EMPLOYMENT TRIBUNALS

Claimant: X
Respondent: Medical Services International Limited

Heard at London Central (by CVP)
On: 30/6/2025 to 3/7/25
Before: Employment Judge Mr J S Burns

Representation
Claimant: Dr H Patel (Friend)
Respondent: Mrs J Callan (Counsel)

JUDGMENT

The claims are dismissed

REASONS

1. These were claims of (i) detriment caused by protected disclosures (ii) automatic unfair dismissal (iii) harassment related to disability and (iv) failure to make reasonable adjustments for disability as set out in Schedule 1 (List of Issues) to these Reasons.

2. I heard evidence from the Claimant and then from the Respondent's witnesses Ms P Mahendran (Head of Transformational Development) and then Ms S Morgan (Chief Commercial Officer and the Claimant's erstwhile line-manager). The documents were in a bundle of 1177 pages. I was sent a link to the Claimant's medical records. I received written and oral final submissions from each side. The Respondent's written submissions included a chronology which I have reproduced in an abridged form in Schedule 2

3. There was no contemporaneous documentation to support much of the Claimant's case, despite the fact that both the Claimant and Ms Morgan are persons of the type would be likely to record important matters in writing, and the fact that the bundle included an extract from a confidential personal diary in which the Claimant recorded events on a daily basis.

Relevant law

Protected disclosures

4. A protected disclosure is a disclosure of information which in the reasonable belief of the worker (which term includes but is not limited to "employee") making the disclosure, is made in the public interest and tends to show one of the states of affairs listed in section 43B(1)(a) to (f) and it must be made in accordance with any of the sections 43C to 43H Employment Rights Act 1996.

5. A “disclosure” does not include behaviour related to or leading up to the disclosure. The belief must be reasonable, judged at the time, even if the information is incorrect.

6. In Chesterton v Nurmohamed [2017] EWCA Civ 979 it was held that it is necessary for the ET to determine whether the worker subjectively believed at the time that the disclosure was in the public interest and, objectively, that belief was reasonable. Underhill LJ warned tribunals to be cautious of offending the “*broad intent*” behind the public interest test, which was to prevent the law being prayed in aid over “*private workplace disputes*”, even those involving a number of employees.

7. By virtue of 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.

8. Detriment is not defined by statute. The question to be asked is whether in all the circumstances a reasonable worker would or might take the view that he had been disadvantaged in the circumstances in which he had to work.

9. Whether or not the detriment or dismissal flows from a protected disclosure is a question of causation. The detriment must be more than just related to the disclosure for a link to be established. It is not enough to establish that but for the disclosure the employers act or omission causing the act of detriment would not have happened. The Tribunal must consider the mental processes that caused the employer to act or fail to act to determine whether the disclosure actually caused the detriment or dismissal.

10. Section 48(2) provides that in a complaint about detrimental treatment it is for the employer to show the ground on which any act or deliberate failure to act was done.

11. Section 103A provides that an employee who is dismissed shall be treated 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.

12. It is for the employee to show that a protected disclosure which has been established by the employee was the reason or principal reason for the dismissal.

Disability

13. Section 4 Equality Act 2010 (EA) provides that disability is a protected characteristic.

14. Per section 6, a person has a disability if they have a physical or mental impairment which has a substantial (which means “more than minor or trivial” per section 212 and a limitation going beyond the normal differences which may exist between people) and long-term adverse effect on his ability to carry out normal day to day activities.

15. In assessing whether there is or would be a substantial effect, one disregards measures such as medical measures which are being used to treat it. Sch 1 para 5(1) and (2).

16. Normal day to day activities are activities such as walking, driving, typing and forming social relationships.

17. The effect is long term if it has lasted or is likely ("could well happen") to last 12 months or for the rest of the person's life (Sch 1 para 2)

Failure to make Reasonable Adjustments

18. Section 20 read with 21 provide that a person discriminates against a disabled person if he fails to comply with a duty to make reasonable adjustments.

19. Section 20(1)(3) provides that where a provision, criterion or practice (PCP) of A's puts the disabled person concerned at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, it is the duty of A to take such steps as it is reasonable to have to take to avoid the disadvantage.

20. In the absence of a provision or criterion, there has to be something that can qualify as a "practice" in order for the duty of reasonable adjustment to apply. The term "practice" has something of the element of repetition about it. A one-off application of a disciplinary process cannot reasonably be regarded as a practice. If it relates to a procedure, it must be something that is applicable to others than the disabled person. If that were not the case, there would be no comparative disadvantage between the disabled person and the others to whom the alleged practice would also apply. (Nottingham CT v Harvey 2013 EAT).

21. A PCP connotes a 'state of affairs, indicating how similar cases are generally treated or how a similar case would be treated if it occurred again.' In relation to practice, this implies the way in which things are generally done or will be done. It is not necessary for a practice to already have been applied to another person, if there is an indication that it would be done again in future if a similar case were to arise." (Simler LJ in Ishola v TFL EWCA Civ 112 7/2/2020.0

22. Section 20(1)(4) provides that where a physical feature puts the disabled person concerned at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, it is the duty of A to take such steps as it is reasonable to have to take to avoid the disadvantage.

23. Section 20(1)(5) provides that 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, it is the duty of A to take such steps as it is reasonable to have to take to provide the auxiliary aid.

24. Para 20(1) of Part 3 of Sch 8 provides that there is no duty to make adjustments if the employer does not know and could not reasonably be expected to know both that a disabled person has a disability and is liable to be placed at the disadvantage.

