Case Number: 1400118/2023
1403542/2023
1405949/2023

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	and	**Respondent**
Mr Simon Greenwood		**Southwest Ambulance Service NHS Foundation Trust**

Held at: Bodmin **On: 18 – 21, 24 - 26 March 2025**

Before: Employment Judge Smail (alone)

Appearances

Claimant: **Ms A Chute (Counsel)**
Respondent: **Mr M. Puar (Counsel)**

RESERVED JUDGMENT

1. The Claimant did make a protected disclosure in his Datix of 4 March 2022.

2. The Claimant's claims fail and are dismissed.

REASONS

1. The Claimant presented claim forms on 6, 13 January and 24 November 2023.

2. The Claimant started employment with the Respondent as an Emergency Care Assistant on 1 July 2016. In addition to providing emergency care, he drives ambulances. He remains employed by the Respondent.

THE ISSUES

3. These have narrowed significantly over the course of the hearing. I am grateful to the Claimant's side for concentrating on what they think are their best points. The issues I have to determine are set out in the appendix. I will consider time limits, however, only if the Claimant wins a liability argument subject to time limits.

THE EVIDENCE

4. I heard from the Claimant himself and from Dougie Woods on behalf of the Claimant. Dougie Woods is a personal friend of the Claimant who has HR experience outside this Respondent.

5. For the Respondent I heard from Tony Albert, Operations Officer; Amy Beet, Executive Director of People/Deputy Chief Executive (Head of HR); Erika Berryman (HR), Christian Brown, Operations Officer; James Crichton (IT); Lauren Dunn, Lead Mental Health Practitioner; Mathew Exelby, Operations Officer; Emily Finch (HR); Megan Foster (HR); Geoff Griffin, Head of Operations – Cornwall and the Isles of Scilly; Christopher Nelson, Trust Incident Manager; and Simon Taylor, Operations Officer.

6. There was an agreed primary bundle of documents of 1097 pages.

FINDINGS OF FACT ON THE ISSUES

7. The bulk of the relevant factual findings are under this section. There are additional facts relevant to particular claims in the Conclusions section.

4 March 2022

8. On 4 March 2022 the Claimant submitted a Datix report complaining about the conduct of Tony Albert, then a Lead Paramedic and the 'HALO' (Hospital Ambulance Liaison Officer) that day at the Royal Cornwall Hospital in Treliske near Truro. It was Covid times. One of the HALO's functions is to juggle ambulances queuing with patients awaiting assessment (RATS), admission or discharge, the latter including by non-Respondent patient transport. This often means one ambulance crew taking on another's patient, depending on how far into the shift a crew was. The Hospital only had 4 assessment bays (for 'Ratting'). A significant number of ambulances could be waiting in the queue with a patient.

9. A Datix is an incident reporting mechanism used by NHS Trusts. It can be used for reporting any matters of concern, including clinical matters. It is not a mechanism required by the Whistleblowing Policy. The Datix submitted by the Claimant was in these terms:

> HALO tried to enforce overtime on crew and then proceeded to speak badly to other crews waiting in RATS, A&E, causing friction between myself, my crewmate

and 1 additional crew.

We were due to finish shift at 2200 but had not had break, meaning without any meal breaks during the shift our intended finish time would be 2100. Our pt had been discharged from our ambulance at approx. 17.15pm but we were waiting for a private PSV to transport pt home.

Crew were nearing their final hour, 2000-2100, when the HALO told us we were to take over another crews pt so that crew could clear and go home. At this time our pt was still on our ambulance. The PSV was supposed to be in the area but no ETA was given.

I explained that the previous night I was in the same situation, waiting on a private PSV which was also in the hospital grounds. Upon further checking this PSV was not assigned to us for another 3hrs.

Tonight the HALO discredited this and stated "are you refusing to take over their (the other crews) pt. The HALO then told the other crew that we were refusing. We asked whether there was any alternative options but never refused. Myself and my crewmate both felt like we were being emotionally blackmailed into taking over the other PT.

We pointed out to the HALO that this would make us late finishing and would be "enforced overtime". HALO continued to try and emotionally push us to take the other pt.

I pointed out how I had been late numerous times due to taking over other crews pts and we were shattered and without food tonight but HALO told us our only other option was to clear and answer a Cat 1 GB. This would have been within the last hour when we were fully protected.

At approx. 2000 I entered A&E to replace the linen, I overheard the HALO and the other crew openly stating myself and my crew mate were refusing to take another pt. This was openly being said in front of numerous other crews in RATS. I approached the HALO and other crew and was told to leave RATS and discuss it outside. There was then an uncomfortable confrontation with the crew the HALO had been talking to. The other crew then headed directly to my crewmate and confronted her as well.

These confrontations with the other crew which were fired up by inappropriate "open" comments by the HALO made myself and my crewmate feel extremely guilty and angry with regards to how the HALO handled the situation. At no point tonight did the HALO offer us a plan, ask if we could help out or, considering the length of shift with no break, food or drink, consider if we felt safe to work extended hours.

During the drive back to station there was a GB [General Broadcast] for a cardiac arrest in Falmouth. We offered up for the job but control stated they had other crews available with a similar ETA and that due to our length of shift with no break it was not appropriate for us to attend.

We as a crew feel disappointed that our welfare was disregarded and feel that with better communications this situation would not of become so public with in the RATS dept giving us a overwhelming feeling of Guilt...

10. Tony Albert gave his version 3 days later in a Datix feedback message:

Whilst working as the HALO on Friday I requested that Simon and his crewmate take another crew's patient, this was around 1900hrs, Simon was due to finish at 2200, the crew I was trying to relieve was over their finish time, none of these crews had had a break.

> Simons patient was being discharged onto a PTS [Patient Transport] crew for return home. Simon became agitated and refused to take another patient, I said that this was fine, either take another or book clear, there are plenty of calls outstanding, just let me know what you decide. He appeared to be unable to understand that the PTS crew where ready to take his patient, he complained that he had had to wait hours on his previous shift for PTS. I told him that they were parked just around the corner and to come and find me if they had not arrived in the next 15 minutes.
>
> I saw Simon passing RATS shortly afterwards and enquired if PTS had his patient and he stated that they had. The crew whose patient had not been taken where talking to me about how disappointed they were that a crew still on duty would not have helped out. Simon then walked into RATS and began screaming and ranting at the other crew and I was forced to insist that he left the department immediately. Paramedic Toni Howell witnessed the exchanges and I asked her if she thought I was being unreasonable as I was astounded by his actions and response, she did not think that I had been.
>
> I requested the duty OO [Operations Officer] come up at the end of my shift and remained late to discuss the incident with him as it had left me both shaken and disappointed that a member of staff would think it acceptable to act in this way and to talk to me in such a rude and unprofessional manner.

11. The Claimant submitted his Datix at 22.25 on 4 March 2022 shortly after his return from duty to his base station, St Austell. He had the assistance of Mike Gough, the Operations Officer at St Austell ambulance station and Megan Birnie, the paramedic with whom he had been on duty.

12. Because of the amount of work caused by Covid, there had been a change to the Standard Operating Procedure regarding rest breaks. The policy was said to be mandatory and only a Strategic Commander could authorise deviation. A shift would be 11 hours plus one hour meal break, usually encompassing 12 hours. 4 days on, 4 days off. If after 6 hours duty, no 1-hour meal break had been taken, a crew was ‘fully protected’ in the sense that no new work could be allocated by Control until the meal break had been taken. If 11 hours had been worked without a meal break, then the shift was over. A crew could always choose to answer a General Broadcast, which is an urgent 999 call, even if fully protected; that would be their choice. An ambulance crew is allocated to each incident but sometimes another crew may be closer to the incident and may choose to assist.

13. On the day in question, the Claimant’s shift was 10.00 to 22.00 (including the 1-hour lunch break). Around 19.00 he was asked to take a patient from a Penzance crew, who were working 7.30 to 19.30. That crew was therefore coming to the end of their shift. In the event a Truro crew, including the paramedic Toni Howell, took the patient from the Penzance crew. The Truro crew were working 11.00 to 23.00.

14. The Claimant’s patient had been discharged by the hospital at 17.00. The patient was awaiting private transport for over 2 hours in the Claimant’s ambulance. The patient was taken by patient transport from the ambulance sometime after 19.15. The Claimant recorded on the system 20.00 as the time the patient was taken and booked clear of the hospital

on the system at 20.04. Given that they had not taken an official meal break, this meant that they were fully protected in the last hour of the shift which means it would finish early at 21.00.

