefferies. Ms Jefferies confirmed she had escalated the Claimant's request for clarification of options to HR. The Claimant said she was still waiting for the disciplinary hearing outcome letter/recommendations. She also said she was waiting for her grievance, It was agreed she would remain on special leave until 23 June 2023. Ms Jefferies proposed that the Claimant would then start a phased return, consisting of homeworking doing mandatory training. A limit on the time of the phased return was not stated. It was hoped in the interim they would receive more information to help guide onward planning. The Claimant's evidence was that she was saying it was not safe to return and she needed to know what the options were and she wanted HR involved, whereas, Ms Jefferies was saying she needed to return and they were going round in circles. Ms Jefferies evidence was that the Claimant had said she was anxious. She was not concerned about the Claimant's mental state, Ms Jefferies had offered an OH referral which the Claimant declined. Ms Jefferies did not accept that they discussed the specifics of the grievance because it was an entirely separate process and she was unaware of the contents until she was copied into the outcome. Ms Jefferies evidence was that the Claimant was waiting for the disciplinary outcome letter and then they could consider next steps. The Claimant in her reply to the e-mail summarising the conversation she said special leave seemed reasonable and she would speak on 23 June and hopefully they would have some further detail or clarification. There was no mention that she did not feel safe. We preferred the evidence of Ms Jefferies.

161. On 20 June 2023, the Claimant was sent the disciplinary outcome letter confirming the allegations were not upheld, although it was not received at that time. In relation to the allegation about misappropriation of funds the panel was concerned about her practice related to buying drinks and other items for service users and said that process required further management and document agreement around parameters of practice via a supervisory process. The Claimant had suggested there was a lack of suitable locations and it was suggested that clarity of all bookable community venues should be explored and if there was an issue about a lack of suitable venue it should be raised with management. In relation to the allegation about inappropriate relationships, it said that the location of appointments must be reviewed as part of management supervision. The panel acknowledged that the impact of the claimant/'s practice related to the misappropriation allegation on professional relationships including appropriate therapeutic boundaries and it was recommended this was addressed through management supervision.

162. The Claimant accepted in cross-examination that just because the allegations were not upheld they were not necessarily baseless and she said she made an assumption. We accepted Ms Jefferies evidence that she interpreted the recommendations as being they would be implemented in supervision and they would be picked up the Claimant's supervisor, Ms Greenaway, manager and social worker, on her return.

163. On 23 June 2023, the Claimant spoke to Ms Jefferies. At this time she had not received the disciplinary outcome letter. The Claimant said that that her solicitor felt she should not return until her grievance had been resolved. We accepted that this was the first time the Claimant made Ms Jefferies aware that the grievance was a bar to a return. It was agreed to speak again on 26 June 2023. In the e-mail confirming what had been discussed, Ms Jefferies said that the Claimant continued to not want to return to work within NEW CMHT and that redeployment had not been mentioned in the disciplinary hearing. she said that the Claimant could consider an internal transfer and she had taken the liberty of making some enquiries about vacancies within Wiltshire involving a similar job. Her suggestion remained that a phased return was explored and noted the Claimant said she was fit to return but factors such as the grievance should be considered prior to a return. A limit on the time for the phased return was not stated.

164. On 25 June 2023, the Claimant e-mailed Ms Jefferies and said she had not received formal notification of the outcome of the disciplinary. She did not have formal confirmation that her suspension had been lifted and said she assumed she was still suspended. She asked what steps the Trust was taking to ensure her safe return. She questioned why suggestions were

being made to apply for posts outside of Devizes when she had done nothing wrong.

165. The Claimant, in cross-examination, said that she did not challenge the suggestion that she did not want to return to NEW CMHT because she had said it verbally. We did not accept that evidence, the Claimant had said she did not want to return. In her witness statement the Claimant said that the suggestion that giving links to other jobs was insulting. The Claimant's oral evidence was that she was not being treated differently to others and she wanted it for her to be safe to return to NEW CMHT or elsewhere. We accepted Ms Jeffries evidence that the Claimant had said she did not feel safe, but despite being asked she did not give specifics as to what safe meant or what it would constitute to enable a return.

166. It was in relation to this time that cross-examination took place about these communications and when the Claimant gave evidence about what a safe plan would look like and in which she said she asked for the matters outlined at the start of the Judgment, only to back track and say she only asked for a meeting with HR. Ms Jefferies did not accept that the Claimant asked for a meeting with HR but had asked for matters to be escalated to them, which she had done. The e-mails supported Ms Jefferies version of events and we preferred her evidence.

167. The Claimant received the disciplinary outcome on 25 June 2023, after sending her e-mail.

168. We accepted that at this time Ms Sturgess was working elsewhere in Wiltshire and was not involved in the teams in NEW CMHT.

169. On 28 June 2023, Ms Jefferies e-mailed the Claimant. She extended the authorised absence to 30 June 2023. To facilitate a safe return to work, she proposed a phased return and offered an OH referral. Initially this was mandatory training and then overseeing the duty rota. She also referred to the Claimant having said that she did not want to return to her substantive post and raised the possibility of voluntary redeployment. She said whilst they could support a move to a new role via the transfer process they could not guarantee that Ms Sturgess would never oversee that service in the future. The Claimant was told Mr Kneeshaw, Deputy Director of People, was reviewing her grievance. [p702-703].

170. We accepted Ms Jefferies evidence that there was no time limit on how long the Claimant could work from home and that overseeing the duty rota would involve written communications and she was unlikely to have any face to face or verbal contact. Ms Jefferies was cross-examined about a particular service user whose contact required discussions with managers, Ms Jefferies was unaware of the care plan of the specific service

user or that contact with other members of the team was not viable. We accepted that she thought it was a sensible step to returning to clinical duty.

171. The Claimant replied and said the return to work and grievance were interlinked. She said she had been encouraged to apply for other jobs in different localities and even though she had done nothing wrong she was being told to move away from Devizes. There had been suggestions of OH referrals, but she was not sick. She expected to remain on special leave until her grievance was resolved given how vulnerable she felt and she had not been given a safe return to work plan. [p701-702]

172. Ms Jefferies e-mailed the Claimant and asked which parts of the proposed plan she was unhappy with and what she suggested a safe return would look like.

173. The Claimant responded to Ms Jefferies and Mr Kneeshaw by e-mail. She said the Trust needed to progress the grievance. Further that the reasons behind the grievance and the accusations and suspension needed to be considered together. She suggested a discussion with HR could help. [p700-701]

174. On 30 June 2023, Mr Kneeshaw wrote to the Claimant. He confirmed the grievance was being progressed. He said that the return to work plan included working from home doing mandatory training and was a reasonable management request. He was struggling to understand why it was not safe. He said it was expected she would return on 3 July unless she requested annual leave or was unwell and if she did not, it could be considered as absent without leave. [p700]

175. At the Claimant's request, WCC was informed in writing on 30 June 2023 that the suspension had been lifted. We accepted Ms Jefferies evidence that as time went by the Claimant's concerns shifted. Initially it was the disciplinary outcome letter, then the letter to WCC and then the grievance outcome.

<u>email to Mr Kneeshaw and Ms C Jeffries dated 2 July 2023 (PD5) and further attempts to enable a return to work</u>

176. On 2 July 2023, the Claimant e-mailed Mr Kneeshaw, copying in Ms Jefferies [p699]. She said that the allegations against her were without foundation and the decision was that elements of her role needed to be explored and they were unresolved. She had a raised a significant grievance about the disciplinary process, its motivation, the involvement of Ms Sturgess and her line management by her. To expect her to return to work as if nothing had happened was remarkable and she was being told she could apply for other roles and she deserved better. She did not share

Ms Jefferies confidence in a return to work and questioned whether she could carry on working without risk of further unfair criticism. The grievance and return were linked and that was why she did not believe a return to work could be safely achieved. She said she would take annual leave under duress.

177. This e-mail was relied upon as a protected disclosure. At the start of the hearing the Claimant told the Tribunal that this tended to show a risk to health and safety. The Claimant's oral evidence was that issues about where she saw people and how she did her job needed to be resolved. She said she needed a documented agreement before she felt safe, but accepted that she had not asked for that and they had not got into the detail. She felt vulnerable going back and wanted a framework in place where she could practice without fear of further ill treatment. In cross-examination she said that there was a breach of health and safety and that it was tending to show there was a culture in relation to allegations and they were not addressing or resolving matters and not creating a safe environment for employees. She said others were in a similar situation but accepted it was not said in the e-mail. She accepted that it probably was not a legal obligation.

178. The Claimant then took two weeks leave.

179. On 13 July 2023, Ms Jefferies e-mailed the Claimant, with some amended observations about a return. She said she had not set a timescale for overseeing the duty roster and they could explore it further following the outcome of the grievance process and subsequent meetings/supervision about remaining concerns. She said that there was no threat of further disciplinary proceedings in relation to locations service users were seen in and consequential expenses. She suggested an informal secondment to the AMHP team could be considered. She apologised that the Claimant felt she had deserved better and said she made the reference to vacancies because the Claimant had previously requested not to return to her substantive role. She hoped they could agree a return. When cross-examined the Claimant queried how it could guaranteed there would not be further disciplinary action. We accepted Ms Jefferies evidence that the secondment suggestion was an attempt to think outside of the box, because at that time none of her suggestions had been to the Claimant's preference.

