EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
F Khan	v	London Underground Limited

Heard at: Watford **On:** 16, 17, 18, 19 September 2025

Before: Employment Judge Anderson
M Harris
C Whitehouse

Appearances
For the claimant: In person
For the respondent: T Welch (counsel)

RESERVED JUDGMENT

1. The claimant's claim of detriment on the ground of making a protected disclosure is dismissed.

REASONS

Background

1. The claimant is employed by the respondent as a customer services manager. His employment commenced on 10 September 2001. He brings a claim of protected disclosure detriment. The respondent denies that disclosures were made or that it subjected the claimant to detriment. Early conciliation began on 17 October 2021 and ended on 27 November 2021. The first claim was filed on 19 December 2021 and the second on 23 December 2021. The claims are the same and the second was filed when the claimant obtained legal representation, in order to clarify and particularise the claim. Unfortunately, the hearing of these claims has been postponed on three occasions.

Recusal application

2. At the outset of the hearing EJ Anderson declared that her husband was an employee of the respondent, London Underground Limited. She told the parties that he works in a different area of the business to the claimant. He is a manager. She has no knowledge of his having any connection with this

case. The parties were given some time to consider this information, and the claimant made an application for the judge to recuse herself.

3. The claimant said that there are so many strands and layers of management involved, and he wanted to protect every staff member should there be any possibility of any issues arising later. He explained there was an incident during the preparation for this hearing whereby there was a data breach, by the respondent, revealing personal information of his partner. Additionally the claimant said he thought there was a possibility of EJ Anderson being biased.

4. For the respondent, Mr Welch said that the respondent did not apply for the recusal of EJ Anderson and objected to the application made by the claimant. He said that the test for bias, both apparent and actual, was set out in the case of *Porter v Magill [2002] 2 AC 357*, in which Lord Hope in the House of Lords said the question was whether the fair minded and informed observer, having considered the facts, would consider the tribunal to be biased. Mr Welch said that there were no facts that reveal a real possibility of bias here. Secondly, Mr Welch referred to the Court of Appeal judgment in *Ansar v Lloyds Bank TSB [2006] Civ 1462* in which the Court of Appeal decision in *Locabail (UK) Ltd v Bayfield Properties Ltd [2000] IRLR 96* (para 21) is quoted with approval. The court in that case said that it would be wrong to yield to a tenuous or frivolous objection of bias. Mr Welch said the tribunal had not heard anything from the claimant, there was no facts or real objections, such that the tribunal should yield. On the facts there was simply no appearance of bias.

5. The tribunal decided unanimously to refuse the claimant's application for the recusal of EJ Anderson. It considered the submissions of both parties and the case law referred to by Mr Welch. It also considered the cases of *South Lanarkshire Council v Burns and ors and other cases EATS 0040/12* where the judge had a daughter who was a partner in the firm of solicitors that represented one of the claimants. He did not declare the interest but the EAT found that even so, recusal was not required as the judge did not have a significant level of interest in the outcome of that case. In *Jones v DAS Legal Expenses Insurance Co Ltd and ors 2004 IRLR 218, CA* the judge's husband was a barrister in chambers that undertook work for the respondent, and her husband had worked on that account. The Court of Appeal found that these facts were not sufficient to indicate a perception of bias under the *Porter v Magill* test, quoted by Mr Welch above.

6. EJ Anderson candidly declared this matter at the outset of the hearing. The respondent is a large organisation employing thousands of people. There is no known connection between EJ Anderson's husband and the facts of this case or the people involved. The claimant has not suggested there is. The claimant suggests that detriment to others could flow from a connection with this case and he gave an example of such a situation in respect of his partner. The tribunal has not decided or read into the case yet and cannot comment on that specific situation but does not accept that this submission gives rise to any possibility of bias by EJ Anderson. The claimant also relied on the fact

that the judge's husband is a manager. Again, without any further issue or potential connection to the outcome of this case, the tribunal does not accept that this is a situation in which there could be actual or apparent bias.

7. After judgment was given the claimant said that he wished it to be recorded that he maintained his objection of perceived bias.

The Hearing

8. The parties filed a joint bundle of 389 pages. The claimant filed his own witness statement and a statement from Julie Bishop. The respondent had two witnesses, Jason Persaud and Danny Asare, who both filed statements. Mr Persaud filed a second statement. This was provided to the claimant on 25 June 2025. The single matter addressed in the supplemental statement was that a document had been located which was relevant to the case and had previously been thought lost. This was a record of an entry made by the claimant on the respondent's attendance management system on 23 June 2021. There was no objection to the inclusion of this statement.