15. When the Claimant challenged the suggestion from Tony Albert that he take on a new patient in his ambulance on or around 17.00, even on a caretaker basis, Senior Officers within the Trust acknowledge he had a point. He was in a fully protected period. Mr Albert saw it differently at the time. Whilst holding a patient in their ambulance at Treliske, the Claimant and his colleague had access to food and drink. During Covid, for example, local pasty firms donated crates of pasties to NHS workers. There was ample food and drink. Whilst tending a patient, the Claimant and his colleague were working but were not engaging in emergency paramedic work. They were able to obtain food and drink.

16. Mr Albert took great pride in his ability to get crews off for the end of their shift by juggling queuing patients. That required crews to take other patients whilst queuing at the hospital. Goodwill was required to make the system work.

17. So, there was a conflict of points of view: Mr Albert wanted to juggle the patients and crews so that crews finished their shifts on time as near as possible; the Claimant was technically right that he was in a fully protected period for a meal break which had not been taken. That did not help the Penzance crew, though.

18. Mr Albert, further, doubts that the patient was taken from the Claimant's ambulance at 20.00. He suspects the Claimant delayed that entry so as to have the last hour of the shift fully protected without having had an official meal break, meaning the shift would end an hour early. Even if that were right, and the Claimant does not accept it, the County Commander, Mr Griffin, would not take significant issue with a step such as that because he acknowledges that it would have been taken for self-preservation purposes. The Claimant had worked an excess shift the day before and did not want to do so again. To their credit, in any event, the Claimant and Megan Birnie answered a General Broadcast in that final hour offering assistance, but were not required.

19. I find that Mr Albert made his displeasure clear. He did however accept the position and told the Claimant if he was not taking another queuing patient at the hospital to 'book clear', that is to say to book clear of the hospital so that he would be subject to Control. Control would see, however, that they were fully protected for the next hour. If it was the final hour, subject to General Broadcasts, the shift would end at 21.00.

20. The Claimant did receive criticism from colleagues. Toni Howell, Truro Paramedic, witnessed the exchanges and wrote the following in a statement she provided 1 year later:

On the 4th March 2022 whilst I was walking and talking to the HALO at RCHT, he was on his way to try get a Penzance crew off of shift. I witnessed the HALO tell a St Austell crew who had handed their pt over to the hospital, who were now free, had protected 1hr break
and weren't due to finish there shift for over 2hrs +, to take the patient over from a Penzance crew who had already finished and had over run by 30mins so they could get home. The ECA from St Austell appeared to already have an attitude from his body language as we approached him, the HALO was very blunt and told them not asked them. The ECA got extremely defensive over this simple task and said no we are not doing it we want to finish on time. To which the HALO replied well technically they've finished you haven't, just do it. Then an argument occurred between the crew and the HALO in the middle of the road between the ambulances, in front of people and patients. Had the ECA approached the HALO different I don't think it would have escalated like it did, the HALO did match the tone given but only after it was instigated first. I did not feel that this was an unfair or unreasonable request however the delivery of the request could have been different but I still believe it would have ended similarly as the crew appeared to have the attitude that they weren't going to help and had their backs up. I did also see the Penzance paramedic approach the crew as they were about to drive off and she had an argument with them, but I did not hear this just spoke to her afterwards.

21. Meliora Stevens, Penzance Paramedic, told Simon Taylor, an Operations Officer who was involved in an initial investigation of the Datix in March/April 2022, that she was aggrieved the Claimant did not take over her patient because she was already passed her finish time.

<u>Did the Claimant make a protected disclosure on 4 March 2022?</u>

<u>The Law on Protected Disclosure</u>

22. S.43A of the Employment Rights Act 1996 defines the meaning of "protected disclosure".

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

S. 43B defines disclosures qualifying for protection.

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

23. I accept the Claimant disclosed information. There was more than a bare allegation. A detailed account was given. The issue is whether the Claimant believed he was making the disclosure in the public interest.

24. The public interest question was considered by the Court of Appeal in Chesterton Global Ltd v Numohamed [2017] EWCA Civ 979. the Court gave the following guidance:

The tribunal has to determine:
(a) whether the worker subjectively believed at the time that the disclosure was in the public interest; and
(b) if so, whether that belief was objectively reasonable.

There might be more than one reasonable view as to whether a particular disclosure was in the public interest, and the tribunal should not substitute its own view.

In assessing the reasonableness of the worker's belief, the tribunal is not restricted to the reasons that were in the mind of the worker at the time. The worker's reasons are not of the essence, although the lack of any credible reason might cast doubt on whether the belief was genuine. However, since reasonableness is judged objectively, it is open to a tribunal to find that a worker's belief was reasonable on grounds which the worker did not have in mind at the time.

Belief in the public interest need not be the predominant motive for making the disclosure, or even form part of the worker's motivation. The statute uses the phrase "in the belief…" which is not same as "motivated by the belief…".

There are no "absolute rules" about what it is reasonable to view as being in the public interest. Parliament had chosen not to define what "the public interest" means in the context of a qualifying disclosure, and it must therefore have intended employment tribunals to apply it "as a matter of educated impression".

In a whistleblowing case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter in which the worker has a personal interest), there may 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. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but the four factors below may be "a useful tool":

(i) The numbers in the group whose interests the disclosure served. Tribunals should be cautious about finding the public interest test satisfied purely based on the number of affected employees, because of the "broad intent" of the legislators was that private workplace disputes should not attract whistleblowing protection. In practice, however, the larger the number of persons whose interests are engaged by a breach of their contracts of employment, the more likely it is that there will be other features of the situation which will engage the public interest.

(ii) The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed. Disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, or where the effect of the wrongdoing is marginal or indirect.

(iii) The nature of the alleged wrongdoing disclosed. Disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people.

(iv) The identity of the alleged wrongdoer. The larger or more prominent the wrongdoer (in terms of the size of its relevant community, that is, its staff, suppliers and clients), the more obviously a disclosure about its activities could engage the public interest, although this principle "should not be taken too far".

25. I agree with the submission of Mr Puar that the following is an important part of the Datix:

> At no point tonight did the HALO offer us a plan, ask if we could help out or, considering the length of shift with no break, food or drink, consider if we felt safe to work extended hours.

Earlier the Claimant related that he and his colleague felt shattered. If an ambulance driver does not feel safe to work extended hours, and he communicates that, he or she is doing that in the public interest. Ambulance crew provide life or death services to members of the public.

<u>The Datix was a protected disclosure</u>

26. I am satisfied that the Claimant believed he was raising their hours on behalf of himself and his crewmate but also on behalf of the public. It was necessarily on behalf of the public if he felt it unsafe to work extended hours. That belief was reasonable. The Datix was made to his employer and engaged matters of health and safety. It was a protected disclosure.

<u>The Claimant's mental impairment</u>

27. In its Amended Response the Respondent accepted that the Claimant was disabled by reason of PTSD, anxiety and depression. Dyslexia was asserted earlier in the proceedings but is not pursued as an issue to be determined here.

28. PTSD relates back to 2002 when the Claimant witnessed dead bodies of children. His mental health worsened when his father died in 2009. Anxiety and depression resurfaced in 2015 resulting from the Claimant's relationship with his ex-wife. He states he was the victim of an abusive

relationship. Medication was prescribed in 2016 and again from 2019. Prior to the Datix incident the Claimant's mental health had been better. He attributed that to group therapy. The Datix incident re-triggered mental ill health, the Claimant says. He was off ill for one day on 5 March 2022. He then had 2 weeks of annual leave. On 22 June 2022 he commenced a long period of absence.

29. An attendance management process ran in parallel to attempts at resolving the matters raised in the Datix.

The Treatment of the Datix

30. Richard Coad was the Operations Officer who was in an administration week at the time it was received. He asked Tony Albert for a response. Simon Taylor then took over administrative responsibility. On 30 March 2022 he spoke to Meliora Stevens, the Penzance paramedic who thought she should have been relieved. On 31 March 2022 he spoke with Toni Howell, the Truro paramedic who witnessed the matter. She criticised both Tony Albert and the Claimant. On 1 April 2022 he spoke to the Claimant. He also spoke to Megan Birnie, the Claimant's crew mate on 4 March 2022. Whilst she stood by the content of the Datix, she did not want any further involvement.

31. Mr Taylor liaised with Geoff Griffin, County Commander; Ashley Mann, Deputy County Commander and Megan Foster (HR). Given that under the Dignity & Respect at Work Policy issues should be resolved informally at first, mediation between the Claimant and Tony Albert was proposed.