180. The Claimant replied and asked for the informal secondment proposals to be set out and suggested she should be paid at the top of Band 7.

181. Ms Jefferies replied on 14 July 2023. She said that the suggestion to work in the AMHP service for a short period of time was to help her integrate into her substantive role or allow her time to consider alternative options.

She confirmed that she would remain on her current salary plan. The Claimant responded by saying it did not take account of the salient points in previous e-mails. Further that working as an AMHP for 2 days a month was different to doing the role for a month and it was evidence that she was being undervalued by suggesting that she did that job for less than her peers at WCC. When cross-examined about the response being about the money the Claimant said that was her initial response but the problem was still being employed by AWP.

The grievance outcome

182. The grievance was reviewed and Ms Robertson-Morrice considered it concerned the recent disciplinary process. She took into account the grievance policy was not designed to address matters of reasonable management action. On 13 July 2023, the Claimant was sent the outcome to her grievance [709-711]. It was held the issues she raised all related to the disciplinary process and that account had been taken of what the grievance policy was designed to address. The grievance was rejected. The complaints fell outside of the scope of the policy Further the Claimant had not stated what outcome she had hoped to achieve. Ms Robertson-Morrice addressed the points raised in any event. In particular she set out:

a) In relation to a vengeful an illogical prosecution. Ms Sturgess had not acted alone, but on the advice of HR. There were concerns with discrepancies in the expenses claimed which required investigation. The Claimant had raised difficulties with Ms Sturgess in the disciplinary process and that had been taken into account.
b) In relation to absence of support. Mr Everett had said in the disciplinary investigation he had taken HR advice and was advised it was not appropriate for him to meet the Claimant at that stage and she should meet her line manager to try and address issues. She did not think this was a failure to try and address matters.
c) In relation to abuse of trust and failure to investigate. The disciplinary allegations had been investigated and the process followed. Although the Claimant believed it had been lacking, a number of witnesses were interviewed and documents reviewed. The disciplinary panel had been critical of some aspects and it was recognised there was learning which needed to be done and would be taken forward. In relation to the Claimant's chronology of events, it was not unusual for employees to do that as part of their cases and mitigation. The panel had found her chronology helpful.
d) In relation to failing to communicate properly, the investigation highlighted the lack of clarity around the use of expenses and found she had worked within the parameters given. The panel had highlighted its concerns around the number of meetings she conducted outside of official venues and the volumes of expenses

e) There had been delays from both sides and an apology was made for the Trust's delays.

Ms Robertson-Morrice suggested the issues could best be dealt with through discussion with her line manager, but the grievance procedure was not an appropriate venue to pursue the matters raised.

183. In cross-examination the Claimant said, in response to a question about not stating the outcome she wanted, that it was for the Trust to determine. This accorded with Ms Robertson- Morrice's evidence that the Claimant had been asked on several occasions about the outcome she was seeking and an answer was not forthcoming. The Claimant also said that the apology for Trust delays was inadequate.

184. We accepted Ms Robertson-Morrice's evidence that she considered that the grievance related to the investigation and that the points raised pertained to it. She had read the grievance as being aggrieved by the investigation and later being cleared of the allegations. She had considered everything in the disciplinary bundle and outcome letter. We accepted that she looked at every point raised by the Claimant and cross-referenced it with the disciplinary bundle and she could not see anything which had not been covered. She did not speak to anyone about the grievance because all points had been reviewed in the disciplinary process. In relation to the suspension there was a lot of evidence and a risk assessment had been completed.

185. Ms Robertson-Morrice was cross-examined on the basis that because the Claimant said the investigation was vengeful that showed a demonstrable flaw. Ms Robertson- Morrice disagreed, the Respondent had identified issues and pursued them. It was allowed to investigate and follow it through. Further, she said that the Claimant was repeating what she had said in the disciplinary investigation. She did not accept that the Claimant had said there was bullying of her in the grievance. She did not accept the investigation was vengeful, there was something which needed to be investigated.

186. On 18 July 2023, the Claimant spoke to Ms Jefferies and followed it up with an e-mail. The points raised included:

a. There was concentration on the comments and recommendations of the disciplinary panel, when she was exonerated and that was what she wanted to be recognised.
b. The Respondent was not taking measures to address her vulnerability and she was expected to return to the team when Ms Sturgess was still in post and colleagues who had added character assassinations of her were still in post. In cross-examination she

accepted this was probably badly worded and she was feeling vulnerable and there had not been an apology.

c. The last straw was the suggestion of being seconded to work within AMHP for a month leaving her working with peers who would be paid more
d. She had been patient but her trust and confidence in the Respondent was destroyed,

187. Ms Jefferies was cross-examined about the letter. We accepted that she considered that the suspension had finished. Further she had not been told about any specific incidents or concerns the Claimant had about Ms Sturgess, who had just said it was historic.

188. On 20 July 2023, the Claimant appealed the grievance outcome. The following points were raised:

a. She said that only her suspension was considered and there were multiple incidents of bullying and vengeful acts which culminated in her suspension. When cross-examined that the original grievance had not raised such matters, she said that it was motivated and driven by Ms Sturgess and she had mentioned policy.
b. In relation to suspension and delay, she disputed that there was delay on both sides. In cross-examination she said her representative not giving her the bundle was not her fault, she accepted that delay might have been outside of the control of the Respondent.
c. In relation to the use of her chronology she said it demonstrated little regard towards employees who are suspended. A chronology was a fundamental part of the process. She only had 15 days to produce it without access to RIO. In cross-examination she said she wanted the Respondent to acknowledge how limited the investigation was and she did it without access to all notes.
d. It was ludicrous to say that there would be a review of the process and there were faults, but the grievance could not be investigated.
e. In relation to the outcome saying that if there were circumstances not mentioned previously making the complaint more serous she should let Ms Robertson-Morrice know, she said there were substantial circumstances which were a matter of record and these should have been accessed and considered in the grievance investigation. In cross-examination the Claimant said that the Respondent should have gone through the Trust records to try and work out what she was saying.
f. She was unable to see anywhere that HR was part of the process and decision. In cross-examination she was taken to the documents showing HR involvement and accepted that there was a ‘narrow involvement’.

189. On 27 July 2023, the Claimant's special paid leave was extended until the outcome of her appeal.

190. On 14 August, the Claimant attended a grievance appeal hearing chaired by Mr Tilley. The Claimant provided some e-mails she had obtained through a subject access request. She provided a brief history of her interactions with Ms Sturgess. She said she had to create her own chronology, but it had not been considered that she did not have access to RIO or pool car records. The outcome she was wanted was to return to work safely. She was asking the Trust to identify a solution which included the right role, right banding, right location and with appropriate protection, namely to protect her from a similar situation and from further reprisals by Ms Sturgess. She wanted staff in the disciplinary investigation spoken to. The Claimant was asked what she needed to return to work and she responded it was for the Trust to decide what was reasonable and it needed to be creative.

191. On 23 August 2023, the Claimant was sent the grievance appeal outcome [p731-732]. It was acknowledged the disciplinary process and suspension had been difficult for her. The original outcome was confirmed. It was held that the grievance policy was clear it did not cover normal supervision leading onto a disciplinary process/disciplinary action unless there was a demonstrable flaw in how the disciplinary policy had been applied. The matters raised related to the events leading up to and were encompassed as part of the disciplinary process. Options for next steps, including redeployment were set out.

192. The Claimant said in cross-examination that there was not an apology or recognition that the suspension and disciplinary process was born out of a bullying culture. When it was suggested that specific incidents were not identified, the Claimant said that someone should look at documents and try and join the dots and she was asking the Respondent to look at culture.

193. On 30 August 2023, the Claimant resigned with immediate effect [p734-737]. She referred to the dismissal of her grievance appeal. She also set out the events in relation to the expenses claims, suspension, investigation and she had to put her own chronology together. She said it was insensitive to expect her to return to work on a short, phased return. She had been threatened with proceedings for being potentially absent without leave. The grievance outcome was flawed as was the appeal decision. She said the failure to properly deal with her grievance was the last straw.

The law

194. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. Section 43B(1) provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

195. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

196. Under Section 47B a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. This provision does not apply to employees where the alleged detriment amounts to dismissal.

197. Section 48(1) and (1A) of the Act state that an employee may present a claim that he has been subjected to detriment contrary to s. 44 and 47B of the Act. Under section 48(2) of the Act, on a complaint to an employment tribunal, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

198. s. 48(3) provides: An employment tribunal shall not consider a complaint under this section unless it is presented—
(*a*) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
(*b*) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
(4) For the purposes of subsection (3)—
(*a*) where an act extends over a period, the 'date of the act' means the last day of that period, and

(*b*) a deliberate failure to act shall be treated as done when it was decided on;
and, in the absence of evidence establishing the contrary, an employer[,a temporary work agency or a hirer] shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonable have been expected to do the failed act if it was to be done.