9. The claimant, Mr Persaud and Mr Asare gave oral evidence. Mr Welch chose not to cross examine Ms Bishop.

10. The claimant handed up a separate bundle at the hearing which included a supplemental statement from him and a supplemental statement from Julie Bishop along with eight appendices. In addition, included in that bundle, were two other documents. The first was a note of a grievance appeal meeting on 2 November 2023, and the second a policy document entitled 'LU Code of Conduct'. The respondent objected to the inclusion of these statements and documents. That objection is dealt with below.

11. The claimant said that he had a number of other preliminary matters to raise. He said that he objected to the disclosure of personal details relating to his partner in a print out of Mr Persaud's WhatsApp messages. The Claimant said that he had requested for personal details to be redacted, and the respondent had agreed to it. The redactions had been carried out. It was not clear to the tribunal what the complaint was by the claimant about this document. He had not asked for the document to be excluded from evidence in its redacted form and admitted that he may originally have disclosed the personal information regarding his partner. The tribunal did not feel that any action was required of it in respect of this document which formed part of the hearing bundle.

12. The claimant said there was a date error in his witness statement and was advised that this could be raised at the outset of his oral evidence as he did not have page references to hand.

13. He said that a key occupational health document had been excluded. The claimant had not asked the respondent for it, nor had he, in the four years that his case has been in preparation, made an application to the tribunal for specific disclosure. The tribunal declined to consider the matter any further.

14. The claimant said the document at pp381 to 389 of the hearing bundle had been added late to the bundle and he was not sure of the document's authenticity, and it was not signed. He said he was not making an accusation of tampering and could not say when the document had been added, i.e. he could not say how long he had been in possession of it, though the tribunal understood this to be some months. The claimant was advised that he could question the relevant witness about the document in cross examination.

Objection by respondent to inclusion of supplemental statements and documents

15. The claimant sent his own supplemental statement to the respondent on 15 August 2025. A supplemental statement from Ms Bishop was filed on 4 September 2025. It was not clear when the eight appendices were disclosed, nor at what point a request was made by the claimant for the inclusion of two further documents, the LU Code of Conduct and the grievance appeal meeting notes of 23 November 2023.

16. Mr Welch said the statements were irrelevant or repetitive and tried to improve the claimant's case after the exchange of the original witness statements. He said much of Ms Bishop's supplemental statement was hearsay and should not be admitted. The claimant's statement included four further alleged detriments and no application to amend his claim had been made. Mr Welch said that though it did not agree that they were relevant, it would not object to the inclusion of the LU Code of Conduct and the grievance appeal meeting notes of 23 November 2023.

17. The claimant said the supplemental statements and appendices were relevant to current issues. He said there were new issues, and he wanted the tribunal to have a full view of what was happening in the background during the harassment and bullying investigation. He said that the tribunal did not need to stick rigidly to the list of issues.

18. The tribunal noted that a paragraph 2 of the claimant's supplemental statement he had set out four new alleged detriments. The claimant confirmed that he had not made an application to amend his claim. He was asked twice by the tribunal whether he wished to do so. He asked if he needed to decide immediately. He was advised that he needed to decide now but if he wished to do so, there would be a break to allow him to prepare. The claimant said that he did not want to make an application to amend his claim.

19. The tribunal therefore considered whether to exclude the two supplemental statements and the appendices. In doing so it kept in mind that evidence should only be admitted that is relevant to the decisions that need to be made in the case. The tribunal admitted the claimant's supplemental statement (paragraph 1.0 to 1.5 only, paragraph 2 setting out and claiming further detriments having been withdrawn). Although most of it was not relevant to the decision to be made, paragraph 1.5 was, potentially, so. The respondent had been in possession of the statement for over a month and had had an opportunity to give instructions. Appendices 1-3 were provided in support of paragraph 1 of the statement and were also admitted. The remainder of the appendices were excluded on relevance grounds.

20. The tribunal refused to admit the supplemental statement of Ms Bishop. The statement was either irrelevant, or a repeat of Ms Bishop's original statement. It included a section in which she recounts a meeting with another employee, of the respondent, Jacob Noel, on the day of his retirement, 30 July 2025. Although the tribunal can admit hearsay evidence it would have been entirely inappropriate to do so here, where there was no explanation given for why first person evidence from that witness could not have been provided and why the information was disclosed so close to the hearing date, without explanation or application.