32. A facilitated mediation, either with a Senior Officer or a trained mediator, was put to the Claimant on 22 April 2022. He turned it down on 27 and 29 April 2022. That was a great pity. During this Hearing before me both the Claimant and Tony Albert have said they would now agree to mediation. That is something the Respondent, the Claimant and Mr Albert could usefully arrange.

33. At the time, however, the Claimant rejected it. On 23 April 2022 he emailed Mr Taylor to say that had Mr Albert treated it as an 'honest mistake' a genuine apology 'would have more than sufficed'. His union advised him to go formal. He also had a friend, Dougie Woods, who works in NHS HR. The Claimant asserted that since the incident Mr Albert had ignored him when he tried to say hello, had given him 'dirty looks'. The Claimant perceived that Mr Albert had talked about the matter with colleagues and had bad-mouthed him.

34. In light of the Claimant's refusal to engage with mediation, he was invited to raise a formal grievance. The relevant link was emailed to him on 28 April 2022.

35. Mr Albert accepts engaging with the Claimant one day, probably when mediation was being mooted, saying to him 'we will have to agree to

disagree' about the events of 4 March 2022. Mr Albert says he was trying to make light of the matter. Mr Albert had not been told not to talk to the Claimant. That would not make sense operationally, for example, if Mr Albert was a duty commander when the Claimant was on shift.

36. Mr Woods started writing letters on the Claimant's behalf, albeit signed by the Claimant, and threatened Tribunal proceedings. The first of these was on 30 June 2022. Claims of disability discrimination and protected disclosure detriment were intimated. Complaint was made of the fact that the Claimant was asked to raise a grievance in these terms:-

> Having made a Datix complaint and spoken to a manager I would have expected the Trust to have reacted. Instead they have insisted I state a grievance without considering the obvious impact this would have on my mental health. The Trust is fully aware of my mental impairment and yet instead of making a reasonable adjustment and acting to support me they have insisted I make a formal grievance which has resulted in my absence from work with 'Work Related Stress'. Earlier this year my recovery was going well I was off medication and my condition was really good. This act of negligence by the Trust has significantly and seriously regressed my condition. I have to hold the Trust accountable for this.
>
> **This is a protected disclosure**
> The Public Interest Disclosure Act 1998 amended the law in respect of the definition of a public disclosure (The Employment Act 1996 c 18 Part IV A) which affords me the right to assert that my complaint is a protected disclosure (section 43 A), and I am entitled to the protections this offers. This is subject to a qualifying disclosure as shown in section 43B para iv. If you feel you have the right to challenge my complaint or my whistle blower protection ahead of me submitting my ET Claim please do so within the next 7 days.

37. I do not accept this position of the Claimant. He had turned down mediation in favour of a formal process. He was sent the grievance link which would have made it formal. He could have got Dougie Woods to help him with it. All he had to do was cut and paste his Datix and add any additional information. Instead, he signed a letter from Dougie Woods intimating a Tribunal claim. The Claimant's position is contradictory and does not make sense. If he was contemplating Tribunal claims, he could fill in a grievance.

38. On 1 July 2022 Mr Griffin, the County Commander, in seeking the Claimant's thoughts on next steps, pointed out that if informal routes are not successful under the Dignity and Respect at Work policy, then raising a grievance is the next step.

39. On 1 July 2022 the Claimant sent another letter drafted by Dougie Woods but signed by him intimating a Tribunal claim. The Claimant said on the one hand that he could not go through a formal process in his current condition; on the other, he said he would have to raise concerns 'to a number of external agencies'. The contradiction is clear.

40. The Claimant agreed to a meeting described as informal with Mr Griffin, the County Commander. After several attempts to hold the meeting, it took

place on 31 August 2022. Mr Woods attended as 'a personal friend'. Mr Griffin did not know at the time that Mr Woods was an HR professional. Following that meeting, Mr Griffin spoke to Tony Albert. In an email dated 15 September 2022 Mr Griffin informed the Claimant that Tony Albert was keen to get the Claimant back to work, as he was. Mr Griffin was keen to start conversations about getting the Claimant back to work and to consider support options.

41. On 29 September 2022 the Claimant sent Mr Griffin 'a letter of intent'. It was drafted by Dougie Woods but signed by him. The letter stated that the Claimant would bring a claim to the Employment Tribunal. In respect of any internal investigation into his complaints, the Claimant said this –

> Before I go on to outline my own intentions I will simply respond quickly to yours. For me it is entirely a matter for you to decide whether you launch an investigation now into my allegations. Let me be clear I will not be cooperating with any investigation beyond the support I have already provided, which is actually quite significant. Personally, I do not believe the most significant question is "should" you launch an investigation; it should be why have you not already done so. As I will shortly explain I believe this will be a very pressing question targeted at you from a number of significant external bodies who are shortly to be invited to engage in this matter.
>
> Whilst I appreciate you have a grievance policy the Trust has an undeniable duty of care to investigate breaches of such a serious nature. Indeed, it is very likely that based on all the information you have, and indeed had for some time, your failure to do so might reasonably be viewed as both negligence and/or a cover up. Certainly, I share this view. I believe the CQC takes a very dim view of organisations that use their own policies to delay or avoid conducting formal investigations into legitimate complaints. It is inexcusable that you have not sought to launch a proper investigation into this matter already.

42. So, the Claimant was not going to participate in any internal process. He was set on external processes including the CQC and the Employment Tribunal.

43. The Claimant also made reference to the fact that when he had attended a sickness absence review meeting on 26 September 2022, he came across Tony Albert in the office at Truro. The Claimant has suggested this was a choreographed attempt at bullying and harassing him. It was not. It was coincidence. I accept what Matthew Exelby (who conducted the Stage 1 meeting) and Tony Albert say about this. There had been no provision asked for that the Claimant never see Mr Albert. There had been a request from Mr Griffin to Mr Albert that all interactions would be professional. It was likely that he would see Mr Albert on occasions because Mr Albert worked with the Truro office. Mr Exelby's observation, which I accept, was that the Claimant did not appear impacted by seeing Mr Albert and they held the stage 1 absence review appropriately. Mr Albert committed no act of bullying as he walked past the Claimant.

44. The Claimant accepts that the meeting on 31 August 2022 with Mr Griffin was a friendly one. The Claimant maintain that he set out the following requests:

(a) That Mr Albert was not to be placed as his line manager in future;

(b) That he was not to work under Mr Albert except when Mr Albert was a commander on duty.

(c) That Tony Albert and the Respondent was to acknowledge that his behaviour towards him was not satisfactory and not to be repeated.

(d) Be given assurances that he would not suffer a detriment for making a whistleblowing complaint again and that his career would not be restricted for raising a genuine concern.

45. Mr Griffin's recollection of the meeting was different. He did not recollect those as the Claimant's conditions. The point he took away was to talk to Tony Albert to make sure there was no obstacle to the Claimant's return to work. The conversation was flowing with the Claimant and not divided into those conditions. He did talk to Tony Albert and reported back to the Claimant in his email of 15 September 2022. The focus of the meeting on 31 August 2022 was to get the Claimant back to work, he recalls. The meeting being informal, Mr Griffin kept no notes of it. I find that the Claimant did not lay down a series of conditions. Insofar as there is a conflict of account as to what happened at the 31 August meeting, I prefer Mr Griffin's.

46. On 17 October 2022 Erika Berryman of HR wrote to the Claimant to say that the 'investigation/review' of the Datix showed no evidence of bullying. Bullying at work involved repeated negative actions that are directed at one or more person. Management had made appropriate offers of facilitated meetings/mediation to rebuild the professional relationship with Tony Albert. There would be no progression of the Claimant's concerns through the disciplinary policy. It was his right to raise matters through the CQC and the Employment Tribunal. The Trust's main priority was to get the Claimant back to work. She proposed a meeting with Mr Griffin and herself as soon as possible.

47. On 19 October 2022 the Claimant challenged this letter in a Dougie Woods drafted letter, signed by him, which ended by saying he would send a 'balanced consideration' of Erika Berryman's involvement in his CQC and Employment Tribunal claims.

48. Complaint was made to the CQC on 16 November 2022. On 6 December 2022 they informed the Claimant that this was an employment dispute and they do not get involved in those.