199. Under section 103A of the Act, an employee is to be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

200. Under section 95(1)(c) of the Employment Rights Act 1996 ("the Act"), an employee is dismissed if he terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

201. If the claimant's resignation can be construed to be a dismissal then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides "…. the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (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".

202. We have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 ("the ACAS Code").

Protected disclosures

203. The tests were re-stated by the Employment Appeal Tribunal in Martin v London Borough of Southwark UKEAT/0239/20/JOJ reaffirming that the definition for a qualifying protected disclosure breaks down into a number of elements: (1) there must be disclosure of information, (2) the worker must believe that the disclosure is made in the public interest, (3) if the worker does hold such a belief, it must be reasonably held, (4) the worker must believe that the disclosure tends to show one or more matters in sub-paragraphs a to f, and (5) if the worker holds such a belief, it must be reasonably held.

204. The Court of Appeal in Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73, also restated the tests.

205. First, we had to determine whether there had been disclosures of '*information*' or facts, which was not necessarily the same thing as a simple or bare allegation (see the cases of Geduld-v-Cavendish-Munro [2010] ICR 325 in light of the caution urged by the Court of Appeal in Kilraine-v-Wandsworth BC [2018] EWCA Civ 1346). An allegation could contain '*information*'. They were not mutually exclusive terms, but words that were too general and devoid of factual content capable of tending to show one of the factors listed in section 43B (1) would not generally be found to have amounted to '*information*' under the section. The question was whether the words used had sufficient factual content and specificity to have tended to one or more of the matters contained within s. 43B (1)(a)-(f). Words that would otherwise have fallen short, could have been boosted by context or surrounding communications. For example, the words "*you have failed to comply with health and safety requirements*" might ordinarily fall short on their own, but may constitute information if accompanied by a gesture of pointing at a specific hazard. The issue was a matter for objective analysis, subject to an evaluative judgment by the tribunal in light of all the circumstances. A bare statement such as a wholly unparticularised assertion that the employer has infringed health and safety law will plainly not suffice; by contrast, one which also explains the basis for this assertion is likely to do so. (Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73)

206. Next, we had to consider whether the disclosure indicated which obligation was in the Claimant's mind when the disclosure was made such that the Respondent was given a broad indication of what was in issue (Western Union-v-Anastasiou UKEAT/0135/13/LA). In Twist DX v Armes UKEAT/0030/20/JOJ the EAT concluded that it is not necessary that a disclosure of information specifies the precise legal basis of the wrongdoing asserted.

207. We also had to consider whether the Claimant had a reasonable belief that the information that she had disclosed had tended to show that the matters within s. 43B (1) (b) or (d) had been or were likely to have been covered at the time that any disclosure was made. To that extent, we had to assess the objective reasonableness of the Claimant's belief at the time that she held it (Babula-v-Waltham Forest College [2007] IRLR 3412 and Korashi-v-Abertawe University Local Health Board [2012] IRLR 4). 'Likely', in the context of its use in the sub-section, implied a higher threshold than the existence of a mere possibility or risk. The test was not met simply

because a risk *could* have materialised (as in Kraus-v-Penna [2004] IRLR 260 EAT). Further, the belief in that context had to have been a *belief* about the information, not a doubt or an uncertainty. The worker does not have to show that the information did in fact disclose wrongdoing of the kind enumerated in the section; it is enough that he reasonably believes that the information tends to show this to be the case. As Underhill LJ pointed out in Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979; [2017] IRLR 837, para.8, if the worker honestly believes that the information tends to show relevant wrongdoing, and objectively viewed it has sufficient factual detail to be capable of doing so, it is very likely that the belief will be considered reasonable. (Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73)

208. 'Breach of a legal obligation' under s. 43B (1)(b) was a broad category and has been held to include tortious and/or statutory duties such as defamation (Ibrahim-v-HCA UKEAT/0105/18).

209. Next, we had to consider whether the disclosures had been '*in the public interest.*' In other words, whether the Claimant had held a reasonable belief that the disclosures had been made for that purpose. As to the assessment of that belief, we had to consider the objective reasonableness of the Claimant's belief at the time that he possessed it (see Babula and Korashi above). That test required us to consider her personal circumstances and ask ourselves the question; was it reasonable for her to have believed that the disclosures were made in the public interest when they were made.

210. The '*public interest*' was not defined as a concept within the Act, but the case of Chesterton-v-Nurmohamed [2017] IRLR 837 was of assistance. The Court of Appeal determined that it was the character of the information disclosed which was key, not the number of people apparently affected by the information disclosed. There was no absolute rule. Further, there was no need for the 'public interest' to have been the sole or predominant motive for the disclosure. As to the need to tie the concept to the reasonable belief of the worker;

> "*The question for consideration under section 43B (1) of the 1996 Act is not whether the disclosure per se is in the public interest but whether the worker making the disclosure has a reasonable belief that the disclosure is made in the public interest*" (per Supperstone J in the EAT, paragraph 28).

211. The Court of Appeal [2017] IRLR 837 dismissed the appeal. At paragraph 31 Underhill LJ said that he did not think "there is much value in

adding a general gloss to the phrase 'in the public interest. … The relevant context here is the legislative history …. That clearly establishes that the essential distinction is between disclosures which serve the private or personal interests of the worker making the disclosure and those that serve a wider interest."

212. Further at paragraphs 36 to 37:
"*36. …The larger the number of persons whose interests are engaged by a breach of the contract of employment, the more likely it is that there will be other features of the situation which will engage the public interest.*

37. Against that background, in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under s.43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. Mr Reade's example of doctors' hours is particularly obvious, but there may be many other kinds of case where it may reasonably be thought that such a disclosure was in the public interest. The question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case, but Mr Laddie's fourfold classification of relevant factors which I have reproduced at paragraph 34 above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."

213. The factors suggested were:
a. the numbers in the group whose interests the disclosure served
b. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed
c. the nature of the wrongdoing disclosed, and
d. the identity of the alleged wrongdoer.

214. Finally, we did not have to determine whether the disclosures had been made to the right class of recipient since the Respondent accepted that if they had been made, they were made to the Claimant's 'employer' within the meaning of section 43C (1)(a).

<u>Detriment (s. 47B)</u>

215. The next question to determine was whether or not the Claimant suffered detriment as a result of the disclosure. The test in s. 47B is whether

the act was done "*on the ground that*" the disclosure had been made. In other words, that the disclosure had been the cause or influence of the treatment complained of (see paragraphs 15 and 16 of the decision in *Harrow London Borough Council-v-Knight* [2002] UKEAT 80/0790/01).

216. A detriment is something that is to the Claimant's disadvantage. In Ministry of Defence v Jeremiah 1980 ICR 13, CA, Lord Justice Brandon said that 'detriment' meant simply 'putting under a disadvantage', while Lord Justice Brightman stated that a detriment 'exists if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment'. Brightman LJ's words, and the caveat that detriment should be assessed from the viewpoint of the worker, were adopted by the House of Lords in Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL, in which Lord Hope of Craighead, after referring to the observation and describing the test as being one of "materiality", also said that an "unjustified sense of grievance cannot amount to 'detriment'". In the same case, at para 105, Lord Scott of Foscote, after quoting Brightman LJ's observation, added: "If the victim's opinion that the treatment was to his or her detriment is a reasonable one to hold, that ought, in my opinion, to suffice"

217. Some workers may not consider that particular treatment amounts to a detriment; they may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way. But if a reasonable worker might do so, and the claimant genuinely does so, that is enough to amount to a detriment. The test is not, therefore, wholly subjective. (Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73)

218. The test in s. 47B is whether the act was done "*on the ground that*" the disclosure had been made. In other words, that the disclosure had been the cause or influence of the treatment complained of (see paragraphs 15 and 16 in Harrow London Borough Council-v-Knight [2002] UKEAT 80/0790/01). It will be infringed if the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the whistle blower (NHS Manchester-v-Fecitt [2012] IRLR 64 and International Petroleum Ltd v Osipov UKEAT 0229/16).

219. The test was not one amenable to the application of the approach in *Wong-v-Igen Ltd*, according to the Court of Appeal in NHS Manchester-v-Fecitt [2012] IRLR 64). It was important to remember, however, if there was a failure on the part of the Respondent to show the ground on which the act was done, the Claimant did not automatically win. The failure then created an inference that the act occurred on the prohibited ground (International Petroleum Ltd v Osipov EAT 0058/17).

220. As observed in (Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73)

" *30. As Lord Nicholls pointed out in Chief Constable of West Yorkshire v Khan [2001] UKHL 48; [2001] ICR 1065 para.28, in the similar context of discrimination on racial grounds, this is not strictly a causation test within the usual meaning of that term; it can more aptly be described as a "reason why" test:*

> *"Contrary to views sometimes stated, the third ingredient ('by reason that') does not raise a question of causation as that expression is usually understood. Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the 'operative' cause, or the 'effective' cause. Sometimes it may apply a 'but for' approach. For the reasons I sought to explain in Nagarajan v London Regional Transport [2001] 1 AC 502, 510-512, a causation exercise of this type is not required either by section 1(1)(a) or section 2. The phrases 'on racial grounds' and 'by reason that' denote a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."*

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

221. This was re-affirmed in Warburton v The Chief Constable of Northamptonshire Police [2022] EAT 42.

Dismissal (s. 103A)

222. We considered the test in Kuzel-v-Roche [2008] IRLR 530:

(a) whether the Claimant and had showed that there was a real issue as to whether the reason put forward by the Respondent was not the true reason for dismissal;

(b) if so, had the employer showed its reason for dismissal;

(c) if not, it is open to the tribunal to find that the reason was as asserted by the employee, but that reason does not have to be accepted. It may be open to the Tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not one advanced by either side.