Harassment

25. Section 26 provides that a person harasses another where the harasser engages in unwanted conduct related to a relevant protected characteristic, which has the purpose or

effect of violating the others dignity or creating an intimidating hostile degrading humiliating or offensive environment for him. In deciding whether conduct has this effect the following must be taken into account: the perception of the other, the other circumstances of the case and whether it is reasonable for conduct to have that effect.

Onus of proof

26. Section 136 provides that it there are facts from which a court could decide, in the absence of any other explanation that a person has contravened a provision under the EA, the court must hold that the contravention occurred, unless the person shows that he did not contravene the provision.

Findings of Fact

27. The Respondent trades as Bupa Cromwell Hospital, for insured, self-paying and embassy sponsored customers.

28. The Respondent employed the Claimant as Head of Development, from 2nd January 2024 until her dismissal with effect from 26th April 2024.

29. The Claimant was responsible for leading the hospital's development strategy, including identifying and developing new services and pathways.

30. The first six months of the Claimant's employment was a probation period.

31. The commercial development team operates on three sites: namely the hospital in Cromwell Road London, office accommodation in 4 Pennant Muse, (which is immediately adjacent to the hospital on it's north side), and offices in High Street, Kensington (HSK). which is about 1 mile away. Administrative and business development employees such as the protagonists in this case frequently walked between the hospital/Pennant street and HSK, on a route shown on Google Maps as a 15 minute walk or 4 minutes on a bicycle.

32. The job description referred to the role as based at the twin locations (hospital/HSK). The interview took place at the hospital and the Claimant's pre-start team introduction on 14/12/23 took place at both locations. The Claimant's contract stated "*Your normal place of work is Cromwell hospital London. We may require you to travel as part of your role to other locations including Bupa sites within the UK".*

33. There was a desk and lockers available for the Claimant at HSK, a hotdesking arrangement in 4 Pennant Muse, where the Claimant could and did use desks when she was away from HSK, and there were also desks and lockers which the Claimant could have used in the "admin corridor" within the hospital itself. However, I find that the Claimant did not raise any issues or requests about desks or lockers during her employment.

The Claimant's impairments/claimed disability

34. The Claimant claims that she was disabled by anxiety, depression, PTSD, chronic foot pain due to bunions, and musculoskeletal injuries from a cycling accident in February 2024.

anxiety, depression, PTSD,

35. The Claimant was diagnosed with anxiety and depression in 2011 and PTSD in 2021 and during the time relevant to this case (ie January to April 2024) she was taking anti-depressants and attending weekly CBT therapy sessions. The condition/s had plainly lasted for in excess of 12 months. I accept the Claimant's evidence that the condition/s significantly impair her ability to manage stress, process information, maintain focus and that they have a negative effect on her energy, motivation, and ability to maintain consistent productivity and manage interpersonal conflict. For these reasons I find that the Claimant was disabled by her mental health problems at the relevant time. (January to April 2024)

foot pain/bunions

36. The Claimant, whose date of birth is 27/10/1988, during her adolescence started to have problems with bunions which are a genetic deformity of the feet. She had many medical interventions for this over the years and major surgery in 2015. She had knee surgery in 2021. Until then she had not run for 20 years. In 2022 she took up running and became the captain of her university alumni running club in London. She was referred on 2/10/23 for an X-ray on her feet which was carried out in May 2024. On 9/10/23 she completed a half-marathon. She stated in oral evidence that following that half-marathon she gave up running because of foot pain. She also claimed that the condition caused her significant pain and distress when walking, particularly in dress shoes. She said that when she started working for the Respondent in January 2024, she found that the regular walks between the sites referred to above caused her pain and debility. She underwent bi-lateral foot surgery on 21/11/24.

37. In her witness statement Ms Morgan stated *"We did that walk (between the two sites) together on several occasions and I did not detect that she was in any discomfort.*"

38. Ms Mahendran (who was a colleague and peer of the Claimant, and doing similar work to her), referred in her oral evidence to the fact that in January and February 2024 she and the Claimant "*shared apple rings*", which are a feature on Apple watches which record exercise and physical movement by wearers. The ring is shown as completed when the day's target for such activity is reached. It is possible to share one's progress with friends who are also wearing their own Apple watches using this feature. She and the Claimant shared their respective progress in this manner until the Claimant suffered her cycle accident on 20/2/24. During that period Ms Mahendran was able to observe that the Claimant was "completing her rings" by running and Zumba (which is an athletic Brazilian dance style). She produced an example of a screenshot of the Claimant's completed Apple ring dated 2/2/24 showing that the Claimant had completed 119% of her target that day, burning 584/490 KCAL[1].

[1] A person typically burns around 100 calories per mile when running, but this can vary based on weight, pace and individual metabolism.

39. Ms Mahendran also stated that during the same period she walked about a dozen times between the work sites with the Claimant during which walks the Claimant did not complain about or show any foot pain or walking problems whatsoever. The only discussion she recalled having with the Claimant about footwear was when the Claimant complimented Ms Mahendran on her Doc Martins.

40. Having heard this evidence from Ms Mahendran I recalled the Claimant to give her an opportunity to comment on it. She agreed that she had shared her Apple rings with Ms Mahendran in January and February 2024 and that the feature allows particular types of exercise to be displayed as completed. She said she had completed some of her targeted activity by "*brisk walking*" and that she "*didn't know if she had selected Zumba dancing and running..perhaps the Apple watch had misrecorded the type of activity*". Finally, she agreed that "her friend" (ie Ms Mahendran) "*was being honest*" (in her evidence) about this.

41. I conclude that although unfortunately the Claimant has been troubled by her feet for much of her life, and has required surgical intervention for this both before and after her employment, in the period of two years immediately prior to her employment she was able to complete and participate in long-distance running, and during her employment up to the date of her cycle accident was able to and did cycle to and from work, walk distances up to around a mile at a time "briskly" without any problems evident to her companions, and furthermore that she willingly engaged in significant further activity such as running and athletic dancing on a daily basis.