49. Amy Beet, the Executive Director of People (Head of HR) and Deputy Chief Executive wrote to the Claimant on 22 November 2022. She expressed concern at the escalating nature of the matter, not least for the Claimant's welfare. She recognised that he remained unhappy with how things had been handled. She further noted that he had not presented a

grievance. There was therefore an impasse. She stated she would appoint an impartial investigation officer who would produce a report which would determine next steps. She reiterated that he remained a valued employee of the Respondent and they were committed to finding a resolution. She noted his WRAAF application had been declined, that his full pay sickness cover was coming to an end in December 2022. She chose to extend full pay for 2 months to 21 February 2023 hoping that matters would be resolved within that window.

50. Louise Huggett, Paramedic Operations Officer, Somerset, Local Somerset and Lead for Violence and Aggression Prevention, was appointed as investigator.

51. Amy Beet pointed out in the hearing that the Freedom to Speak Out Policy, the Respondent's whistleblowing policy, requires the employee to engage with the Dignity at Work Policy, the grievance policy, where the matter relates to the employee's personal position. There was no difference in this case, therefore, between the mechanism for raising a whistleblowing matter and raising a grievance. There was a different process where the matter raised concerned fraud, bribery or corruption, for example.

52. The first ET1 was 6 January 2023.

53. Amy Beet fed back to the Claimant's union rep on 28 March 2023. Amy Beet stated it was time for the Claimant to deal with Geoff Griffin in terms of resolving concerns and getting back to work. The internal investigation had reported that week. Definitions of bullying and harassment had been borne in mind. The evidence reviewed against these definitions had determined that the behaviour demonstrated by the 'HALO' should not be progressed formally, instead it was evidenced that there was poor behaviour demonstrated towards each other in that moment. As such, the County Commander would hold a further meeting with the HALO to share the impact this had on Simon and to set expectations moving forward. The County Commander would also meet with the Claimant to discuss rebuilding his professional relationship with the HALO. Options included a facilitated meeting or mediation.

54. Amy Beet confirmed the WRAAF decision but reiterated that full pay was paid throughout the period of investigation and would end at the end of March 2023, the end of the investigation.

55. It should be pointed out that the Claimant chose not to co-operate with the internal investigation. Further Megan Birnie had said she did not wish to be further involved. The Clamant told me that this is because she had been threatened with repercussions. However, there is no evidence to that effect and I reject it. She has now left the Trust. A statement had been obtained from Toni Howell, as referred to above. The Claimant has argued that Nathan Coombe should have been approached. Louise Huggett

explained in an email dated 28 April 2023 both about Nathan Coombe and Megan Birnie, as follows:-

> From my understanding and the details provided to me, Nathan Coombe was not raised to me as being a witness to anything so therefore I did not make contact with him.
>
> However, I spoke with Nathan last night and I can confirm that Nathan was working the night shift on the 4th March 2022 1800-0600hrs, he did see Simon Greenwood and Megan Birnie (Mel) at the Royal Cornwall Hospital Truro. Nathan confirms he did not witness any exchanges, screaming or ranting between the HALO (Anthony Albert) and Simon Greenwood. Nathan does note that Simon Greenwood appeared upset outside of the ED department.
>
> It would appear that Simon Greenwood has been contacting Nathan periodically through this timeline since this 4th March 2022 asking him to provide a statement. Nathan confirms recently seeing Simon Greenwood and Simon has again asked Nathan to provide a statement in relation to the events at the hospital with Anthony Albert and wanting confirmation that management have not contacted him as a witness.
>
> Simon Greenwood then emailed Nathan after seeing him in person, again requesting that Nathan provide a statement. I have not asked Nathan for an additional statement as he has little to add and he has already sent a reply to Simon Greenwood.
>
> In regards to Megan Birnie (Mel) yes, she has now left the trust. I have attached an entry on the timeline for the 1st July 2022 which relates to a letter from Simon Greenwood to Geoff Griffin. Simon of his own admission in the letter confirms;
>
> > I had a witness to the initial bullying complaint who, seeing that the Trust refused to actively support me, subsequently withdrew her support for my complaint.
>
> I understood this to be his crewmate Megan Birnie (Mel). It has been reflected in the draw report that she declined to provide a statement…

56. Indeed, Nathan Coombe wrote this to the Claimant on 19 March 2023.

> I can confirm no one from management has been in touch regarding this incident.
> As you may appreciate this event was more significant to you than me, but to my memory I was in and out of the dept, more than likely holding outside or waiting for handover (sorry I can't be more specific it was a while ago) and became peripherally aware that you had had a difference of opinions with AA about relieving another crew.
>
> You and Megs did seem annoyed/upset by this which is why I asked if you were ok later on.
>
> At no point did I witness screaming or ranting in RATS whilst I was in the department.
> I did not see anyone get sent outside.

<u>The WRAAF (Work Related Absence Form) decision</u>

57. The Claimant applied for work-related absence support. If someone sustains an injury at work then they do not lose full contractual sick pay. A

paradigm example would be if assaulted by a member of the public. The Claimant's argument was that he was suffering mental health issues caused by being bullied by Tony Albert at work. He argued that was work-related. Erika Berryman, HR, ruled on 15 November 2022 that sickness as a result of disputes relating to employment matters does not qualify.

58. This was upheld by Amy Beet but she exercised a discretion to pay full sick pay until the end of the internal investigation 31 March 2023 when otherwise it would have expired in or around January 2023.

59. The WRAAF policy says 'sickness absence as a result of disputes relating to employment matters, such as investigations or disciplinary action, or as a result of a failed application for promotion, secondment or transfer' is not covered.

GENERAL LEGAL PROVISIONS

60. I have dealt with the definition of a protected disclosure above. The remaining legal statutory provisions relevant to the Claimant's claims are as follows:

Detriment: s.47B Employment Rights Act 1996

Detriment on the ground of having made protected disclosures.

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

Harassment s26 EqA 2010

26 Harassment

(1)A person (A) harasses another (B) if—

(a)A engages in unwanted conduct related to a relevant protected characteristic, and

(b)the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a)the perception of B;

(b)the other circumstances of the case;

(c)whether it is reasonable for the conduct to have that effect.

<u>Victimisation s27 EqA 2010</u>

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a)B does a protected act, or

(b)A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

<u>Discrimination arising from disability s.15 EqA 2010</u>

60. S 15 Equality Act 2010 provides –

(1) A person (A) discriminates against a disabled person (B) if—
(a) A treats B unfavourably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have
been expected to know, that B had the disability.

<u>Failure to make reasonable adjustments: s.20 EqA 2010</u>

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

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

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid

Burden of Proof

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

In practice, the burden of proof rule means that a Claimant has to adduce facts showing a prima facie case of discrimination. If he does that, the burden transfers to the Respondent to show that discrimination played no role whatsoever: Igen v Wong [2005] IRLR 258, CA.

CONCLUSIONS

61. The Claimant in his list of issues helpfully sets out his core factual allegations in his list of issues and then reworks each under the statutory cause of action he relies upon. The factual claims remaining are 14 in number. Because of withdrawn allegations, the allegation numbers are not completely sequential. I will give my conclusions in respect of all causes of action relied upon under each allegation.

Allegation 1 (s47B; s15; Reas Adj; s26; 27): failure by the respondent to adequately investigate the claimant's complaint, concerns, and public interest disclosure.

62. I reject this allegation. The first reaction to the Datix from the Respondent was, after an initial investigation, to arrange a facilitated meeting or a mediation to restore the working relationship between the Claimant and Tony Albert early. That was an entirely sensible idea. Indeed it remains a sensible idea at the end of this litigation and both the Claimant and Tony Albert are open to it now. I recommend that this process at last takes place. Both individuals understand the importance of them having a good working relationship forward and both are committed to it. I commend them for it.

63. Once the Clamant decided against mediation, and he may have been unhelpfully advised (although it ultimately was his decision not to proceed with it), it was within the Respondent's policies, and in any event appropriate, to ask the Claimant to bring his complaint as a grievance. Under the whistleblowing policy, if the matter affects a colleague personally, the procedure dovetails with the grievance procedure. A grievance is required. That is not a detriment following a protected disclosure; it is a reasonable mechanism for dealing with a protected disclosure that impacts on the work of the colleague in question. This was also appropriate because the Claimant wanted to add matters post Datix. This process was entirely accessible to the Claimant and his advisers. All he had to do was cut and paste his Datix and add any subsequent matters. He could have done that; his union could have done that; Dougie Woods could have done that.