Constructive dismissal

223. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: "*If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract*."

224. In Tullett Prebon PLC and Ors v BGC Brokers LP and Ors Maurice Kay LJ endorsed the following legal test at paragraph 20: "… whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract."

225. In Courtaulds Northern Spinning Ltd v Sibson it was held that reasonable behaviour on the part of the employer can point evidentially to an absence of significant breach of a fundamental term of the contract. However, if there is such a breach, it is clear from Nottingham County Council v Meikle [2005] ICR 1, Abbey Cars (West Horndon) Ltd v Ford EAT 0472/07 and Wright v North Ayrshire Council [2014] IRLR 4, that the crucial question is whether the repudiatory breach "played a part in the dismissal" and was "an" effective cause of resignation, rather than being "the" effective cause. In need not be the predominant, principal, major or main cause for the resignation.

226. With regard to trust and confidence cases, Dyson LJ summarised the position thus in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA: The following basic propositions of law can be derived from

the authorities: 1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761. 2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as "the implied term of trust and confidence". 3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship. 4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the breach must: "impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer".

227. This was reaffirmed in Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA, in which the applicable test was explained as: (i) in determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied; (ii) If, applying Sharp principles, acceptance of that breach entitled the employee to leave, he has been constructively dismissed; (iii) It is open to the employer to show that such dismissal was for a potentially fair reason; (iv) If he does so, it will then be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally (see Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA) fell within the range of reasonable responses and was fair."

228. The same authorities also repeat that unreasonable conduct alone is not enough to amount to a constructive dismissal (Claridge v Daler Rowney [2008] IRLR 672); and that if an employee is relying on a series of acts then the tribunal must be satisfied that the series of acts taken together cumulatively amount to a breach of the implied term (Lewis v Motorworld Garages Ltd [1985] IRLR 465). In addition, if relying on a series of acts the claimant must point to the final act which must be shown to have contributed or added something to the earlier series of acts which is said, taken as a whole, to have broken the contract of employment (Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA).

229. The judgment of Dyson LJ in Omilaju has recently been endorsed by Underhill LJ in Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA Civ 978. Having reviewed the case law on the "last straw" doctrine, the Court concluded that an employee who is the victim of a continuing cumulative breach of contract is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation by the employee.

230. If the suggested last straw was entirely innocuous, further guidance was given in Williams v The Governing Body of Alderman Davies Church in Wales Primary School UKEAT/0108/19/LA at paragraph 33. "If the most recent conduct was not capable of contributing something to a breach of the Malik term, then the Tribunal may need to go on to consider whether the earlier conduct itself entailed a breach of the Malik term, has not since been affirmed, and contributed to the decision to resign."

231. In addition, it is clear from Leeds Dental Team v Rose [2014] IRLR 8 that whether or not behaviour is said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties is to be objectively assessed, and does not turn on the subjective view of the employee. In addition, it is also clear from Hilton v Shiner Ltd - Builders Merchants [2001] IRLR 727 that even where there is conduct which objectively could be said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties, if there is reasonable and proper cause for the same then there is no fundamental breach of contract.

232. A claimant cannot rely upon a breach of contract which he/she has been taken to have affirmed. Affirmation can, of course, have been express, but it can also be implied by inaction and delay, although simple delay is rarely enough. In Chindove-v-Morrisons UKEAT/0201/13/BA, Langstaff J said this (paragraph 26);

> "*He [the claimant] may affirm a continuation of the contract in other ways: by what he says, by what he does, by communications which show that he intends the contract to continue. But the issue is essentially one of conduct and not of time….. It all depends upon the context and not upon any strict time test."*

Conclusions

233. Some of the allegations of detriment and breaches of the implied term of trust and confidence overlapped. We therefore first addressed whether protected disclosures were made. We then approached the allegations of breach and detriment. Where there was an overlap we addressed the factual basis for both and then applied the respective tests for the allegations.

Did the Claimant make protected disclosures?

On 5 October 2022, the Claimant emailed Jason Everett, stating that she was concerned about the 'active hampering of social work practices, roles and interventions over a prolonged period of time by Polly Sturgess, which [his] email seemed to endorse'. The Claimant set out that Polly Sturgess was repeating behaviours that she had already expressed to him and that Ms Sturgess did not appreciate or understand the differences between social work and clinical practice and how they worked together to provide a proper service for service users.

234. The e-mail relied upon by the Claimant said that there had been a history of Ms Sturgess being unreasonable around her social worker status and practices. Further that those practices were being repeated and she was not being mindful, respectful or accommodating of professional differences. The Claimant's case was that this tended to show that there was a risk to health and safety. There was not any reference to health and safety in the e-mail dated 5 October 2022. The Claimant suggested that it needed to be read in conjunction with her e-mail dated 27 September 2022 to Ms Sturgess. That e-mail was a response to Ms Sturgess asking for a rationale for the expenses claims. She had referred to the particular circumstances of the service user but did not suggest any policy or action of the Respondent was putting them at risk. This e-mail was sent before Ms Sturgess sent her e-mail saying that her claims would be signed off in full and setting out guidelines for future claims and boundaries for the type of contact with the service user. There was not a suggestion in that e-mail that what Ms Sturgess was proposing was hampering the service, it predated the guidance. We did not accept that the Claimant provided information to Mr Everett about the health and safety of service user in the e-mail dated 5 October 2022, even when read in conjunction with the e-mail of 27 September 2022.

235. We were not satisfied that the Claimant had a reasonable belief that the information given to Mr Everett tended to show that there was a risk to health and safety. She did not use those words or words of that type when communicating with him and she did not suggest that any actions were placing the service users were at risk.

236. Further we were not satisfied that the Claimant had reasonable belief that it was in the public interest. The matters referred to Mr Everett related to her personal relationship with Ms Sturgess only. The matters which she said the disclosure tended to show were not referenced in the e-mail and she had not referred to safety or hampering of social work roles or the provision of services.

237. The Claimant did not make a protected disclosure on 5 October 2022.

At a meeting on Monday 7 November 2022 attended by Kelsey Greenaway, Steve Smith, Lou Stephens and other team members, the Claimant expressed an opinion relating to staff satisfaction and morale, which was contained in a published national survey and which was by inference critical of the Trust

238. The Claimant relied upon comments she made before a meeting started on 7 November 2022. Her case was that the information she gave tended to show that there was a risk to health and safety and to the provision of the service. The Claimant's evidence in relation to what she said was inconsistent, in that her witness statement said she had referred to morale but in cross-examination said that she had not said it out loud. We concluded that the account given by Ms Greenaway in her e-mail of the same day was most likely to be correct. We did not accept that the Claimant referred to staff morale or made any reference to there being a risk to service users. We were not satisfied that there was a reference to a legal obligation or a risk to health and safety. We were not satisfied that the Claimant conveyed the information that she claimed to have done.

239. In any event we were not satisfied that the Claimant reasonably believed that it tended to show there was a risk to health and safety or service provision. Her own case did not refer to discussing safety or that she had discussed the impact on service provision. The Claimant was inviting the Tribunal to make a leap from saying that morale was low, to that the work of the team was affected and by extension affecting the service, without her communicating the additional steps. We did not accept that at the time the Claimant believed that she was communicating such information. If she had reasonably believed it, she would have referred to the impact or potential impact on service users and the delivery of the service.

240. Further we would not have been satisfied that the Claimant reasonably believed it was in the public interest. What she was saying was not linked to the provision of the service or the effect on service users. It was made following events and communications about which she was unhappy. We concluded that the raising of the survey was personal to the Claimant.

241. The Claimant did not make a protected disclosure on 7 November 2022.

On 14th June 2023 at the disciplinary hearing, the Claimant made submissions that Polly Sturgess did not like social workers and that she had become, without any need, her de facto line manager in Devizes. The Claimant explained the difficulties created by the co-existence of psychiatric nursing and social work and that her suspension was a waste of taxpayer's money and that her requests for meetings were ignored. The Claimant explained that Polly Sturgess had driven the

disciplinary process and that the arrangement of work and the understanding between different disciplines was not working and of course setting out the Polly Sturgess' improper motivation was in issue.

242. The Claimant's case was that she made a protected disclosure in the statement of case that she read out at the disciplinary hearing and that it tended to show that it was affecting the delivery to service users and there was a risk to health and safety. She had not referred to this matter in her witness statement and when she gave evidence she said that that there had been a breach of a legal obligation to have a safe working environment and not induce mental health problems from suspension and bullying. The first part of the matters relied upon by the Claimant, as a protected disclosure, related to the assertion that Ms Sturgess did not like social workers and her in particular, she had tried to raise a grievance and Ms Sturgess was the commissioning manager into the investigation. There was not a reference in this part to health and safety or that there was not a safe working environment. This part also made no reference to the service users. The second part of the matters relied upon said that there had been waste of taxpayer money and time because the allegations were without foundation and her absence had diminished the care that can be given to service users.