The issues

21. The issues for the tribunal to decide were set out in the case management order of EK Skehan dated 27 February 2023 as follows:

List of issues- Agreed between the parties.
Whistleblowing detriment - s47B Employment Right Act 1996 ("ERA")

1) Did the Claimant make the following protected disclosures:

(a) the entry on the Respondent's Attendance Management System on the 23rd June 2021;

(b) in his conversation with Mr Persaud on the 24th June 2021;

(c) in his report to the Respondent's confidential protected disclosure procedure on
the 27th July 2021;

(d) in his conversation with Mr Persaud on the 10th August 2021.

2) At the time of making those protected disclosures, did the Claimant hold a reasonable belief that those disclosures were made in the public interest and tended to show that:

a) The Respondent had failed, or were likely to fail, to comply with any legal
obligation to which they were subject (s43B(1)(b) ERA); and/or

b) The health or safety of any individual had been, was being, or was likely to be endangered (s43B(1)(d) ERA)?

3) Did the Respondent subject the Claimant to the following detriments:

(a) Mr Persaud's implied threat to his employment on the 30th July 2021;

(b) being denied the opportunity to act up for Mr Persaud on or around the 30th July 2021; and

(c) the content of referral form to Occupational Health on the 22nd September 2021;

(d) being denied funding by Mr Persaud on 22 September 2021 to continue his membership with the Chartered Management Institute.

4) Was the Claimant subjected to said detriments because he made the protected disclosures?

Remedy

5) If the Tribunal finds that the detriment complaint is well founded, what compensation is owed to the Claimant, including any award for injury to feelings?

6) If the Tribunal finds that the Claimant did make the protected disclosures referred to at paragraphs 21 (a) – (d) of the GOC, were they made in good faith?

7) If not, would it be just and equitable to reduce any award made to the Claimant by up to 25% pursuant to s49(6A) ERA?

8) If the Tribunal finds that the detriment complaint is well founded, in what terms should the declaration to that effect be stated pursuant to s49(1)(a) ERA?

9) Has the Claimant taken reasonable steps to mitigate his loss?

Relevant Findings of Fact

22. At the relevant time the claimant was employed by the respondent as a customer services manager (CSM) and worked at Finsbury Park Station.

23. An employee of the respondent (Person A) was asked by another CSM, Abdul Aziz Bhamjee, to work at Seven Sisters Station for part of a shift on 22 June 2021. An employee at Seven Sisters had tested positive for Covid 19. That employee and those that had been in close contact with them were off work. There was therefore a shortage of staff at that station. Person A had a number of medical problems. When he got to Seven Sisters and found out the shortage was due to a Covid 19 issue he was upset. He spoke to Julie Bishop, a customer services supervisor (CSS), and said that he should not have been sent to the station in those circumstances and that he felt vulnerable. She passed his call to Mr Bhamjee. When Jason Persaud, the area manager (AM), was told of the matter by Ms Bishop he said he would call Person A.

24. The claimant also called Person A that day. The next day, 23 June 2021, Person A called in sick. Ms Bishop asked the claimant to record the details and circumstances of Person A's absence on the respondent's absence system known as AMT. He did so and that entry was as follows:

23/06/2021
Initial call taken by CSS Bishop
Person A called to say that his son had tested positive. He shall be isolating. He stated that he was clinically vulnerable and that he was sent to Seven Sisters station against his will even though there was a reported covid related issue at that station. He said he had headaches and was having flu like symptoms himself. He had taken a PCR test himself and was not showing positive. He will contact us every three days.
CSM Farid Khan

25. It is the claimant's case that on 24 June 2021 Mr Persaud called him into his office and told him that he should not have recorded on the AMT that Person A was forced to go to Seven Sisters. The claimant states that he said to Mr Persaud that it was wrong to have sent Person A to that station as he was on restricted move around and the respondent was meant to shield his exposure. Ms Bishop's written evidence is that the claimant told her that Mr Persaud had made a comment about the entry on AMT. She states that when she next saw Mr Persaud, he said the information should not be on AMT and Ms Bishop should not have requested that the claimant make that entry.