64. I am certain about that because instead of submitting a grievance, the Claimant put his name to a series of confrontational letters and emails declaring an intent to report the Respondent to the CQC and bring claims to the Employment Tribunal. All of which took place. It is fundamental to the Claimant's case in matter that he could not have been expected to submit a grievance. That position makes no sense when put alongside the litigious communications he was content to put his name to. His disability did not prevent him putting his name to those communications. I reject the suggestion that he could not have been expected to bring a grievance. He could have done it without complication.

65. Furthermore, he could have attended a meeting with HR. He attended a sickness absence meeting with Matthew Exelby. He attended an informal meeting with Geoff Griffin

66. The Claimant therefore caused the impasse that resulted from his refusal to put in a grievance. Amy Beet recognised the impasse and commissioned the internal investigation from Louise Huggett. The Claimant said he would not engage with the internal investigation and did not do so. That made life extremely difficult for the employer. It also meant it was highly unlikely he would achieve any particular result he wanted from the investigation, if he did want any result.

67. The merits, furthermore, of the 4 March 2022 incident are mixed. The Claimant had a point that he and his crew member did not want to work late once again. Tony Albert's point was that he had to juggle the competing interests of the various crews and to him the Penzance Crew, who were passed their shift end, needed relief. Their case was stronger, in his eyes. Covid, of course, was a challenging time for all. With both having a point, a resolution by way of facilitated meeting or a mediation was entirely apt.

68. The ultimate conclusion of the internal investigation that Tony Albert did not merit disciplinary sanction was within management discretion and fair. The Respondent did not fail adequately to investigate the Claimant's protected disclosure.

69. There was no detrimental treatment committed on the ground that there was a protected disclosure. It did not arise from his disability that he could not put in a grievance or attend a grievance hearing. Those requirements did not amount to unfavourable treatment. He could have done both of those things without complication. In any event, the Respondent would justify its procedure as involving a proportionate means of achieving a legitimate aim. If the Claimant wants a matter relating to their personal work investigating, they need to put in a grievance. There was no discrimination arising from disability. The PCP of requiring him to submit a grievance did not cause any substantial disadvantage. There was no failure to make reasonable adjustments. There was no conduct related to his disability either at all or reasonably regarded as harassment. There was no detrimental treatment following any protected act. The Claimant does not establish a prima facie case.

<u>Allegation 2 (s15; Reas Adj; s27) repeatedly refusing to formally to investigate the claimant's complaint unless he submitted a grievance in line with the respondent's grievance policy.</u>

70. It was the Respondent's procedure to investigate a protected disclosure that affected the work of the employee making the disclosure as a grievance. In terms of reasonable adjustments analysis, that was a provision criterion or practice. I reject the suggestion, however, that this PCP put the Claimant at a substantial disadvantage compared to someone who did not have his disability. That is because he was able to put his name to a series of confrontational letters and emails to the effect he wished to raise the matter with the CQC and make claims to the Employment Tribunal, both of which he did. Even if it required the help of his Union or Dougie Woods, he could have cut and pasted his Datix and added any further detail without difficulty. If he wanted resolution: put in the grievance; participate in the process.

71. It did not arise from his disability that he could not put in a grievance or attend a grievance hearing. Those requirements did not amount to unfavourable treatment. He could have done both of those things without

complication. In any event, the Respondent would justify its procedure as involving a proportionate means of achieving a legitimate aim. If the Claimant wants a matter relating to their personal work investigating, they need to put in a grievance. There was no discrimination arising from disability. The PCP of requiring him to submit a grievance did not cause any substantial disadvantage. There was no failure to make reasonable adjustments. There was no detrimental treatment following any protected act. The Claimant does not establish a prima facie case.

Allegation 3 (s15; Reas Adj; s27) failing to interview two key witnesses as repeatedly requested by the claimant.

72. Megan Birnie, the Claimant's crewmember, whilst happy to put her name to the original Datix, wanted no more to do with the process. I reject the suggestion that she was threatened with repercussions. There is no evidence to that effect. On the balance of probability, the reality is what it seems to be: she made her point in the Datix; she wanted it left there. She did not want to be interviewed.

73. Nathan Coombe was ultimately contacted by Louise Huggett. He had nothing substantive to add. There was no point interviewing him.

74. There was no unfavourable or detrimental treatment. There was no PCP applied which put the Claimant at any disadvantage. Megan Birnie wanted no further involvement. Nathan Combe had nothing substantive to add. The claim is rejected.

Allegation 4 (s47B; s26): refusal by the respondent to recognise their failings in investigating the complaint, concerns, and public interest disclosures.

75. The Claimant's position of i) not putting in grievance and ii) not participating in the internal investigation made it difficult for the Respondent to do anything other than find no disciplinary case to answer against Tony Albert and recommend a facilitated meeting/mediation. This was not detrimental treatment on the ground that the Claimant had made a protected disclosure. It was not harassment related to disability. As I say above, if he wanted resolution: put in the grievance, participate in the process. If he could put his name to the litigious letters threatening CQC referral and Employment Tribunal claim, he could have done that.

76. That said, it is difficult to see any other resolution other than to acknowledge the Claimant had a point as did Tony Albert. A facilitated meeting to get the Claimant back to work was always the sensible resolution.

77. The Respondent's witnesses all accepted that to an extent the Claimant had a point about the events of 4 March 2022. That said, there was a recognition of the pressures on the HALO at Truro Hospital during Covid,

when there were more patients than Hospital beds and the patients needed to queue up, waiting in ambulances, with some ambulance crews working past the end of their shift.

Allegation 5 (s47B; s26; s27): repeated refusal by the respondent to consider and/or to implement the four requests made by the claimant at the meeting held in August 2022 with Mr Geoff Griffin (County Commander) and thereafter.

78. I prefer Mr Griffin's account of this meeting. There were not 4 requests put forward by the Claimant in the way of conditions. Mr Griffin took from that meeting the need to talk to Mr Albert to make sure there was no obstacle to the Claimant returning to work. There was not. Mr Albert was keen for the Claimant to return to work. Mr Griffin wanted to get the Claimant back to work with support options. The Claimant wanted instead to explore a referral to the CQC and a claim to the Employment Tribunal. There was no detrimental treatment from the Respondent whether on the ground that there was a protected disclosure or a protected act. There was no unwanted conduct which reasonably could be regarded as harassment. The Respondent wanted the Claimant back at work.

Allegation 6 (s47B; s26): refusal by the respondent to recognise that the claimant's allegations amounted to bullying on 17 October 2022 and thereafter.

79. It is likely that Mr Albert did not hide his displeasure on 4 March 2022 that the Clamant and his crew member did not take the Penzance crew's patient. Erika Berryman's point was that the one-off event that day did not amount to sustained conduct which could be described as bullying. In the absence of the Claimant bringing a grievance about Mr Albert's conduct that day and any subsequent conduct, it was not realistic that the Respondent could find bullying. The position that mediation had been offered and that there would be no disciplinary proceeding against Tony Albert was one that was reasonably open to the Respondent. It was a position repeated following the Huggett review. There was no detrimental treatment of the Claimant on the ground that he had made a protected disclosure. There was no unwanted conduct which could reasonably be regarded as harassment. The Respondent's focus was to get the Claimant back to work. That was positive.

Allegation 7 (s47B; s15; Reas Adj; s26; s27): the respondent decided, on or around 15 November 2022, that the claimant's absence did not meet the requirements to be categorised as a "work related illness" and therefore his pay would be reduced by 50% and then eventually to nil if he did not return to work.

80. It was a bona fide decision that the Claimant's case did not qualify as work-related absence under the policy because it was the result of an

employment dispute, which was an excluded matter. It was not a decision taken because the Claimant had made a protected disclosure or made a protected act. The application of the policy did not put the Claimant at a substantial disadvantage compared to those who were not disabled for the purposes of reasonable adjustments. The absence was either as result of a dispute in connection with an employment matter or not. If it was, and so was excluded by the policy, the Respondent can justify not paying it. The Respondent arrived at a reasoned position it was open to them to take.

81. The position was mitigated by the fact that the Respondent extended full contractual sick pay until the end of the month in which the Huggett investigation reported.

Allegation 8 (s15 only) whilst the claimant was absent on sick leave from work, his "plus/minus" ruling hours of been changed by the Respondent from about -29.24 hours (in June 2022) to circa -53.41 hours. Therefore, the claimant is alleged to owe the respondent hours, despite not being in work.