243. The Claimant adduced no evidence as to why she was asserting that care had been diminished. There was not any factual evidence as to whether or not her team had been unable to cover the Claimant whilst she was suspended or that there had been any consequences. This was an assertion of an outcome without any factual content as to the basis of it. As identified in Kilraine words that were too general and devoid of factual content tending to show one of the factors in s. 43B of the Employment Rights Act 1996 would not generally be found to have amounted to information. This was not a case where the words were boosted by the context or surrounding communications. The Claimant had not made a reference to damage to her health or the health of others or how the care to service users had been diminished. This was a bare allegation and not the provision of information.

244. The Claimant suggested that she had reasonable belief that the information conveyed that there was a health and safety risk or breach of the obligation to provide a safe working environment on the basis that if there was poor treatment of an employee it should be taken as truth. We rejected that suggestion. She did not make any suggestion to the disciplinary panel that her health was being or could be damaged or that was the case for anyone else. It is not a reasonable belief to ask for a leap to be made without providing any basis for the recipient to understand what is being asserted. Further there was not a reference to other employees being affected and the matters referred to by the Claimant were personal.

We did not accept that she had a reasonable belief that it was in the public interest. It she did hold such a belief, the way in which she provided the information would have been expressed in wider terms and referred to the impact on other people.

245. In relation to the impact on service users, as said above we did not accept that the Claimant provided information. In any event we would not have accepted that the Claimant had a reasonable belief that what was said tended to show that there had been a breach of legal obligation or health and safety was endangered. If there had been such a reasonable belief the Claimant would have provided some specific information about some circumstances or an instance of a difficulty.

246. The Claimant did not make a protected disclosure.

The Claimant raised a significant grievance about the disciplinary process, its motivation, the involvement of Polly Sturgess, the absurdity of the allegations, the lack of proper investigation and my line management by Polly Sturgess and stating, “these matters are hugely important to me and so they should be for the Trust”. (“PD4”) Legal obligation in relation to the disciplinary process and health and safety

247. The Claimant’s case was that her grievance was a protected disclosure and that what she said tended to show that there was a breach of a legal obligation, namely not following policy or procedure in relation to the disciplinary process and there was a risk to health and safety. The Claimant, other than simply referring to that she raised a grievance, said nothing in her witness statement as to why it was a protected disclosure. The Claimant said in cross-examination, what conveyed this was when she had said there was vengeful act and suspension and this tended to show damage to health and safety. There was no reference in the grievance to any actual or risk of harm to the health and safety of the Claimant or any other person. She sought to argue that if someone had been subjected to a vengeful act that there would be a lasting effect, however she did not say anything of that type in the grievance letter. The Claimant referred to emotional pressure but gave no information as to what that consisted of or the effect it had on her health. Similarly the Claimant did not say anything in the grievance letter about a particular policy or procedure being breached or give information about how such a policy or procedure had been breached. She also did not give such an explanation in oral evidence. This was not a case where what was said in the grievance letter was boosted by the surrounding circumstances.

248. We did not accept that the Claimant had a reasonable belief that what she said in her grievance tended to show that there had been a breach of a legal obligation or that health and safety had been endangered. We

considered that if that was what she was trying to convey she would have referred to specific policies and procedures or what the impact had been on her health.

249. Further we did not accept that the Claimant reasonably believed it was in the public interest. The natural reading of the grievance was that it related to her personally. She did not refer to any impact on colleagues or service users. The Claimant's case generally was that because she was suspended the service would be affected. This was not mentioned in the grievance or when the Claimant gave evidence about this alleged disclosure. It was relevant that the Claimant did not adduce evidence as to how the service had been affected and what she knew at the time. The Claimant made no mention of any wider interest than her own. We did not accept that the Claimant reasonably believed what she was raising in her grievance was in the public interest.

250. The Claimant did not make a protected disclosure.

On 2 July 2023, the Claimant wrote an email to Christina Jefferies and Carl Kneeshaw setting out her concerns that the allegations against her were without foundation. The decision of the disciplinary panel was that elements of her role (seeing clients in locations other than a clinical setting and consequential expenses) needed to be explored and resolved and to the Claimant's knowledge these matters remain unresolved.

251. The Claimant did not refer to this e-mail in her witness statement. The Claimant, when giving evidence accepted that what was being said did not tend to show that there was a breach of a legal obligation. Her case was that it tended to show that there was a risk to health and safety. The Claimant provided information about her concerns in relation to criticism and that she did not feel she could safely return to work. We accepted that taking into account the length of time which had expired since the suspension and the discussions and communications she had with Ms Jefferies about her return that she reasonably believed that it tended to show that there was a risk to her health and safety.

252. The Claimant did not explain why what was said was in the public interest. The contents of the e-mail were entirely personal to her. There was no reference to impact or potential impact on colleagues or service users or what such an impact might be. We were not satisfied that the Claimant reasonably believed it was in the public interest.

253. The Claimant did not make a protected disclosure.

Allegations of breach of the implied term and/or detriment

254. Although we did not accept that the Claimant made a protected disclosure for completeness we have addressed the detriments.

From August 2021, Polly Sturgess assumed direct line management for the Claimant and subjected her to a level of scrutiny and criticism that was unnecessary and humiliating. In particular, Ms Sturgess frequently questioned details of the Claimant's AMHP duties and the legal agreement that was in place to allow the Respondent and the Claimant to fulfil this role. Ms Sturgess unilaterally removed the Claimant's ability to input data into the electronic rota on 31st August 2022 which excluded the Claimant and made her role difficult. In challenging the Claimant's expense claim between September and November 2022, Ms Sturgess was unpleasant, didactic, and hectoring in tone. The Claimant submits that she was being bullied by Ms Sturgess. (Breach of the implied term)

255. This allegation had a number of sub-divisions which we have addressed below

From August 2021, Polly Sturgess assumed direct line management for the Claimant and subjected her to a level of scrutiny and criticism that was unnecessary and humiliating. In particular, Ms Sturgess frequently questioned details of the Claimant's AMHP duties and the legal agreement that was in place to allow the Respondent and the Claimant to fulfil this role.

256. The Claimant provided very little evidence as what she said had occurred before she moved to NEW CMHT. The only specific incident referred to was in October 2021. At that time, the Claimant and Ms Sturgess were both Band 7 Team Leaders. Ms Sturgess did not have any line management responsibility for the Claimant. The meeting in October 2021 was to discuss a case in which there had been a sub-optimal transfer of a service user and both of their teams had been involved. There was a discussion as to what happened with the transfer. We concluded that Ms Sturgess had not said anything that was humiliating or bullying or was an unnecessary level of scrutiny or criticism and she had not said the Claimant had failed as a manager. It was notable that the Claimant's evidence was that she had pushed back. We were not satisfied that the Claimant had proved the factual basis for the allegation or that Ms Sturgess had assumed direct line management of her. We did not accept that there had been a breach of contract in this respect.

In particular, Ms Sturgess frequently questioned details of the Claimant's AMHP duties and the legal agreement that was in place to allow the Respondent and the Claimant to fulfil this role. Ms Sturgess unilaterally removed the Claimant's ability to input data into the electronic rota on 31st August 2022 which excluded the Claimant and made her role difficult.

257. In terms of whether Ms Sturgess questioned the Claimant's AMHP role, it was relevant that she had become the Community Service Manager in May 2022 and she line managed the Claimant's line manager Ms Stephens. In late August 2022 Ms Stephens and Ms Sturgess were reviewing the rota and Ms Stephens informed Ms Sturgess that the Claimant carried out the AMHP shifts but she was unaware of the details of the arrangement with WCC. Ms Stephens had responsibility for her team and the scheduling of the rota. Ms Sturgess had overall responsibility for Ms Stephens team and other teams in her department. A regular secondment arrangement for an employee will have a potential impact on how their team is managed. Ms Stephens was unaware of the details and we accepted that there had not been any issues of concern during the time that the Claimant had worked in NEW CMHT. Neither Ms Stephens or Ms Sturgess were aware of the details of the arrangement. It was reasonable for them to seek to discover what they were, given that they had managerial responsibilities for the team the Claimant was in and they had to ensure that resources were appropriately allocated and used. We accepted that Ms Sturgess had reasonable and proper cause in ascertaining what the detail of the agreement was. The Claimant suggested that she was being focussed on because she was the only member of the team with AMHP responsibilities and that therefore there was a breach of contract. We rejected that suggestion. The Claimant was in a unique position, however the detail of the contractual arrangement was unknown. We did not accept that she was targeted or focussed upon. Ms Sturgess would have acted in the same way in respect of any employee who was on a regular secondment arrangement and the details of the arrangement were unknown. We did not accept that this was used as a tool to bully the Claimant. She was never stopped from undertaking her AMHP shifts, what was sought was clarification as to the terms of the arrangement. Ms Sturgess also acted with reasonable and proper cause in asking Mr Mitchell to clarify the terms of the agreement, he being the senior manager at WCC and who would be able to provide the information. It was important that Ms Sturgess knew what the implications of the arrangement were on the number of shifts the Claimant would be seconded for and how that impacted on the rota for the team and also how the secondment would affect the team's budget. We accepted that Ms Sturgess acted with reasonable and proper cause and that there was not a breach of contract in this respect.