26. Mr Persaud's evidence about the events of the 23 and 24 June 2021 is set out below.

27. In his first witness statement, written in 2023 when the respondent had been unable to locate the AMT entry of 23 June 2021 (it was thought because of a loss of data when the respondent switched to a new system (AMT2)), he said *'we have been unable to locate any AMT entry allegedly made by [the claimant] on 23 June 2021 and I am not aware of any such entry having been made.'* He said that he had no recollection of having a conversation in his office on 24 June 2021 with the claimant about Person A. In oral evidence he said that he had no recollection of speaking to the claimant or Ms Bishop about the entry. When asked by the claimant if he agreed that the claimant had raised the concerns set out in the AMT entry with him on 24 June 2021 he said, *'I don't' recall, you may have done.'* and *'You may have said that, but I cannot recall any specific conversation'*.

28. The AMT record was subsequently located when the respondent carried out a fact find investigation into the events of 23 June 2021. Mr Persaud says this was in January 2024. The document was disclosed to the claimant on 25 June 2025. No explanation was offered in the supplementary witness statement for the eighteen month time gap between locating the document and disclosing it to the claimant. Mr Persaud states that having seen the AMT record and noting that he made entries after the claimant's entry, he may well have seen the claimant's entry when he made his own.

29. The tribunal finds that Mr Persaud spoke to the claimant and Ms Bishop about the entry on AMT of 23 June 2021 on 24 June 2021 and accepts their evidence that he was unhappy with the wording of the entry. Furthermore, it accepts the claimant's evidence that he raised his concerns that Person A should not have been relocated to Seven Sisters for health reasons with Mr Persaud in the same conversation. The tribunal prefers the claimant's

evidence because the accounts given by the claimant and Ms Bishop are similar, they have clear recollections, and Ms Bishop's evidence was not contested in cross examination. Though he denied that he would have criticised either the claimant or Ms Bishop for the wording of that entry, Mr Persaud said he did not recall a conversation with the claimant about it, but there may have been one. He also forgot there had been an entry at all until the AMT was recovered in January 2024.

30. Tragically, Person A went on to test positive for Covid 19 a few days after 23 June 2021. He became very ill and died on 22 July 2021.

31. On 26 July 2021 the claimant made a disclosure to the Confidential Incident Reporting and Analysis Service (CIRAS) which is an option set out the respondent's Whistleblowing Guidance. CIRAS is a confidential safety hotline for the transport sector. This was by way of an anonymous phone call to a dedicated number. The details of the call were recorded as follows:

> *Concern has been raised that staff identified as being vulnerable to Covid-19 have been pressured to carry out frontline work on the Victoria Line during the pandemic increasing their risk of getting Covid-19. It is believed this is an ongoing issue for around 1.5 years.*
> *The reporter explains that pressure from management has resulted in vulnerable staff being told to go against medical advice and carry out activities such as gateline duties which put them in a frontline position and at greater risk of contracting Covid-19. The reporter is aware that London Underground has a procedure for vulnerable staff returning to work, including risk assessment of the duties they will be asked to do. However, they do not believe that this is always done for staff working on the Victoria Line. They also believe that vulnerable staff can be assigned alternate duties such as admin roles or other office-type tasks which would reduce their risk from Covid-19 but they do not believe that this option is being utilised for those working on the Victoria Line.*

32. The disclosure was deemed as high risk and investigated. A response is set out in the subsequent report which is undated (it was listed on the bundle index as being dated 26 July 2021, but that is clearly the date of the disclosure and not of the report). It is noted under the heading 'Details of investigation carried out (if applicable)':
Raised with the Customer Services Head of and Area Manager for more detail on the report.

33. The next heading is 'Actions taken as a result of this report:' and underneath that is written:
A reminder sent to Area Managers on the line by the Head of Customer Services and SHE Business Partner.

34. It is the claimant's case that these two entries on the form strongly suggest that Mr Persaud had been told about the disclosure.

35. Mr Persaud said that he was not aware of the CIRAS disclosure until he was interviewed by Danny Asare on 30 June 2022 in relation to a harassment and

bullying complaint made by the claimant, and he did not see the CIRAS report until preparing for the hearing of this case. Mr Persaud said in oral evidence that there was no specific email to him about there being a CIRAS complaint to his area, asking him to confirm if a specific risk assessment had been done. He said that he received reminders about health and safety at that time and there were constant communications from the company on the subject.

36. The tribunal noted that the complaint is not about Person A and refers to staff generally and the matter of staff being pressurised to work on the frontline during the pandemic. It then goes on to talk about vulnerable staff being told to go against medical advice. Again, this is about staff generally, not identifying Person A or that the complaint is about any one specific person. The tribunal also noted that the claimant made the CIRAS call anonymously, and it notes that the respondent's Whistleblowing Guidance is clear that the confidentiality of an employee who makes a disclosure is maintained (at paragraph 4.2 of the policy). When the claimant raised his harassment and bullying complaint on 17 October 2021, he did not refer to any belief that it was a result of his making a CIRAS disclosure that he had suffered detrimental treatment.