82. This relates to rolling relief hours. This was corrected speedily. As Geoff Griffin said in his letter to the Claimant of 19 May 2023 -

> I can confirm that we have further reviewed the rolling relief balance and that where we had seen an increase in the negative balance, after booking fit it has realigned. We will continue to work with the ROC to understand what happened but can confirm that on entering sickness you were at -38:33 and as at today are showing -29:45.

The problem was a computer one. No person was involved. No one treated the Claimant unfavourably. The matter was corrected upon being pointed out.

Allegation 10 (s47B): the respondent's absolute and continued refusal to acknowledge the claimant's protected disclosure as a whistleblowing complaint or investigate it as such despite the claimant's repeated requests.

83. There is a fundamental factual misconception with the Claimant's case here: there is no difference between investigating it as a whistleblowing complaint and investigating it as a grievance. Where the content of the protected disclosure results from the employee's experience of work, the procedure is to investigate under the grievance policy. I reject the Claimant's case that he could not have written a grievance either on his own or with the support of his union or friend, Dougie Woods. It was principally a cut and paste job. He would still have had to attend a meeting with HR in any type of investigation, remotely (this was Covid) or otherwise. I reject any suggestion that he could not attend such meeting. There was no detrimental treatment of him.

Allegation 11 (s15) the respondent investigated Tony Albert's version of events from the events of March 2022, including witnesses supporting his statement. The claimant was not afforded the same treatment.

84. I reject this argument on the facts. The Claimant was invited to put in a grievance. He could have cut and pasted his Datix and added other information. He chose not to, preferring to concentrate on a CQC referral and intimate then start Employment Tribunal proceedings. He could have participated in the Huggett investigation. Instead, he said in advance that he was not going to participate. In all of those eventualities, his version would have been further considered.

85. Further, that Toni Howell did make the statement she did, shows that the merits of what happened on 4 March 2022 are mixed.

Allegation 12 (s15) as a result of the claimant's absence, his grievance was not investigated reasonably or fairly; therefore the respondent did not provide the claimant with the outcome he requested, which was four requests for assurances as follows: (a) acknowledgment that the incident at the respondent's ED in March 2022 was poorly handled by Tony Albert and the management follow-up was inadequate; (b) assurance that the claimant would not be a direct report of Tony Albert at any time in the future save in the capacity of duty bronze; (c) assurance that the claimant would be treated with respect by Tony Albert in line with Trust values; and (d) assurance to make endeavours that Tony Albert would not continue to make adverse comments about the claimant and taint his reputation.

86. I reject this on the facts. The Claimant chose not to put in a grievance and he chose not to engage with the Respondent's procedures and the Huggett investigation. He was able to do all of those things, notwithstanding being signed off work. Instead, he focused on a referral to the CQC and initiating Employment Tribunal proceedings. That may have been under advice, but nonetheless those were his decisions. The Respondent could reasonably come to a view that the merits of what happened on 4 March 2022 were mixed; that Tony Albert was doing his best to juggle ambulances and patients; and what happened did not merit disciplinary proceedings. The Respondent tried to stop the matter from escalating and to hold an early facilitated meeting/mediation at which all matters could have been aired and a resolution negotiated. The Claimant did not raise those 4 conditions in his meeting with Geoff Griffin. The focus of that meeting and of the Respondent generally, over the time frame the subject of these claims, was to get the Claimant back to work, where he is a valued employee.

87. There was never any suggestion that Tony Albert would be the Claimant's line manager. This was in any event confirmed by Amy Beet's letter of 30 November 2022.

88. Similarly, there were assurances in that letter that all employees had to observe the Trust's policies and that the Claimant was free to raise the

matter should any one transgress. This was reiterated in an email from Geoff Griffin to his Union representative Helen Coley, copied into the Claimant, on 16 May 2023.

89. There was in any event a limited acknowledgement of procedural error from the Respondent, again in Amy Beet's letter of 30 November 2022, namely that they should not have sent the Claimant a copy of Tony Albert's response to the Datix. The Claimant would have seen that ultimately, however, as proceedings progressed, whether grievance (had it been pursued) or Employment Tribunal. The Respondent otherwise maintained that their response had been appropriate.

90. A 'single response' to the Claimant's concerns was sent by Geoff Griffin on 19 May 2023. It was to the above effect.

91. The Respondent's position was not related to the Claimant's absence. It was neither unfavourable treatment at all nor because of absence.

Allegation 13 (s47B, s26): the respondent failed to put into place measures to prevent further incidences of bullying or unwanted contact between the claimant and Tony Albert following the disclosure; as a result, Tony Albert approached the claimant on or around April/May 2022 regarding mediation.

92. I reject this argument on the facts. By proposing a facilitated meeting/ mediation at the outset, the Respondent wanted to sort out the working relationship between the Claimant and Mr Albert straight away. The Datix having been shared with him, Tony Albert was under no doubt that his conduct was being looked at. The Claimant chose not to put in a grievance and he chose not to engage with the Huggett investigation. That made life difficult for the Respondent procedurally and managerially.

93. Mr Albert accepts engaging with the Claimant one day, probably when mediation was being mooted, saying to him 'we will have to agree to disagree' about the events of 4 March 2022. Mr Albert says he was trying to open up communication with the Claimant. Mr Albert had not been told not to talk to the Claimant. That would not make sense operationally, for example, if Mr Albert was a duty commander. Mr Albert was trying to sort the matter out.

94. There was no detriment on the ground that the Claimant had made a protected disclosure. There was no conduct which could reasonably be regarded as harassment.

Allegation 14 (s47B, s26): the claimant received an unexpected call from HR on or around August 2022 in which HR put immense pressure on the claimant to issue a grievance. This caused him stress, anxiety and upset. The respondent was aware of the claimant's mental state at this time and their actions were designed to violate the claimant's dignity or create an

environment that was intimidating, hostile, degrading, humiliating or offensive to the claimant.

95. I reject this on the facts. It is right that HR telephoned to inform the Claimant that he needed to put in a grievance to develop his position procedurally. I accept from the Claimant that he got the phone call. HR was right about the position, though. This was not done to harass him. The Claimant was able to put in a grievance. He was putting his name to very strongly-worded letters intimating referrals to the CQC and claims to the Employment Tribunal. He would also have been able to attend meetings with HR, as he attended at least one sickness absence meeting, and the meeting with Geoff Griffin on 31 August 2022.

96. There was no detrimental treatment whether at all or on the ground that he had made a protected disclosure. There was no conduct that could reasonably be described as harassment.

Allegation 15 (s26 only): when the claimant was at the respondent's HQ to attend the Stage 1 meeting, Tony Albert was in the room prior to the meeting. The respondent's failure to prevent this interaction between the claimant and Tony Albert was designed to violate the claimant's dignity or create an environment that was intimidating, hostile, degrading, humiliating or offensive to the claimant. Whilst this was discussed during the meeting, it was not acknowledged in the outcome letter from HR.

97. I reject this on the facts. It was a coincidence that Tony Albert was there. As soon as he saw the Claimant he left. Truro was one of his places of work. The Claimant made no further reference to the matter in the meeting with Mr Exelby. He made nothing of it. There was no need for it to be recorded in the outcome letter from HR. There was no position that the Claimant could never see Tony Albert. There was no harassment.

98. For all these reasons, whilst the Claimant is right that he made a protected disclosure, his substantive claims fail. They are dismissed.

Employment Judge Smail
Date: 05 June 2025
South West Region

Judgment sent to the parties on
10 June 2025 By Mr J McCormick

For the Tribunal Office

APPENDIX 1: THE ISSUES

1. JURISDICTION

1.1 The first claim was presented on 6 January 2023, and the second claim form was presented on 13 January 2023. The claimant commenced the Early Conciliation process with ACAS on 12 December 2022 (Day A). The Early Conciliation Certificate was issued on 14 December 2022 (Day B). Accordingly, any act or omission which took place before 13 September 2022 (which allows for an extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear the complaint.

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus the Early Conciliation extension) of the act or omission to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus the Early Conciliation Extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

1.3 Was the detriment complaint made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

1.3.1 Was the claim made to the Tribunal within three months (plus the Early Conciliation) beginning with the date of the act or failure to act which the complaint relates?

1.3.2 If not, where the act or failure is part of a series of similar acts or failures, was the claim made to the Tribunal within three months (plus the Early Conciliation) of the last of them?

1.3.3 If not, was it reasonably practicable for the claim to have been made to the Tribunal within the time limit?

1.3.4 If it was not reasonably practicable for the claim to have been made to the Tribunal within the time limit, was it made within a reasonable period?