42. While this activity is commendable and was no doubt good for the Claimants health, it does lead me to the conclusion that although the Claimant had a long-term impairment in her feet, it did not have a substantial adverse effect on her day-to-day activities at the relevant time and had probably not done so for at least a few years previously. Hence the Claimant has not proved that she was disabled by her feet or claimed mobility problems.

<u>musculoskeletal injuries from a cycling accident on 20/2/24</u>

43. This was a severe accident breaking the Claimant's her right wrist and elbow, and causing ligament tears, and ongoing right shoulder pain due to a nerve irritation. The Claimant was signed off from work for a month after the accident but was well enough to start work again after that, working from home for a month, after which, but for her dismissal, she was to return to working at the Respondent's premises.

44. The Claimant claims that these injuries limited her ability to type for long periods and perform physical tasks, and that "*even holding a cup of tea can be painful*". I accept that evidence insofar as it refers to the period of a few months after the accident only.

45. The normal prognosis for broken upper limbs suffered by an adult of the Claimant's age is that the main symptoms have resolved in a few months. The specialist medical advice which the Claimant received shortly after the accident (from a GP signing her off sick until 30/3/24, and then from Mr Zaman, an Orthopaedic surgeon, advising that she should be allowed to

work from home until 22/4/2020 and then return to work in the office) is consistent with this expectation at the time. Despite my flagging this up during the Hearing, I was not shown any objective evidence that during the relevant time – ie in the period from 20/2/24 until the date of the dismissal decision on 19/4/24. it was likely that the impairment would last at least 12 months, and I find that it was unlikely.

46. Hence the Claimant has not proved that she was disabled by musculoskeletal injuries from a cycling accident in the period from the date of that accident until dismissal.

Respondent's knowledge of the Claimant's pre-existing health conditions

47. Before entering employment, the Claimant filled in a Respondent's health questionnaire in which she gave negative answers to the questions *"Do you currently have or have you ever had any of the following conditions? Musculoskeletal conditions that may affect ability to perform work tasks; Mental health problem or illness (e.g. nerves, phobias, stress, anxiety, depression, eating disorders); Are you at present taking any form of medication (excluding contraception)? Give name and dosage of any drugs below; "*

48. After this on 2/11/2023 the Claimant had an interview with the Respondent's OH service following which a note was produced recording amongst other things: "*This employee has a history of psychological ill health. This is currently well-controlled without treatment. No adjustments are indicated with regards to this at this stage….This employee has a history of musculoskeletal symptoms. I would recommend that she complete a DSE assessment upon starting in post. Any actions from this should be followed up by management as indicated."*

49. The following day 3/11/2023, the Claimant signed her employment contract.

50. On 9/11/23 the Respondent's OH sent the Claimant a message as follows: "*The Nurse has asked me to advise you as follows: If the previous bunion surgery is not causing any issues currently, we would not need to do anything additional- I would suggest she just notify her manager of the pending appointment. If the previous bunion surgery is causing issues and* (the Claimant) *feels that she requires support or adjustments due to this- please let us know.".*

51. I was not shown evidence of any further contact from the Claimant to OH in response to this invitation.

52. The Claimant claimed that on 14/12/23 she told Ms Morgan about her bunions and pending surgery. Ms Morgan denied this and stated that she was not aware before these proceedings were issued that the Claimant had problems with bunions.

53. There is no reference to bunions or walking problems in any messages between the Claimant and Ms Morgan, despite the fact that they exchanged numerous work messages. If Ms Morgan had been alerted to the Claimant's bunion problems I find that Ms Morgan would have recorded this in writing at the time and made sure that any appropriate adjustments were made. I have already found that the Claimant did not display foot problems at work and was advertising to Ms Mahendran the fact that she was dancing and running. For these reasons I prefer Ms Morgan's evidence on this point.

54. There was agreement between the parties that shortly after the Claimant started work in early January 2024, she told Ms Morgan about the fact that she was attending cognitive behaviour therapy once a week. and Ms Morgan gave the Claimant permission to leave work early once a week for that purpose. Ms Morgan understood this was a preventative measure. In addition, on 27/03/2024 during contact between Ms Morgan and the Claimant during the latter's sick leave, the Claimant mentioned to Ms Morgan that she had struggled not being around people while off sick, in response to which Ms Morgan sent her details of a source from which she could obtain support. These were the only express references made by the Claimant to Ms Morgan about her mental ill-health.

55. On her first day at work on 2/1/24 the Claimant asked if working from home was an option. Ms Morgan did not understand this as a request for a reasonable adjustment for any disability. However, she told the Claimant that she could work from home on any day when she had a medical appointment.

<u>The claimed protected disclosures on 14/12/2023.</u>

56. Before her employment started, the Claimant came for a visit on 14/12/23. On that day, she met the team at HSK and then walked round to the Hospital with an employee Olli Phillips who gave her a tour of that site.

57. The Claimant claims that she returned to HSK after the hospital visit and then disclosed to Ms Morgan that day that there were: *several scrubs left on the floor in the Hospital outside a locker; several boxes in the Hospital that were blocking walkways; and stacks of patient notes left on administration desks, where anybody could have picked them up.* She relies on this claimed disclosure as a protected disclosure for her whistleblowing claims

58. Ms Morgan denied that the Claimant had mentioned these things to her that day or any other time during her employment. Ms Morgan claims that she met the Claimant only once that day at HSK and that was before the Claimant visited the hospital, during which visit she was not accompanied by Ms Morgan, and after which visit the Claimant did not return to HSK or talk to Ms Morgan.