258. The second aspect of this alleged breach related to the removal of the Claimant's ability to input shifts onto the roster. The Claimant suggested that this occurred because she was being singled out and no-one else on the team was an AMHP. We accepted that in relation to the teams for which Ms Sturgess had responsibility only Band 7 employees and above had access to the roster with the ability to make changes. The Claimant was the only Band 6 to have such access and it appeared likely that this access had not been removed when she moved from the Band 7 to her Band 6 role.

259. The Claimant relied upon there not having been any problems in the previous 12 months as tending to show that there had been a breach of the implied term of trust and confidence. The Claimant did not have responsibility for the team roster, that was the responsibility of Ms Stephens. We accepted the Respondent's position that if a number of people can make changes to the roster that there was a risk that the service would not be covered properly. We accepted that it was a reasonable management decision for one person to have responsibility for the roster, namely the team manager, so that they could ensure that the caseload was properly covered and resources were properly planned and allocated. We also accepted that it was a reasonable management decision to ensure that editing access to the roster was consistent across the teams managed by Ms Sturgess. Ms Sturgess was therefore acting with reasonable and proper cause when deciding to remove the Claimant's access to the roster.

260. The Claimant's case was that the removal made her role more difficult, however this was clarified as it not making the actual role more difficult but that it damaged trust. We did not accept that submission, the Claimant accepted that access to the roster was discretionary. Further the rationale was explained and we did not accept that the e-mails from Ms Sturgess suggested that the Claimant's integrity was being questioned.

261. The Claimant made the fair point that she could have been spoken to about the changes, rather than being informed in an e-mail. We accepted that this might have made her feel happier about the change. However the e-mails sent in relation to this were pleasant and explained the reason why and acknowledged that it was thought that the Claimant had always ensured her caseload was covered. We accepted that Ms Sturgess was busy and that she acted with reasonable and proper cause in making her decision and in the way she communicated it.

262. There was not a breach of contract in these respects

In challenging the Claimant's expenses claims between September and November 2022, Ms Sturgess was unpleasant, didactic, and hectoring in tone.

263. The Claimant submitted an expenses claim in September 2022. We accepted that the amount claimed was larger than was normally expected. The claims included sums paid for groceries for a service user and the purchase of a number of hot drinks from coffee shops. Ms Stephens asked her line manager to review the claim, which Ms Sturgess did. It is reasonable for a line manager to seek assistance from their manager if they are not sure what to do. We did not accept that this was Ms Sturgess assuming direct line management of the Claimant. Her interaction was in relation to a discrete issue only.

264. Ms Sturgess highlighted the matters which she thought could or could not be approved and asked for the Claimant's rationale for the claims. We did not accept that asking for the rationale was unreasonable, given that the claim had been made and public money would be used to pay for it. We were not satisfied that anything said in the e-mail was unpleasant, hectoring or didactic.

265. When the Claimant responded she provided her rationale. Ms Sturgess reviewed what the Claimant had said and decided to pay the claim in full. We recognised that this was the first expenses claim the Claimant had made for many years. We also accepted that the matters claimed for and the amounts were unusual as far as the team was concerned. Ms Sturgess provided guidance to the Claimant for future support of service users and the making of expenses claims. We did not accept that anything in the e-mail was unpleasant, hectoring or didactic.

266. The Claimant accepted that it was appropriate for the claim to be reviewed. She said that there should have been a conversation. Whilst a conversation may have felt better for the Claimant, we accepted that Ms Sturgess set out what the boundaries and parameters were in writing and that by providing it in writing what was being said was clear. We did not accept that responding by e-mail was without reasonable and proper cause, responding in such a fashion was something a reasonable manager could do.

267. We rejected the Claimant's contention that there was a focus on her. The Claimant was the only person in the team who had provided an unusual expenses claim. We concluded that the review of the claim and the response to it was because the claim was unusual and was nothing to do with the person who made it.

268. Ms Sturgess did not challenge the Claimant in respect of the second expenses claim before the investigation commenced. Therefore there could not have been an unpleasant, hectoring or didactic communication in relation to it.

269. We were satisfied that, as a manager, Ms Sturgess had reasonable and proper cause in reviewing the expenses claim, asking for a rationale and providing guidance for the future. We did not accept that the way she went about it was unpleasant, hectoring or didactic. It was notable that she approved the claim in full.

270. There was not a breach of contract in this respect.

In October 2022, the Claimant requested a meeting with Polly Sturgess to discuss the situation with a view to seeking a solution, which was refused. The Claimant states that this was contrary to the Respondent's Grievance Policy. (Breach of the implied term)

271. The grievance policy, in respect of informal resolution, said that discussion should be with the line manager, i.e. Ms Stephens. If the grievance was about the line manager HR should be contacted. It also said that participation in mediation was voluntary. The Claimant was seeking a meeting with managers who were more senior than her line manager and therefore we were not satisfied that there was a breach of the policy for an informal discussion to be with the line manager.

272. Mr Everett responded to the Claimant querying the threshold for a grievance had been reached given advice about expense claims had been given and why it could not be addressed with Ms Stephens. We accepted that at the time Ms Sturgess was very busy with a case load review which would take a number of days and that following her response she thought Mr Everett was dealing with the Claimant's request. On 10 October 2022, Mr Everett made the suggestion that the Claimant discussed the matter with the social work lead or Ms Stephens.

273. The meeting did not happen. Ms Sturgess did not respond either way to the Claimant. The e-mail the Claimant sent on 5 October was sent after Ms Sturgess had told Mr Everett she was too busy to respond.

274. We accepted that the Claimant was disappointed that Ms Sturgess and Mr Everett did not attend a meeting with her, however we were not satisfied that it was a breach of the grievance policy. Mediation is a voluntary process and parties cannot be forced to participate. In the present case it was not clear how such a meeting would be conducted. It may have been better management practice to have a discussion with the Claimant, however that of itself does not mean not agreeing to attend such a meeting is without reasonable and proper cause. It would be reasonable for a participant to know in advance what is being alleged and how the discussion would take place.

275. We did not accept that the failure to agree to a meeting was something that was likely to seriously damage trust and confidence. There was not a requirement for Ms Sturgess to attend such a meeting under the policy, however it was something which might have helped. The Claimant had the option of raising a formal grievance if she wanted to. We did not accept that this was something which went to the root of the contract and we did not accept that it was a fundamental breach of contract.

In November 2022, Louise Stephens informed the Claimant by email that a complaint had been made about her comments on staff satisfaction and morale.

Louise Stephens also stated that other comments that the Claimant had made about Polly Sturgess' management and the need for a meeting to discuss her concerns about Polly Sturgess were capable of bringing the Respondent into disrepute and could be treated as a conduct matter. This Claimant states that this reflected the culture of bullying by the Respondent as she was unable to speak out even when in contact to the Freedom to Speak Up Champions. (Detriment) /

In November 2022, Louise Stephens (Team Manager) wrote to the Claimant to advise that there had been a complaint from a team member about the Claimant's comments that the Trust was third from the bottom in a national survey about staff retention and morale. The Claimant was advised that discussing her desire to improve working relationships and could be seen as bringing the Respondent into disrepute and could be treated a conduct matter. The Claimant states that her attempts to raise a Public Disclosure were quashed by the Respondent. (Breach of the implied term)

276. We have already concluded that the Claimant did not make a protected disclosure and therefore the detriment claim must fail. However we considered the test as a matter of completeness.

277. The Claimant suggested that her attempts to raise a public disclosure were quashed, we rejected that suggestion. The Claimant was unable to remember what was said and thought it was something along the lines of 'let's start the meeting'. Ms Stephens came into the end of a conversation and was aware that there was tension. The purpose of the Teams call was to have a meeting and Ms Stephens had reasonable and proper cause to start it.

278. The allegation related to the e-mail sent by Ms Stephens. We rejected the Claimant's assertion that she was told that it was a conduct issue. She was told that such conversation could be viewed as a conduct matter. Ms Stephens had received complaints from two people and had been asked to address the concerns. Further at the meeting and there were student nurses present. Ms Stephens was aware that the Claimant had been discussing her dissatisfaction with management with people inside and outside of the Respondent and was concerned about the Respondent's reputation. Ms Stephens had concerns about the way in which the Claimant was airing her concerns. There were appropriate channels she could follow under the grievance procedure. We accepted that when colleagues raise concerns about things which have been said it is reasonable to address them. Ms Stephens drew the concerns to the Claimant's attention and dealt with it in an informal manner. The Claimant was effectively being asked to be mindful as to what she was saying and to whom she was speaking. Ms Stephens was acting with reasonable and proper cause when she sent the e-mail.