2. PROTECTED PUBLIC INTEREST DISCLOSURES ('WHISTLEBLOWING')

2.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

2.1.1 The claimant relies on one disclosure, namely his disclosure to the respondent under its Datix system on 4 March 2022.

2.1.2 Was that a disclosure of 'information'?

2.1.3 Did the claimant believe the disclosure of information was made in the public interest?

2.1.4 Was that belief reasonable?

2.1.5 Did the claimant believe it tended to show that the health or safety of any individual had been, was being or was likely to be endangered?

2.1.6 Was that belief reasonable?

2.2 If the Claimant made a qualifying disclosure, then it was a protected disclosure because it was made to the Claimant's employer pursuant to section 43C(1)(a) of the Act.

3. THE CLAIMANT'S ALLEGATIONS GENERALLY

3.1 Did the Respondent do the following things:

3.1.1 Allegation 1 (s47B; s15; Reas Adj; s26; 27): failure by the respondent to adequately investigate the claimant's complaint, concerns, and public interest disclosure; and

3.1.2 Allegation 2 (s15; Reas Adj; s27) repeatedly refusing to formally to investigate the claimant's complaint unless he submitted a grievance in line with the respondent's grievance policy; and

3.1.3 Allegation 3 (s15; Reas Adj; s27) failing to interview two key witnesses as repeatedly requested by the claimant; and

3.1.4 Allegation 4 (s47B; s26): refusal by the respondent to recognise their failings in investigating the complaint, concerns, and public interest disclosures; and

3.1.5 Allegation 5 (s47B; s26; s27): repeated refusal by the respondent to consider and/or to implement the four requests made by the claimant at

the meeting held in August 2022 with Mr Geoff Griffin (County Commander) and thereafter; and

3.1.6 Allegation 6 (s47B; s26): refusal by the respondent to recognise that the claimant's allegations amounted to bullying on 17 October 2022 and thereafter; and

3.1.7 Allegation 7 (s47B; s15; Reas Adj; s26; s27): the respondent decided, on or around 15 November 2022, that the claimant's absence did not meet the requirements to be categorised as a "work related illness" and therefore his pay would be reduced by 50% and then eventually to nil if he did not return to work; and

3.1.8 Allegation 8 (s15 only) whilst the claimant was absent on sick leave from work, his "plus/minus" ruling hours of been changed by the Respondent from about -29.24 hours (in June 2022) to circa -53.41 hours. Therefore, the claimant is alleged to owe the respondent hours, despite not being in work; and

3.1.9 Deleted

3.1.10 Allegation 10 (s47B): the respondent's absolute and continued refusal to acknowledge the claimant's protected disclosure as a whistleblowing complaint or investigate it as such despite the claimant's repeated requests; and

3.1.11 Allegation 11 (s15) the respondent investigated Tony Albert's version of events from the events of March 2022, including witnesses supporting his statement. The claimant was not afforded the same treatment; and

3.1.12 Allegation 12 (s15) as a result of the claimant's absence, his grievance was not investigated reasonably or fairly; therefore the respondent did not provide the claimant with the outcome he requested, which was four requests for assurances as follows: (a) acknowledgment that the incident at the respondent's ED in March 2022 was poorly handled by Tony Albert and the management follow-up was inadequate; (b) assurance that the claimant would not be a direct report of Tony Albert at any time in the future save in the capacity of duty bronze; (c) assurance that the claimant would be treated with respect by Tony Albert in line with Trust values; and (d) assurance to make endeavours that Tony Albert would not continue to make adverse comments about the claimant and taint his reputation; and

3.1.13 Allegation 13 (s47B, s26): the respondent failed to put into place measures to prevent further incidences of bullying or unwanted contact between the claimant and Tony Albert following the disclosure; as a result, Tony Albert approached the claimant on or around April/May 2022 regarding mediation; and

3.1.14 Allegation 14 (s47B, s26): the claimant received an unexpected call from HR on or around August 2022 in which HR put immense pressure on the claimant to issue a grievance. This caused him stress, anxiety and upset. The respondent was aware of the claimant's mental state at this time and their actions were designed to violate the claimant's dignity or create an environment that was intimidating, hostile, degrading, humiliating or offensive to the claimant; and

3.1.15 Allegation 15 (s26 only): when the claimant was at the respondent's HQ to attend the Stage 1 meeting, Tony Albert was in the room prior to the meeting. The respondent's failure to prevent this interaction between the claimant and Tony Albert was designed to violate the claimant's dignity or create an environment that was intimidating, hostile, degrading, humiliating or offensive to the claimant. Whilst this was discussed during the meeting, it was not acknowledged in the outcome letter from HR; and

3.1.16 Deleted

3.1.17 Deleted

4. WHISTLEBLOWING DETRIMENT (S47B OF THE ACT)

4.1 Did the Respondent do the following things:

4.1.1 4.1.1 Allegation 1 (s47B; s15; Reas Adj; s26; 27): failure by the respondent to adequately investigate the claimant's complaint, concerns, and public interest disclosure; and

4.1.2 4.1.2 Allegation 4 (s47B; s26): refusal by the respondent to recognise their failings in investigating the complaint, concerns, and public interest disclosures; and

4.1.3 Allegation 5 (s47B; s26; s27): repeated refusal by the respondent to consider and/or to implement the four requests made by the claimant at the meeting held in August 2022 with Mr Geoff Griffin (County Commander) and thereafter; and

4.1.4 Allegation 6 (s47B; s26): refusal by the respondent to recognise that the claimant's allegations amounted to bullying on 17 October 2022 and thereafter; and

4.1.5 Allegation 7 (s47B; s15; Reas Adj; s26; s27): the respondent decided, on or around 15 November 2022, that the claimant's absence did not meet the requirements to be categorised as a "work related illness" and therefore his pay would be reduced by 50% and then eventually to nil if he did not return to work; and

4.1.6 Deleted

4.1.7 Allegation 10 (s47B): the respondent's absolute and continued refusal to acknowledge the claimant's protected disclosure as a whistleblowing complaint or investigate it as such despite the claimant's repeated requests; and

4.1.8 Allegation 13 (s47B, s26): the respondent failed to put into place measures to prevent further incidences of bullying or unwanted contact between the claimant and Tony Albert following the disclosure; as a result, Tony Albert approached the claimant on or around April/May 2022 regarding mediation; and

4.1.9 on or around August 2022 in which HR put immense pressure on the claimant to issue a grievance. This caused him stress, anxiety and upset. The respondent was aware of the claimant's mental state at this time and their actions were designed to violate the claimant's dignity or create an environment that was intimidating, hostile, degrading, humiliating or offensive to the claimant; and

4.1.10 Deleted

4.1.11 Deleted

4.2 By doing so, did it subject the Claimant to detriment?

4.3 If so, was it done on the ground that the claimant had made the protected disclosure set out above?

5. DISABILITY

5.1 The respondent accepts that the Claimant had a disability as defined in section 6 of the Equality Act 2010 at all material times by reason of three impairments: (i) Post Traumatic Stress Disorder (PTSD); (ii) Depression; and (iii) Anxiety.

5.2 Deleted

6. DISCRIMINATION ARISING FROM DISABILITY (s15 EQUALITY ACT 2010)

6.1 Did the respondent treat the claimant unfavourably by:

6.1.1 Allegation 1 (s47B; s15; Reas Adj; s26; 27): failure by the respondent to adequately investigate the claimant's complaint, concerns, and public interest disclosure (although the wording "concerns, and public interest disclosure" does not apply to the s15 EqA claim); and

6.1.2 Allegation 2 (s15; Reas Adj; s27) repeatedly refusing to formally to investigate the claimant's complaint unless he submitted a grievance in line with the respondent's grievance policy; and

6.1.3 Allegation 3 (s15; Reas Adj; s27) failing to interview two key witnesses as repeatedly requested by the claimant; and

6.1.4 Allegation 7 (s47B; s15; Reas Adj; s26; s27): the respondent decided, on or around 15 November 2022, that the claimant's absence did not meet the requirements to be categorised as a "work related illness" and therefore his pay would be reduced by 50% and then eventually to nil if he did not return to work; and

6.1.5 Allegation 8 (s15 only) whilst the claimant was absent on sick leave from work, his "plus/minus" ruling hours of been changed by the Respondent from about -29.24 hours (in June 2022) to circa -53.41 hours. Therefore, the claimant is alleged to owe the respondent hours, despite not being in work; and

6.1.6 Allegation 11 (s15) the respondent investigated Tony Albert's version of events from the events of March 2022, including witnesses supporting his statement. The claimant was not afforded the same treatment; and

6.1.7 Allegation 12 (s15) as a result of the claimant's absence, his grievance was not investigated reasonably or fairly; therefore the respondent did not provide the claimant with the outcome he requested, which was four requests for assurances as follows: (a) acknowledgment that the incident at the respondent's ED in March 2022 was poorly handled by Tony Albert and the management follow-up was inadequate; (b) assurance that the claimant would not be a direct report of Tony Albert at any time in the future save in the capacity of duty bronze; (c) assurance that the claimant would be treated with respect by Tony Albert in line with Trust values; and (d) assurance to make endeavours that Tony Albert would not continue to make adverse comments about the claimant and taint his reputation

6.2 Did the following things arise in consequence of the claimant's disability? The Claimant's case is that the "something arising" was: (i) his inability to write a formal grievance and request for the respondent to consider his original Datix complaint to be treated as the grievance; (ii) his inability to attend a grievance hearing in person; and (iii) his sickness absence from 22 June 2022.