59. The following day, the Claimant and Ms Morgan exchanged a series of WhatsApp messages referring to her visit the previous day. Ms Morgan wrote "*So nice to see you yesterday, thank you for coming in! Hopefully we made a good impression! Looking forward to having you on join on the 2nd Jan. Enjoy your Xmas break!*" The Claimant replied "*I'm*

so pleased I came yesterday. I had a great time. It was nice to see you and meet the team. They are fabulous and it's definitely got me even more excited... really like the positivity and I might even try baking." Ms Morgan assured her that she "*did great*".

60. The claimed protected disclosures are not referred to in any contemporary documents during employment and the suggestion that on 14/12/23 the Claimant found three things which concerned her such that she needed to complain about them to Ms Morgan is inconsistent with the upbeat and positive messages which she sent Ms Morgan the next day, and Ms Morgan writing "*Hopefully we made a good impression!"*. If the Claimant had been complaining to Ms Morgan about the state of hospital then Ms Morgan would already know that they had not made a good impression.

61. Furthermore, it would be strange for most prospective employees to start complaining to their prospective line manager about work conditions even before the employment had started.

The Claimant's alleged protected disclosures on 2 to 4 January 2024

62. The Claimant started work on 2 January 2024 and the first few days were taken up with induction and introductions. As a large part of the Claimant's role was to engage with consultants, Ms Morgan spent some time during her induction explaining to her the various types of contracts which the Respondent enters into with them. Ms Morgan also gave the Claimant access to contracts so that she could familiarise herself with them.

63. After her employment ended, the Claimant raised concerns about alleged breaches in these contracts of the CMA Private Healthcare Market Investigation Order 2014; but Ms Morgan denied that the Claimant raised any such concerns or concerns with her either during the Claimant's induction period or at any point during her employment.

64. There is no contemporary documentation to support these alleged expressions of concern during the Claimant's employment.

65. Ms Morgan and the Claimant exchanged WhatsApp messages on 4/1/24 and there is nothing in those to suggest that the Claimant had any concerns about the contracts to which she had been given access earlier that day.

66. When Claimant was told about her dismissal on 19/4/24 she referred to having raised complaints about consultant's behaviours as recorded in the following extract from the note of the meeting on 19/4/24 "*Olly has raised to me in the past about consultants' behaviours…"* and when the Claimant raised a grievance on 24/4/24 she referred to *"Prevention from raising concerns and whistleblowing regarding inappropriate behaviour…..: "The week commencing April 1, 2024, and April 9, 2024, Jessica Beal and Oliver Philips raised concerns with me regarding the behaviour of Nick Morris, who had made harassing phone calls and emails. When I attempted to escalate this issue to Sarah Morgan, she discouraged me from filing a formal complaint, indicating that it could negatively impact my reputation".*

67. This matter pertaining to Nick Morris has nothing to do with the subject matter of the claimed protected disclosures dated 14/12/23 and 2-4/1/24, now relied on, (which the Claimant did not refer to when being dismissed or when raising her grievance).

68. The claimed protected disclosures dated 14/12/23 were not referred to in the ET1 presented on 3/7/24 and the claimed protected disclosures on 2-4/1/24 were referred to for the first time in that document.

69. On 21/8/24 the Claimant submitted a "Speak Up" report in which she made complaints about potential breaches of CMA regulations, including "*I observed and reported practices that appeared to contravene these regulations, such as using development contracts with consultants that could be perceived as hidden referral fees. I raised these concerns with Sarah Morgan, Nivan Sithamparanathan, and Peter Weller, as well as other colleagues*. "

70. However, as already stated, there is no contemporary documentary or other objective evidence produced to me to show that these reports were ever made, and Ms Morgan denied that they were made to her at the time.

71. While there is no rule that protected disclosures have to be made in writing, the absence in the evidence of any contemporary writing in the particular circumstances of this case (involving a literate and communicative Claimant operating in a formal business environment in which she was regularly exchanging messages with Ms Morgan and others) tends to undermine the claim that they were made by her during her employment.

72. For these reasons I find that the Claimant has failed to prove that she made the claimed protected disclosures on 14/12/23 and 2-4 January 2024.

<u>The cycling accident</u>

73. On 20th February 2024, the Claimant was injured in a cycling accident. She told Ms Morgan and the latter encouraged her to attend hospital and go home, which she did.

74. The following day, the Claimant joined a Teams call from home with a number of colleagues, and also others who were not in her team. She told them all about the details of her cycling accident.

75. The Claimant worked from home for the rest of the week. Ms Morgan agreed to obtain dictation software for her and arranged for her deputy Ms P Mahendran to attend meetings and take minutes for her.

76. Ms Morgan went on holiday with the understanding that the Claimant would continue to

work, with the adjustments referred to above.

77. On 26th February 2024 (while Ms Morgan was still on holiday) the Claimant emailed the Respondent to the effect that she needed to take two to four weeks off work to recover and then submitted a fit note referring to fractured wrist and elbow and signing her off as unfit to work until 30/3/24.

78. She then submitted a letter from Mr Zaman, an Orthopaedic surgeon, advising that she should be allowed to work from home until 22/4/2020. In the end the Claimant started working again on 2/4/24 but did so from home.