279. We did not accept that this was a breach of contract.

280. We were not satisfied that Ms Stephens was aware of the e-mail sent to Mr Everett on 5 October 2022 or its contents. As such we were satisfied Ms Stephens decision to send her e-mail on 7 November was not at all influenced by the e-mail of 5 October 2022. The e-mail was sent because of the concerns raised by the Claimant's colleagues and other reports that she had been speaking to people outside of the Respondent. We were not satisfied that it was influenced in any way by the Claimant raising concerns about health and safety.

On 11 November 2022, the Claimant was suspended on four false allegations that were found to have no evidence to support them despite the lengthy investigation. The Claimant was exonerated at the Disciplinary Hearing on the 14th of June 2023. During these disciplinary proceedings the Claimant was socially isolated from colleagues and friends who had any connection with the Respondent. (Detriment)
/
On 11 November 2022, the Claimant was suspended from work as a result of unproven allegations because she had stated her intention to raise a grievance against Polly Sturgess. The Claimant states that an unnecessarily lengthy investigation showed that there was no evidence to support any of the allegations. (Breach of the implied term)

281. The Claimant placed reliance on the allegations ultimately being dismissed at the disciplinary hearing. She also effectively suggested that a full investigation should have been completed before she was suspended.

282. When the first expenses claim was received the Claimant had claimed for expenses which were unusual in type, for example groceries, and in amount, in that the total amount was much higher than was usually expected. Despite reservations about the claims, they were approved and the Claimant was given guidance as to seeking agreement with management before incurring expenses. Further that there needed to be a clear therapeutic need for a particular intervention, for example taking a service user to a coffee shop, which needed to be recorded in a care plan. A limit to the amount which could be spent was also set out. The Claimant was also aware that it was considered taking service users to coffee shops was not considered to be a usual activity.

283. When the Claimant submitted her second expenses claim the number of expenses she had claimed, for drinks in coffee shops, had increased rather than decreased. The claim had not identified the service users and when it was resubmitted with the service user initials included, the number of claims had increased.

284. We accepted that Ms Stephens was concerned about the increasing nature of the claims, despite the guidance that had been given to the Claimant. Advice was taken and Ms Stephens was asked to audit the claims in the second expenses claim. Ms Stephens discovered that some of the claims made did not tally with RIO notes, the diary or service users' clinical diaries. There appeared to be inconsistencies with records suggesting there were home visits or receipts being for a different day. Ms Stephens then carried out an audit of the first expenses claim and found similar inconsistencies.

285. The Respondent was presented with expenses claims which did not appear to correspond with diary entries and RIO and clinical notes. Advice had taken from the Counter Fraud team. Taking into account that the Claimant had been given guidance before the second claim we were satisfied that the Respondent had reasonable and proper cause to investigate the expenses claims.

286. We accepted the Respondent's evidence that there was a risk of inappropriate relationships forming if a service user became dependent upon the Respondent making purchases for them. This issue was related to the expenses claims. We were satisfied that the Respondent had reasonable and proper cause to investigate.

287. The Claimant was suspended pending the investigation and subsequent disciplinary hearing. The Claimant accepted that the allegations were serious allegations. The Respondent completed a suspension risk assessment. The Claimant questioned the Respondent's witnesses about the references to her talking to colleagues and having left her previous role in difficult circumstances. The Claimant sought to rely on these matters as tending to show that the reason for the suspension was to prevent a grievance being raised or because she had raised the concerns in her alleged protected disclosures. The risk assessment however also referred to the Claimant having made similar expenses claims and that they were increasing, coupled with diary entries not corresponding with the claims for expenses. Further there was concern that the Claimant could seek to influence potential witnesses, whether they were a service user or a colleague. Those additional matters were important and significant. We accepted that the Respondent looked to see if there was an alternative to suspension and concluded that there was not an admin only role the Claimant could do which would not involve record keeping or potentially coming into contact with potential witnesses.

288. We were satisfied that the Respondent was concerned about the risks associated with further expenses claims and that service users might be developing a dependency relationship. The Respondent was concerned

that the investigation could be compromised by the Claimant seeking to influence witnesses, this was supported by the Respondent's observations by the way the Claimant had been speaking about management to colleagues and third parties. We were satisfied that the Respondent had reasonable and proper cause in suspending the Claimant.

289. We rejected the Claimant's suggestion that the matters should have been investigated with her before deciding to suspend. Ms Stephens had undertaken a preliminary audit and from that it appeared a full investigation was required. The Claimant had been given guidance and had gone on to make further large claims. The Respondent was concerned about repeat behaviour. Suspension was not a disciplinary sanction and it was neutral. Ms Sturgess considered the factors as to whether there should be a suspension and reached a conclusion that was open to her. We were satisfied it was believed that if there was not a suspension before the investigation that there was a risk of interfering with records or potential witnesses. We were satisfied that the Respondent had reasonable and proper cause for suspending the Claimant when it did.

290. We rejected the Claimant's contention that she was suspended to prevent her from raising a grievance. The Claimant's own case was that she was considering raising a grievance at the beginning of October 2022 and had communicated this on 1 October 2022 in her e-mail. She was suspended 6 weeks later. She had made her second expenses claim at the end of October/beginning of November 2022. We accepted that it was the increasing nature of the expenses claim and the apparent inconsistency between the claims made and the diary, RIO and other official documents which caused the matter to be looked into. We would also have been satisfied that it was those matters which caused the investigation and suspension and that the matters the Claimant had said were protected disclosures had no influence whatsoever.

291. There was not a breach of contract in the above respects.

292. The Claimant also said that length of the investigation was a breach of the implied term of trust and confidence. We accepted that the investigation took longer than anticipated.

293. The Respondent instructed Ms Grundy to carry out the investigation. We accepted that the investigation started in the run up to the Christmas and New Year period and it was difficult for Ms Grundy to arrange interviews. Ms Grundy had a period of leave in the run up to New Year and the Claimant was on leave in the period afterwards. Witnesses were entitled to be accompanied and it was necessary therefore to take into account the availability of the witnesses, the representative and Ms Grundy. There was also a need to get the witness to check and return the notes with any

amendments. We accepted that Ms Grundy tried to complete her investigation as quickly as possible whilst being thorough and without rushing it. The Report was initially completed by 26 February 2023, however the Claimant then asked for a further witness to be contacted. Ms Grundy needed to contact that person and wait for the response on 16 March 2023. She completed the report by the end of that month. We accepted that the investigation took a long time and that the Claimant found this delay difficult and distressing, however we were not satisfied that Ms Grundy tried to delay it. We were satisfied that she was working as quickly as she reasonably could and there was reasonable and proper cause for the time it took.

294. There was a further delay due to the Claimant not receiving the disciplinary hearing documentation. We accepted that the documentation was sent and that the Claimant had not received information sent to her and her union representative had not passed it on to her. We accepted that this delay was outside of the control of the Respondent. We did not accept that there was any design by the Respondent to drag out the investigation process.

295. We were not satisfied that there was a breach of contract in this respect.

Lesley Grundy failed to properly investigate the disciplinary allegations against the Claimant and did not explore the motivation behind the Claimant's suspension or the link between her disclosures and detriment. Ms Grundy did not identify and analyse the evidence as borne out at the Disciplinary Hearing on the 14th of June 2023. (Detriment)

296. This was an allegation of detriment only and not relied upon as a breach of the implied term. The Claimant did not make a protected disclosure and therefore the detriment claim was dismissed. In any event we were satisfied that Ms Grundy was unaware of the e-mail and its contents sent on 5 October 2022 or that the Claimant was suggesting that she had raised health and safety concerns in the meeting on 7 November 2022. As such it was not possible for Ms Grundy to have been influenced by the alleged protected disclosures and we were satisfied that they had no influence whatsoever on the way she conducted the investigation.

297. In any event we accepted that Ms Grundy's remit was to investigate the allegations made and that she needed to gather and collate the evidence and that it was not her function to decide who was right or wrong. She fairly set out what the Claimant had said in her report when summarising the evidence. It did not appear to Ms Grundy that the commissioning of the investigation or the suspension was motivated by an ulterior factor. She had set out that the issues raised about Ms Sturgess by the Claimant and the enquires that she had made with others about them.

She identified that there were apparent inconsistencies between Trust records and the expenses claims. There was a difference of opinion as to what was an appropriate use of expenses whilst meeting service users and whilst she could not find evidence to support or refute the allegation it could be viewed as a misappropriation after taking into account the guidance the Claimant had been given.

298. The Claimant criticised Ms Grundy's analysis and based this on the chronology she provided to the disciplinary hearing. We accepted that it was normal for employees, subject to disciplinary processes, to provide their own chronologies and explanations. The disciplinary hearing is a further opportunity for the employee to make representations and provide further evidence and explanations. We did not accept that the Claimant's more detailed explanations in her chronology meant that Ms Grundy had not properly analysed the evidence she had obtained. We accepted the report was balanced and even-handedly set out the competing contentions.

299. We would not have been satisfied that there was any detrimental treatment and we accepted that Ms Grundy was acting with reasonable and proper cause throughout.