6.3 Was the unfavourable treatment because of any of these things which are said to have arisen form the claimant's disability?

6.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were to follow its employment policies.

6.5 The Tribunal will decide in particular:

6.5.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims; and

6.5.2 Could something less discriminatory have been done instead; and

6.5.3 How should the needs of the claimant and the respondent be balanced?

6.6 Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? If so, from what date?

7. REASONABLE ADJUSTMENTS

7.1 Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability in question? If so, from what date?

7.2 A "PCP" is provision, criterion or practice. Did the Respondent have the following PCPs:

7.2.1 PCP 1: the respondent's requirement for employees to submit a formal grievance as per the respondent's grievance policy; and

7.2.2 PCP2: the respondent's requirement for employees to attend a grievance hearing in person; and

7.2.3 PCP3: the respondent's policy on "work-related absence" and/or the application of this policy (and sick pay policy/contractual terms)

7.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

7.3.1 Allegation 1 (s47B; s15; Reas Adj; s26; 27): failure by the respondent to adequately investigate the claimant's complaint, concerns, and public interest disclosure (although the wording "concerns, and public interest disclosure" does not apply to the s15 EqA claim); and

7.3.2 Allegation 2 (s15; Reas Adj; s27) repeatedly refusing to formally to investigate the claimant's complaint unless he submitted a grievance in line with the respondent's grievance policy; and

7.3.3 Allegation 3 (s15; Reas Adj; s27) failing to interview two key witnesses as repeatedly requested by the claimant; and

7.3.4 Allegation 7 (s47B; s15; Reas Adj; s26; s27): the respondent decided, on or around 15 November 2022, that the claimant's absence did not meet the requirements to be categorised as a "work related illness" and therefore his pay would be reduced by 50% and then eventually to nil if he did not return to work

7.4 Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

7.5 What steps the ('adjustments') could have been taken to avoid the disadvantage? The claimant suggests:

7.5.1 using the claimant's original Datix complaint as the formal grievance; and

7.5.2 carrying out a fair and thorough investigation. If the respondent had carried out such an investigation, the claimant would have achieved his four desired outcomes, which were (a) acknowledgment that the incident at the respondent's ED in March 2022 was poorly handled by Tony albert and the management follow-up was inadequate; (b)assurance that the claimant would not be a direct report of Tony Albert at any time in the future save in the capacity of duty bronze; (c) assurance that the claimant would be treated with respect by Tony Albert in line with Trust values; and (d) assurance to make endeavours that Tony albert would not continue to make adverse comments about the claimant and taint his reputation; and

7.5.3 interviewing all the relevant witnesses; and

7.5.4 treating the claimant's subsequent complaints that the investigation was flawed as an appeal of his grievance and carrying out a full investigation of the complaint; and

7.5.5 dealing with the claimant's investigation meeting on paper as opposed to requiring his physical attendance; and

7.5.6 discounting the claimant's disability related absence when applying the "work-related absence" and sick pay policy/contractual terms.

7.6 Was it reasonable for the respondent to have taken those steps and when?

7.7 Did the respondent fail to take those steps?

8. HARASSMENT RELATED TO DISABILITY

8.1 Did the respondent do the following things:

8.1.1 Allegation 1 (s47B; s15; Reas Adj; s26; 27): failure by the respondent to adequately investigate the claimant's complaint, concerns, and public interest disclosure; and

8.1.2 Allegation 4 (s47B; s26): refusal by the respondent to recognise their failings in investigating the complaint, concerns, and public interest disclosures; and

8.1.3 Allegation 5 (s47B; s26; s27): repeated refusal by the respondent to consider and/or to implement the four requests made by the claimant at the meeting held in August 2022 with Mr Geoff Griffin (County Commander) and thereafter; and

8.1.4 Allegation 6 (s47B; s26): refusal by the respondent to recognise that the claimant's allegations amounted to bullying on 17 October 2022 and thereafter; and

8.1.5 Allegation 7 (s47B; s15; Reas Adj; s26; s27): the respondent decided, on or around 15 November 2022, that the claimant's absence did not meet the requirements to be categorised as a "work related illness" and therefore his pay would be reduced by 50% and then eventually to nil if he did not return to work; and

8.1.6 Deleted

8.1.7 Deleted

8.1.8 Allegation 13 (s47B, s26): the respondent failed to put into place measures to prevent further incidences of bullying or unwanted contact between the claimant and Tony Albert following the disclosure; as a result, Tony Albert approached the claimant on or around April/May 2022 regarding mediation; and

8.1.9 Allegation 14 (s47B,s26): the claimant received an unexpected call from HR on or around August 2022 in which HR put immense pressure on the claimant to issue a grievance. This caused him stress, anxiety and upset. The respondent was aware of the claimant's mental state at this time and their actions were designed to violate the claimant's dignity or create an environment that was intimidating, hostile, degrading, humiliating or offensive to the claimant; and

8.1.10 Allegation 15 (s26 only): when the claimant was at the respondent's HQ to attend the Stage 1 meeting, Tony Albert was in the room prior to the meeting. The respondent's failure to prevent this interaction between the claimant and Tony Albert was designed to violate the claimant's dignity or create an environment that was intimidating, hostile, degrading, humiliating or offensive to the claimant. Whilst this was discussed during the meeting, it was not acknowledged in the outcome letter from HR; and

8.1.11 Deleted

8.2 If so, was that unwanted conduct?

8.3 Did it relate to the claimant's protected characteristic, namely his disability?

8.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

8.5 If not, did it have the effect? The Tribunal will consider the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

9. VICTIMISATION

9.1 The respondent concedes that the claimant did the following protected acts:

9.1.1 PA1: on 30 June 2022, the Claimant's letter to Mr Geoff Griffin; and

9.1.2 PA2: on 7 July 2022 the claimant's letter to MR Geoff Griffin; and

9.1.3 PA3: 19 October 2022 claimant's letter to Mr Geoff Griffin (copied to Erika); and

9.1.4 PA4: 4 November 2022 the claimant's work-related absence application form; and

9.1.5 PA5: on 22 November 2022 the claimant's e-mail to Amy Beet.

9.2 If there is a prima facie determination that the claimant made one or more protected acts, did he do so in bad faith, namely:

9.2.1 did the claimant give false evidence or information; and/or

9.2.2 did the claimant make a false allegation?

9.3 Did the respondent do the following things:

9.3.1 Allegation 1 (s47B; s15; Reas Adj; s26; 27): failure by the respondent to adequately investigate the claimant's complaint, concerns, and public interest disclosure; and

9.3.2 Allegation 2 (s15; Reas Adj; s27) repeatedly refusing to formally to investigate the claimant's complaint unless he submitted a grievance in line with the respondent's grievance policy; and

9.3.3 Allegation 3 (s15; Reas Adj; s27) failing to interview two key witnesses as repeatedly requested by the claimant; and

9.3.4 Allegation 5 (s47B; s26; s27): repeated refusal by the respondent to consider and/or to implement the four requests made by the claimant at the meeting held in August 2022 with Mr Geoff Griffin (County Commander) and thereafter; and

9.3.5 Allegation 7 (s47B; s15; Reas Adj; s26; s27): the respondent decided, on or around 15 November 2022, that the claimant's absence did not meet the requirements to be categorised as a "work related illness" and therefore his pay would be reduced by 50% and then eventually to nil if he did not return to work.

9.4 By doing so, did the respondent subject the claimant to detriment?

9.5 If so, was it because the claimant had done the protected acts?

10, 11, 12,- DELETED