Contacts and exchanges with the Claimant during her sickness absence

79. On 21/2/24 Andy Martin (a colleague) sent the Claimant a WhatsApp message checking on her wellbeing.

80. On 19/3/24, Ms Morgan received an email from Ms J Dela Cruz (Health Roster Assistant) notifying her that the Claimant's sickness absence from 6/3/2 would be unpaid. The following day, she clarified that this was because the Claimant was entitled to only one week's sick pay during her probation. On 20/3/24 Ms Morgan forwarded this exchange to the Claimant's personal email address (because she was not working) in case she was unaware. She replied the same day asking if she could utilise annual leave to cover any part of her absence (so that she would be paid for it). Ms Morgan was unsure if company policy would allow for this but agreed to look into it for her. The Claimant replied to say that she had already raised it with Ms J Dela Cruz Jand that "*any exceptions or support would be much appreciated, as I'll have difficulty paying my mortgage and other living expenses next month*". Ms Morgan asked the Claimant to check how much holiday she had available and how much of it she wanted to use. She replied that *"I currently have six days available. Ideally, I'd like to take that if I can take any leave from next year, i.e. a couple of weeks or later in the year. I'd also appreciate that. This is what Jemma (Ms J Dela Cruz) suggested*." They agreed that the Claimant would take 21 to 28 March 2024 as paid annual leave (29 March and 1 April 2024 were bank holidays).

81. On 20/3/24 Ms Morgan suggested to the Claimant that she should get in touch with Olli (who had been covering the Claimant's work during her absence on sick leave) to have a discussion with him about the work which he would be handing back to her on her return to work (albeit from home) on 2/4/24. As a result the Claimant had a telephone conversation with Olli on 27/3/24 about him handing back work to her.

Back to work (at home)

82. The Claimant started working again (from home) on 2/4/24 after a sickness absence of five weeks. The Respondent agreed that the Claimant could continue to work from home for a further three weeks to help ease her return to work. It was agreed that the Claimant would only attend the office on days when she was travelling in anyway for physiotherapy appointments. Ms Morgan sent the Claimant an email on 2/4/24 expressing her full support

for these arrangements, including the following "*I'm very pleased that you're feeling better and are able to return to work, with working from home the only mitigation required. As discussed, I'm very happy for you to work from home for the next 3 weeks as per the doc's advice, coming into the office when you're travelling in for physio. You've said you're happy to wfh in your current set-up, but that you'll let me know if you need anything additional or any support over the next 3 week*"

"Being pressurised to work"

83. The Claimant complains that she was pressured to work during her sickness absence and to come into the office when she was signed off to work from home. These complaints relate to activities such as those referred to in paragraphs 79 to 81 above, and to the Claimant voluntarily checking her work email, coming into the office to collect a laptop charger on 2/4/22, and attend a social bowling evening on 11/4/24.

84. Having reviewed the relevant correspondence (for example Ms Morgan's email of 2/4/24 quoted above) and other evidence about these matters. I find that the complaint is unjustified. Ms Morgan was considerate of the Claimant, accepted the long sick note and Mr Zaman's recommendations about home working for a further extended period, and phrased any references to work-type or work-related activities during the Claimant's absence as suggestions "*if the Claimant felt well enough*" etc, and not as instructions.

Telling others about the accident

85. During the Claimant's absence both Ms Morgan and Ms Mahendran told various colleagues and other stakeholders that the Claimant had had a cycling accident and had fractured her arm and was off sick. This information was provided to these others for business reasons, for example as a means of explaining why the Claimant was unable to attend a meeting or do other work, or to mitigate frustration on the part of consultants about the fact that the Claimant's work involving them had been delayed or not done, and in one case, to encourage another employee who had had a similar injury to contact the Claimant to tell her about dictation software which she could use while she could not use her right arm/wrist to type.

Team bowling night

86. On 11/4/24 the Claimant attended a team-building bowling night. She had been invited by Ms Morgan, not pressurised. She did not have to bowl and could not do so with her right wrist/arm (because she was still recovering from the cycling accident) but decided to try bowling with her left wrist/arm. She could not bowl well and obtained a low score. She claims that Ms Morgan, who was bowling in the next aisle, made a remark that "*now we know that you are not left handed".* Ms Morgan denied making any such remark.

87. In her contemporaneous personal journal the Claimant wrote the following about that evening: "*Scheduling bowling, putting my name up on the board, and watching me attempt to bowl with my left hand is harassment*". There is no mention here of the claimed remark. If Ms Morgan had made such a remark, seeing that the Claimant went to the trouble of

writing down what she felt upset her that evening, that remark would have been recorded. I find therefore that it was not made.

The claimed protected disclosures in April 2024

88. In mid-April 24, the Claimant, still working from home, raised the subject of her pay/leave. She relies on two emails from her to Ms Morgan on this subject as further protected disclosures.

89. The first on 15/4/24 reads : "*If you read my sick note from my GP which I had to get from my GP because my notes were not ready at Cromwell Hospital. This letter states that I was signed- off to the end of march. I only asked to use my annual leave pay because the Bupa sickness policy did not cover me for the length of my sickness absence. March 20th and March 27th I was not on sick leave or holiday because I worked. You will note that I returned to work only if I was provided reasonably adjustments as by Mr Zaman stated in his letter. Probably best to get this across to the people team*. "

90. The second on 16/4/24 reads in relevant part : "*My understanding of the HR rules is that any sick day worked over a minute is considered a working day - but I'm not an expert. Sarah, I felt there was an expectation from you when I first was injured and since to continue to work at 100 per cent and, at times to do things outside of the guidance given to me by my doctor - though I've risen to the challenge, and fortunately, I'm healing well. My DCTOM nomination last week verified that which was very nice to hear. Thanks for looking in to this for me. I can verify this job is best performed with two arms."*

91. In context the main point of both these emails was not to disclose information about failing to comply with a legal obligation or the endangering of health and safety, but rather to advance a claim by the Claimant to be paid her normal salary for 20/7/24 and 27/3/24 (rather than those days being treated as either unpaid sick leave or holiday).