In July 2023, Christina Jefferies and Carl Kneeshaw proposed that the Claimant return to work in the same situation with no scheme of work for social work/psychiatric care in place and no plan for Polly Sturgess to be the subject of any form of education or censure and her fear that further intimidating and derogatory comments would be made and further spurious discipline was highly likely. The Claimant states that the Respondent failed to provide a plan for a safe return to work. (Detriment) /

The Respondent asked the Claimant to return to work on 19 June 2023 without putting safeguards in place. (breach of the implied term)

300. The Claimant's case was that the Respondent was not proactive with options being considered for her return to work and she was expected to return without any thought or planning as to what would be reasonable and safe.

301. The Claimant's evidence in relation to this issue was not easy to follow. She gave the impression of having asked for a meeting and mediation with Ms Sturgess, only to retract that and say that she asked for a meeting with HR. Ms Jefferies evidence was that a meeting with HR was not asked for, but the Claimant had asked for the issues to be referred to HR. When the Claimant first spoke to Ms Jefferies after the disciplinary hearing she said that she did not want to return to NEW CMHT.

302. The Claimant on a number of occasions informed Ms Jefferies that it was unsafe to return. The Claimant, despite being asked to explain on a number of occasions, did not tell Ms Jefferies what it was that was unsafe or what could be done to make it safe for her. This was also a feature of the evidence before the Tribunal, in that the Claimant would make a broad assertions but provided little in terms of specific details. We did not hear evidence that the Claimant had told Ms Jefferies that she wanted Ms Sturgess to receive education or some form of censure.

303. We also accepted that what the Claimant sought, during the discussions, changed over time. Initially she wanted the written disciplinary outcome, then a letter to be sent to WCC saying her suspension had been lifted and then for the grievance to be determined before she could return.

304. Ms Jefferies had proposed a phased return, initially working from home on mandatory training. The difficulty for Ms Jefferies was that the Claimant did not explain what was unsafe or what would make her feel safe. Whilst these matters were being discussed Ms Jefferies extended the Claimant's authorised paid absence. In late June Ms Jefferies also suggested that the Claimant could oversee the duty rota, which was unlikely to have any face to face or verbal contact with the team.

305. The Claimant had also told Ms Jefferies that she did not want to return to her substantive post. Ms Jefferies made suggestions in relation to posts which could be applied for outside of Devizes. The Claimant suggested that this was insulting because she had not done anything wrong, we rejected that suggestion. Ms Jefferies made the suggestions because the Claimant did not want to return to the team, we accepted that Ms Jefferies was trying to assist and it was reasonable to make suggestions about alternative roles. The suggestions could have been a way in which the Claimant felt able to return to work. We accepted that Ms Jefferies was acting with reasonable and proper cause in this respect. We also accepted that it was not possible for the Respondent to guarantee that Ms Sturgess would never oversee a service the Claimant was in in the future. Staff move roles and can be promoted and we accepted it was not possible to predict what would happen in the medium to long term.

306. We accepted that by the end of June 2023, Ms Jefferies had made suggestions which unsatisfactory to the Claimant, however the Claimant was not providing Ms Jefferies with suggestions of her own or explanations as to the lack of safety. The Claimant's suggestion was that the grievance needed to be progressed. We accepted that Ms Jefferies was unaware as to the contents of the grievance until the outcome was sent. At that stage, the Claimant was warned that if she did not return to work it could be considered as an unauthorised absence. We accepted that it was not clear to the Respondent why the Claimant could not return and it was not being

given an understandable explanation. We accepted that it was acting with reasonable and proper cause when it warned the Claimant that not returning could be absence without leave if she was not unwell or on annual leave. The Claimant's special paid leave was subsequently extended in any event.

307. On 13 July 2023, Ms Jefferies provided further explanation about her suggestions for a phased return and that there was not a timescale put in place for overseeing the duty rota. She also confirmed that there was no threat of disciplinary proceedings from what had taken place before. At this stage she also suggested the possibility of an informal secondment. We accepted that Ms Jefferies was trying to think of various alternatives to try and assist a return to work and to give the Claimant time to consider other alternative options. We accepted that she had reasonable and proper cause when making these suggestions.

308. We accepted that Ms Jefferies tried to assist the Claimant as much as possible in seeking a return to work. The Claimant did not make suggestions of her own, which made it more difficult for the Respondent to make suggestions. We did not accept that the Claimant was being asked to return to the same situation, Ms Sturgess no longer was involved with the team, further Ms Jefferies was trying to get a phased return started, during which further options could be explored. We were satisfied that Ms Jefferies was acting with reasonable and proper cause in her attempts to find a way of enabling a return to work. The phased return did not involve face to face contact with the team and we were satisfied that it would have had very little, if any, verbal contact. We did not accept that there was a failure to put in place or consider safeguards, Ms Jefferies was trying to facilitate the return but the Claimant did not explain what she was seeking to enable it.

309. We did not accept that there was a breach of contract in this respect.

310. For completeness, we did not accept that Ms Jefferies was aware of the alleged disclosure made on 5 October and 7 November 2022, nor the comments made at the disciplinary hearing. Ms Jefferies was unaware of the contents of the grievance until she was copied into the grievance outcome. There was not any evidence to support that Ms Jefferies was influenced to act one way or the other by the e-mail the Claimant sent on 2 July 2023 or by the contents of the grievance. Ms Jefferies was looking to try and find a solution, however she was not being given any meaningful suggestions by the Claimant as to what would assist. In the circumstances we did not accept that there was detrimental treatment of the Claimant. We further accepted that what the Claimant had said had no influence whatsoever on the way in which Ms Jefferies sought to try and facilitate a return to work. Even if the Claimant had made a protected disclosure we would have dismissed the detriment claim.

Dismissed the Claimant's grievance (Breach of the implied term)

311. We accepted Ms Robertson-Morrice's evidence that when she reviewed the grievance she considered it related to the disciplinary process. The Respondent's grievance policy set out that such disciplinary processes would normally fall outside of the policy unless there was demonstrable flaw in how the disciplinary policy had been applied. The opening part of the grievance letter stated that it related to the disciplinary process and the suspension. When Ms Robertson-Morrice considered whether the grievance fell within the scope of the policy she considered the whole of the disciplinary report and cross-referenced the points made by the Claimant in her grievance with the disciplinary hearing documents. This was not a situation in which cursory consideration had been given to the grievance. Ms Robertson-Morrice fully considered each point and looked to see whether it had been referred to in the disciplinary process and then decided that the grievance related to that process. It was also notable that Ms Robertson- Morrice went on to consider the various matters raised in any event, even though they fell outside of the grievance policy.

312. We accepted that Ms Roberson-Morrice considered whether there was a vengeful element and that she had noted that there had been much evidence in relation to the disciplinary allegations and there were inconsistencies between the claims and Trust records. She considered that there was something which needed to be investigated. It was also relevant that the panel, although it dismissed the allegations, had some concerns which it suggested were addressed through supervision. There was a detailed suspension risk assessment and it was not just Ms Sturgess who had been involved.

313. We were not satisfied that Ms Robertson-Morrice failed to properly consider the grievance. We were not satisfied there was a demonstrable flaw in the disciplinary process. We accepted that she gave the grievance her full attention and that the decision she reached was one which was open to her. We were satisfied that Ms Robertson-Morrice was acting with reasonable and proper cause in reaching her decision.

314. There was not a breach of contract in this respect.

Dismissed the Claimant's appeal against the grievance outcome. (Breach of the implied term

315. Mr Tilley agreed with the decision of Ms Robertson-Morrice that the matters raised were encompassed in the disciplinary process. The Claimant raised matters which were not included in the original grievance. Further it was apparent, from the cross-examination of the Claimant, that she considered , that the Respondent should have searched through Trust

records and to try and work out what she was saying. The Claimant did not raise specific allegations in the appeal process. The Claimant had referred to a safe return to work, but when asked what that would be she told Mr Tilley it was for the Trust to decide.

316. We did not draw an adverse inference from Mr Tilley not being called to be a witness. The Claimant had previously said she was not relying upon it as an allegation of breach, however at the start of the hearing confirmed that it was an issue. On reviewing the documentation and doing the best we could in the circumstances, we were satisfied that Mr Tilley reviewed what had been said by the Claimant and the decision reached by Ms Robertson-Morrice. We were satisfied that the decision was one upon which he could properly arrive, in that the matters raised were about the disciplinary procedure. We were not satisfied that the Claimant had proved there was a breach of contract in this respect.

Overall consideration

317. We also stood back and looked at the allegations of breach of contract as a whole. For the reasons set out above we were satisfied that the Respondent had reasonable and proper cause for the way it acted. We were not satisfied that the matters taken together were calculated or likely to destroy or seriously damage trust and confidence between the parties. We were not satisfied that the Claimant had proved that there was a breach of the implied term of trust and confidence. Accordingly, although she resigned and resigned promptly after the dismissal of her grievance appeal we were not satisfied that she resigned in response to a fundamental breach of contract.

318. Accordingly, the claims of detriment and constructive unfair dismissal, including automatically unfair dismissal, were dismissed.

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Employment Judge J Bax
Dated: 22 May 2025

Judgment sent to Parties on
6 June 2025

Jade Lobb
For the Tribunal Office