37. The tribunal does not accept that the two entries in the report referred to above are evidence that Mr Persaud had been told about the disclosure. It finds that Mr Persaud was unaware of the CIRAS disclosure until he was interviewed by Mr Asare in connection with the harassment and bullying complaint in June 2022.

38. On 30 July 2021 there was a team away day for CSMs and Mr Persaud. Employees went on a boat trip on the Thames. It is the claimant's case that during that trip '*Mr Persaud looked into my eyes and said that half of the people present would not have a job in the next 24 months.'* The claimant says that he believed this to be a direct threat to his own future employment. The claimant raised this matter in his complaint of 17 October 2021. He named two witnesses. Mr Asare, the investigation manager, asked the witnesses about the incident. He asked Victoria Bruce, Joanne Palmer and Jacob Noel about the conversation, as well as Mr Persaud. Ms Palmer remembered a conversation about the impending change programme but nothing about jobs. Ms Bruce remembered that there had been a conversation about reorganisation and that it might impact jobs. Mr Noel also remembered the conversation but again nothing about the imminent loss of jobs. Mr Persaud agrees that there was a conversation about a restructure, and he did say on the boat trip that this might affect staff numbers. He denies he threatened the claimant or said that any of the team would lose their jobs.

39. The claimant cross-examined Mr Persaud, at length, and Mr Asare about whether there had been any official communication about a restructure at that time. They agreed there had not, but Mr Persaud said that there was a discussion going on at senior management levels and Mr Asare said that was likely. The claimant was questioned about the fact that in his initial complaint on this matter his account was that Mr Persaud had said there would be job losses within twelve months and in later accounts he said within twenty four

months. The tribunal did not find that evidence relating to either of these matters was determinative.

40. The claimant stated that there were witnesses to the incident and the accounts of those witnesses, as well as others, do not corroborate his account. The tribunal finds that there was a general conversation about a restructure and possible impact on staff numbers. It finds that Mr Persaud did not make a comment in a threatening manner directly to the claimant about his job being at risk.

41. Mr Persaud took a period of leave for five weeks commencing on 31 July 2021. On 29 July 2021 he sent to all relevant staff an email setting out dates on which various CSMs would be acting up as area manager in his absence. He named four CSMs, covering a week each, starting on 1, 8, 15 and 22 August 2021. The claimant was not included in this list. Under the timetable Mr Persaud wrote:

    On the weeks that they are covering me their duties are 0700 from Sunday - Thursday. This means that they are contactable most of the week in office hours.

42. On 30 July 2021 the claimant sent a WhatsApp message to Mr Persaud as follows:
    Hi Jason
    I forgot to ask you which of the week /s am covering during these holidays of yours
    Pls let me know

43. Mr Persaud responded the next day by email. He was, by this time, on annual leave:

    Hello Farid,
    If your shifts permit (meaning that you are available through the week Mon-Fri not nights) on week commencing 29th August you can cover me.

    Priorities are;

    - *AMT (checking and updating) delegate this.*
    - *Managing the Overtime. (check the Database daily) cancel unnecessary O/T*
    - *AAW check that any LDI packs are issued and chase up outstanding LDI's*
    - *Ensure that the PGI and Fire Compliance check is completed*
    - *Send out the attendance update each week on Tuesdays to, your colleagues , Amina Rahman and Coverage and Team Admin.*
    - *Attend or delegate someone to attend the line CC each morning at 1000*
    - *Attend the weekly coverage meeting via teams on Wednesdays at 1200*

Best regards

44. The claimant's response, by email on 1 August 2021, with a heading of 'Equal Opportunities and Fairness' was:

Hi Jason

I was instructed by yourself to keep my weeks in August 21 clear as you told me to cover you as Acting AM. I am not happy that my name was omitted from your list of nominees altogether.

When I called you this evening you told me that you could not remember this conversation.

Week commencing 29th of August 2021 I am AL and it shall be inconvenient that I would have to cancel more days during kids summer vacations.
I could work week commencing 15th of August 2021 if you could agree with CSM A A Bhamjee to cover you another week.