92. As stated above, on 20/3/24 the Claimant was on unpaid sick leave but had exchanged emails with Ms Morgan on the subject of her changing her unpaid sick leave to paid annual leave, and on 27/3/24 she had had a telephone call with Olli to discuss his returning her work. She wanted to be paid for those days.

93. A secondary point made by the email of 16/4 was a remark/complaint by the Claimant that she had felt "*an expectation* (from Ms Morgan) *that she should work during her sickness absence"*, which I find was first made simply to back up the claim to be paid on the days referred to.

94. I find that these Claimant communications about the her pay and being "*expected to work during sick leave"* (which Ms Morgan denied) were simply about the Claimant's personal circumstances ie her leave/pay situation and her relationship with her line manager. There was no-one else she could identify as in a similar situation who could be benefitted by these communications. I find that it was not reasonably believed by the Claimant at the time that either of these emails were in the public interest. Hence, they were not protected disclosures as defined in section 43B ERA 1996.

The Claimant's probation and reasons for termination of employment

95. The Claimant was still in her six-month probation period and she had been employed for only seven weeks before her cycling accident. During that time, Ms Morgan had not been impressed by her performance. There had been an unacceptable delay in the Claimant booking a meeting with a consultant, requiring Ms Morgan to have to ask the Claimant three times to do it. Similarly, when the Claimant had been assigned on 10/1/2024 to onboard and source a room for two new GPs that the Respondent wanted to bring into the Hospital, Ms Morgan had to chase her again on 18/1/24 but it had still not been completed by 9/4/24.

96. Furthermore, Ms Morgan was not impressed by the Claimant not handover her work to Ollie properly after her accident. In Ms Morgan's view as the Claimant had joined a Teams call on the day after her accident, and had been able to correspond while off sick to arrange for her sickness absence to be converted into paid leave, so she also should have been able to call Olli to handover to him, as he was to do or cover her work during her absence. As it was, the Claimant had merely forwarded a series of emails to him with little or no explanation, and as a result he found the experience stressful, overwhelming and frustrating.

97. Ms Morgan considered it appropriate to reset the Claimant's objectives and to review her performance to date. She wrote to the Claimant on 12/4/24 to invite her to a probation review meeting on 15/4/2024.

98. Following this invitation the Claimant made her requests (referred to in paragraphs 88-94 above), for payment for a whole day on days when she had been on sick leave and had done (in Ms Morgan's opinion), either nothing which should be regarded as work (for example on 21/2/24 simply receiving a Whatsapp message from Andy Martin checking on her wellbeing, and the Claimant asking for annual leave instead of sick leave on 20/3/24 or) or negligible work only (such as her hand-back phone call with Olli on 27/3/24), and at the same time, the Claimant had complained as a way of supporting her request that she had been "*forced to work during her sick leave*". Ms Morgan felt that the Claimant's behaviour in this regard was manipulative and unreasonable.

99. At about the same time, Ms Mahendran brought to Ms Morgan's attention concerns about how the Claimant had conducted a meeting with Dr Kaba on 11/4/2024 which Ms Mahendran had also attended. She reported to Ms Morgan that the Claimant had: (a) discussed her accident for the first 15 minutes of what was scheduled to be a 45-minute meeting, causing the meeting to overrun; (b) inappropriately commented on her own negative experiences of the Respondent's staff and patient care; (c) inappropriately shared personal information about Ms Mahendran without her consent.

100. This report, and especially the part of it relating to the Claimant's negative comments made to Dr Kaba, caused consternation to Ms Morgan because one of the most important objects of the Claimant's role was supposed to be promoting the hospital to consultants and encouraging them to increase, or at least not decrease, their use of its services.

101. Ms Mahendran's report reinforced Ms Morgan's growing view that the Claimant was not demonstrating the core values expected of a senior leader within the Respondent's business and was not acting as an appropriate role model for other members of the department.

102. Ms Morgan cancelled the meeting scheduled for 15 April 2024 and rearranged it for 19 April 2024 when she met with the Claimant and terminated her employment, subsequently issuing a dismissal letter stating that the reason was "*your behaviours have not been in line with that of the Bupa Values or Code. Specifically: An unsatisfactory level of responsibility and care demonstrated for your direct line report and the department, going into and during your period of sick leave. This includes the lack of a sufficient handover and prioritisation plan for your line report, and insufficient communication with a consultant going into the period of leave. Sharing without consent, personal information about a peer to a consultant during a professional meeting.* '

103. Despite the Claimant being entitled to only one weeks' notice, the Respondent paid her four weeks' pay as a severance payment.

Summary/Conclusions

104. I do not find that the Claimant made any protected disclosures and hence without more the claims under section 47B and 103A ERA 1996 fail.

105. In any event regarding the claimed detriments in the section 47B claim:

> *Sarah Morgan putting pressure on the claimant to work after the February 2024 cycling accident despite the claimant's injuries. Sarah Morgan putting pressure on the claimant to attend a bowling event on a team day on 11 April 2024. Sarah Morgan saying to the claimant at that bowling event, when the claimant had to bowl with her left hand because of the cycling injuries which she had sustained, "now we all know that you are not left-handed*".

106. These are not proved for the reasons given above

> *Sarah Morgan not giving the claimant the reasonable adjustments referenced in her reasonable adjustments complaints below. (The claimant states that the adjustments were requested in a letter from her consultant Mr Tariq Zaman on 25 March 2024 and that Sarah Morgan failed to put these in place).*

107. This is not proved for the reasons given below

108. The dismissal reason was not the making of protected disclosures but rather those given in the dismissal letter.

109. The harassment claim relates to the cycling accident injuries only which I have found were not a disability.

110. In any event regarding the claimed unwanted conduct in the harassment claim;

> *"In February 2024, Sarah Morgan disclosed details of the claimant's February 2024 cycling accident to others at the respondent. In advance of a meeting on 11 April 2024 between the claimant and Dr Riaz Kaba (an independent consultant), Priscilla Mahendran disclosed to Dr Kaba details of the claimant's February 2024 cycling accident."*

111. The Claimant had already voluntarily disclosed these details to a variety of colleagues and stakeholders during a Teams video call on the day after the accident, showing that she did not regard the accident as a private or sensitive matter. While Ms Morgan and Ms Mahendran did disclose that the Claimant had had an accident/was on sick leave/had broken her arm, these communications were not in context a breach of the Claimant's privacy and were done for reasonable business purposes. Even if they had related to a disabling impairment, they did not have the purpose or effect in section 26(1)(b) EA 2010.

112. In the reasonable adjustments claim the claimed PCPs are as follows:

> *.Not permitting the claimant to work from home (from the start of her employment up to the 20 February 2024 cycling accident.*
>
> *After the February 2024 cycling accident, Sarah Morgan put pressure on the claimant to attend the office.*
>
> *The claimant not being given a dedicated workstation or locker at Cromwell Hospital (throughout her employment).*

113. I find that none of these qualify or have been proven as valid PCPs, because they all describe alleged treatment of the Claimant only without any reference to or evidence to support any element of general application or potential repetition as described in the Nottingham and Ishola cases cited above.

114. Even if these were PCPs, it is not shown that they placed the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who do not have the claimant's disability.

115. The reasonable adjustments which the Claimant claimed should have been made were as follows:

> *to allow the claimant to work from home for three days a week.*

116. The Claimant did not request this and it is not shown that this would have helped or alleviate her claimed (but unproved) mobility problems or poor mental health in any event.

> *to provide a workstation and locker at the Cromwell Hospital.*

117. The Claimant did not request these and there were desks and lockers available at both

sites had she wanted them, as described above

Sarah Morgan should not have put the claimant under pressure to attend the office (contrary to Mr Zaman's advice).

118. This allegation relates to the sick leave and working from home period following and because of the cycling accident injuries, which I have found were not a disability. I have found that Ms Morgan did not place the Claimant under such pressure in any event.

119. Ms Morgan as the Claimant's line manager knew that the Claimant had mental ill-health but no other claimed disability and throughout the Claimant's employment the reasonably held view of Ms Morgan/Respondent was that this was managed by the Claimant attending CBT once a week only and that no other adjustments for anything else were required.

J S Burns Employment Judge
London Central
5/07/2025
For Secretary of the Tribunals
Date sent to parties
9 July 2025

Schedule 1

(List of Issues)

30. Public interest disclosures Protected disclosures

30.1.Did the claimant make a disclosure of information? The alleged disclosures relied on by the claimant as protected disclosures are as follows:

30.1.1. In a discussion on 14 December 2023 with Sarah Morgan (before the claimant's employment commenced), the claimant disclosed verbally to Ms Morgan that:

there were several scrubs left on the floor in the Cromwell Hospital outside a locker;

there were several boxes in the Cromwell Hospital that were blocking walkways; and

there were stacks of patient notes left on administration desks, where anybody could have picked them up.

30.1.2. From 2 - 4 January 2024, during induction and one-on-one discussions with Sarah Morgan, the claimant raised concerns verbally to Ms Morgan about breaches of the CMA Private Healthcare Market Investigation Order 2014, including:

hidden referral fees/incentive payments in consultant development contracts, which Sarah Morgan referred to as "complexity payments"; and

non-compliance with fee transparency obligations, specifically the lack of accessible self-pay fee schedules on the hospital's website.

30.1.3. An email to Sarah Morgan in the week commencing 15 April 2024 asking that the claimant be paid for days on which she worked during her sick leave.

30.1.4. An email to Sarah Morgan in the same email exchange in the week commencing 15 April 2024, stating that the claimant felt pressurised by Sarah Morgan to work during her sick leave.

30.2.Were the above disclosures of information as opposed to mere allegations?

30.3.Did the claimant have a reasonable belief at the time she made each disclosure that the disclosure tended to show that:

30.3.1. (in the case of the alleged disclosures at 30.1.1.1, 30.1.1.2 and 30.1.4) the health or safety of any individual had been, was being or was likely to be endangered; or

30.3.2. (in the case of the alleged disclosures at 30.1.1.3, 30.1.2.1, 30.1.2.2 and 30.1.3) a person had failed, was failing or was likely to fail to comply with a legal obligation to which that person was subject?

30.4.Did the claimant have a reasonable belief at the time she made each disclosure that the disclosure was in the public interest?

30.5.Was each disclosure made to the claimant's employer for the purposes of the ERA?

Section 47B: detriment

30.6.Was the claimant subjected to any detriment by any act, or deliberate failure to act, by the respondent done on the ground that the claimant made any disclosure or disclosures as referred to above? The acts/deliberate failures to act relied on by the claimant for these purposes are as follows:

30.6.1. Sarah Morgan putting pressure on the claimant to work after the February 2024 cycling accident despite the claimant's injuries.

30.6.2. Sarah Morgan putting pressure on the claimant to attend a bowling event on a team day on 11 April 2024.

30.6.3. Sarah Morgan saying to the claimant at that bowling event, when the claimant had to bowl with her left hand because of the cycling injuries which she had sustained, "now we all know that you are not left-handed".

30.6.4. Sarah Morgan not giving the claimant the reasonable adjustments referenced in her reasonable adjustments complaints below. (The claimant states that the adjustments were requested in a letter from her consultant Mr Tariq Zaman on 25 March 2024 and that Sarah Morgan failed to put these in place.

Section 103A: unfair dismissal

30.7.Was the reason or principal reason for the claimant's dismissal by the respondent that she made any disclosure or disclosures as referred to above?

31. Disability

31.1.Does the claimant have a physical or mental impairment? The claimant relies on five alleged impairments, namely anxiety; depression; PTSD; orthopaedic problems because of bunions; and musculoskeletal injuries as a result of her cycling accident in February 2024.

31.2.If so, do the impairments either individually or cumulatively have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?

31.3.If so, is that effect long term? In particular, when did it start and:

31.3.1. has the impairment lasted for at least 12 months?

31.3.2. is or was the impairment likely to last at least 12 months or the rest of the claimant's life, if less than 12 months?

31.4.Are any measures being taken to treat or correct the impairments? But for those measures would the impairments be likely to have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?

32. Section 26: Harassment related to disability
32.1.Did the respondent engage in unwanted conduct as follows:

32.1.1. In February 2024, Sarah Morgan disclosed details of the claimant's February 2024 cycling accident to others at the respondent.

32.1.2. In advance of a meeting on 11 April 2024 between the claimant and Dr Riaz Kaba (an independent consultant), Priscilla Mahendran disclosed to Dr Kaba details of the claimant's February 2024 cycling accident.

32.2.Was the conduct related to the claimant's disability?

32.3.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?

32.4.If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

32.5.In considering whether the conduct had that effect, the Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

33. Reasonable adjustments: section 20 and section 21

33.1.Did the respondent apply the following provision, criteria and/or practice ('the provision') to the claimant, namely:

33.1.1. Not permitting the claimant to work from home (from the start of her employment up to the 20 February 2024 cycling accident.

33.1.2. After the February 2024 cycling accident, Sarah Morgan put pressure on the claimant to attend the office.

33.1.3. The claimant not being given a dedicated workstation or locker at Cromwell Hospital (throughout her employment).

33.2.Did the application of any such provision put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who do not have the claimant's disability in that the consequent impact of the claimant having to walk to and from the office and with a lot of belongings caused physical pain in relation to bunions and exacerbated the claimant's anxiety, depression and PTSD. This alleged substantial disadvantage applies in relation to all three of the PCPs listed above.

33.3.Did the respondent take such steps as were reasonable to avoid the disadvantage? The burden of proof does not lie on the claimant, however it is helpful to know the adjustments asserted as reasonably required and they are identified as follows:

33.3.1. In relation to the first and third PCPs, to allow the claimant to work from home for three days a week or to provide a workstation and locker at the Cromwell Hospital.

33.3.2. In relation to the second PCP, Sarah Morgan should not have put the claimant under pressure to attend the office.

33.4.Did the respondent not know, or could the respondent not be reasonably expected to know that the claimant had the disability relied on or was likely to be placed at the disadvantage set out above?

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Schedule 2

Chronology

08/10/2023	Claimant did half marathon – reported to GP next day	965
c02/11/2023	Occupational Health report	326
	Claimant completed a New Starter health questionnaire	229-230
14/12/2023	Claimant visited the team at HSK. She then went round the hospital with Oliver (Ollie) Phillips (OP). Date of claimed 3 public interest disclosures (PIDs)	
02/01/2024	Claimant commenced work.	
02-04/01/24	date of claimed further (PIDs)	
05/01/2024	Claimant had a 1:1 with SM who agreed she could leave early to attend CBT appointment	
20/02/2024	Claimant had a cycling accident.	370
21/02/2024	Claimant participates in a Teams call (unsolicited).	
19/03/2024	SM advises claimant that sick pay ran out. Claimant requested to convert holidays to sick pay: granted. Then asks for pay for days "worked": checking her own holidays on 29/03/24; reading and responding shortly to two emails sent to her work email on 28/02/24; a short hand-over to OP in contemplation of her RTW – SM suggested short Teams call if she felt up to it, otherwise, SM would get him to send her an email as handover (20/03/2024)	419
25/03/2024	Mr. Zaman's report – advising WFH until 22/04/2024.	455

	SM email to claimant saying she was happy for her to WFH and suggesting she looks into dictation software with Andy Martin if she wished.	425
27/03/2024	SM noted the claimant had mentioned she had struggled not being around people while off sick – support signposted.	257
02/04/2024	C ended sick leave. SM emailed C to say she was pleased she was able to RTW with the only mitigation being WFH. SM invited claimant to let her know if any other support required over the 3 weeks of WFH.	459
02/04/2022	Claimant attended Hospital to collect a laptop charger Met SM at HSK.	459-460
10/04/2024	SM emailed the team to announce PM would be moving roles.	
11/04/2024	Claimant attended a meeting with Dr. Kaba and PM at HSK. Attendances at workplace were on days the claimant attended physio at the hospital. Team bowling evening.	513
12/04/2024	SM emailed claimant about her probation review	511
15/04/2024	PM had 1:1 with SM and fed back about the 11/04/24 meeting	
16/04/2024	Probation review meeting subsequently changed to 17/04/2024	512
17/04/2024	Email and letter changing probation review meeting – now to be on 19/04/2024 with warning probation may be terminated, alternatively extended.	new doc new doc
19/04/2024	Probation ended and claimant dismissed – notes of meeting letter of dismissal	518-521 515
24/04/2024	Grievance emailed to P. Luce	566-567
24/05/2024	Grievance interview (claimant)	600-611
25/05/2024	Grievance interview (SM)	644-656
03/07/2024	ET1	16-29
21/08/2024	Speak Up report by claimant	779-782
13/12/2024	PH held by CVP	68-79

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