Kind regards

Farid Khan

45. Mr Persaud did not respond to the claimant but emailed Mr Bhamjee on 2 August 2021:

Hello Abdul -Aziz,

You are due to cover me on week commencing 15th of August 2021 can you swap with Farid and cover me week commencing the 29th August as Farid is on annual leave that week.

Can you confirm with Farid

Many thanks

46. It was agreed between all witnesses who gave oral evidence that acting up to area manager was a valuable career development opportunity. Mr Persaud agreed that the claimant had not been given an opportunity to act up since Mr Persaud commenced managing him in 2020.

47. It is the claimant's case that Mr Persaud had told him prior to the incident on 22 June 2021 to keep August clear for covering while Mr Persaud was on annual leave. Mr Persaud denies this and states that he told all of the CSMs that he would be on leave in August, and he would be arranging cover.

48. It is the claimant's case that Mr Persaud deliberately excluded him from an acting up opportunity. In the list of issues, the case is put as denying him the opportunity to act up. Mr Persaud's evidence is that he chose people who worked the early shift as they were then around to cover his duties which

involved day time meetings. The claimant was on annual leave or late shifts during the relevant period. When the claimant texted him, he realised he had not put in cover for the final week of his holiday and offered that to him. When the claimant said that was not possible and suggested an alternative, he contacted Mr Bhamjee and asked him to swap with the claimant. He was on leave at this time and expected the two of them to sort it out between them.

49. Mr Asare said in his outcome letter for the harassment and bullying complaint on 5 April 2023, that *'I found that, historically, [Mr Persaud] arranges for CSMs on early shifts to cover the AM role.'*

50. The tribunal finds that there is clear documentary evidence to show that the claimant was not denied the opportunity to act up. Mr Persaud offered the claimant the opportunity to cover his final week of annual leave, and then contacted Mr Bhamjee, as suggested by the claimant, asking him to swap with the claimant as the claimant could not act up in the final week. He carried out these actions while he was already on annual leave. The claimant provided evidence that someone not on early shift was offered an acting up opportunity in July 2022. The tribunal does not find that this single example undermines the evidence of Mr Persaud where there is written evidence that he tried to provide a cover opportunity to the claimant on two separate weeks of his leave period.

51. The claimant commenced a period of sickness absence on 7 August 2021. There is one fit note provided in the bundle for that time which is dated 17 September 2021 [129] in which it is recorded that the claimant is absent due to '*Stress related issues (work related) low mood*.'

52. It is the claimant's case that he spoke, by telephone, to Mr Persaud on 10 August 2024, again raising that there had been a health and safety breach in relation to Person A. The claimant sent a WhatsApp message to Mr Persaud at 09:24 on 10 August 2021 as follows:

    Am sorry to bother you during your AL

    Could you call me please

    Farid

53. The claimant says Mr Persaud called him and they discussed Person A. The call lasted an hour. Mr Persaud says that he does not recall any such conversation and specifically refutes the claimant's claim that he (Mr Persaud) said that Person A was restricted and '*we have to live with that*.'

54. Neither party had submitted call records in evidence so the only documentary evidence the tribunal had before was the WhatsApp text from the claimant to Mr Persaud. The tribunal notes that Mr Persaud clearly does, on occasion, carry out work tasks while on annual leave. There is an email in the bundle dated 30 June 2022 in which he invites CSMs to contact him during part of his leave, and he had responded to the claimant about the acting up opportunity earlier in this leave period. The claimant had commenced a period

of sickness absence which was due to work related stress, and this stress was around the incident of 22 June 2021 and its aftermath. While it makes no finding on specific words used, the tribunal finds that Mr Persaud did call the claimant on 10 August and that the claimant's concerns around what happened to Person A, namely that there had been a health and safety breach, were discussed. Mr Persaud has said that he does not remember conversations with the claimant and Ms Bishop on 23 June 2021 that the tribunal has found did take place, and it notes that he did not remember the AMT entry of 23 June 2021 until it was located some years later. The tribunal prefers the claimant's evidence on this matter.

55. On 22 September 2021 the claimant attended an absence review meeting with Mr Persaud at Mr Persaud's office. The claimant made a note of the meeting which he tried to give to Mr Persaud afterwards. Mr Persaud refused to accept it. That note was in the bundle and was difficult to read. The tribunal requested that the parties work together to provide a transcript. The claimant provided a handwritten transcript to the respondent's solicitor. The respondent's solicitor said that the original document was illegible, and they could not comment on the transcript. They did not provide a copy to the tribunal, type it up, or offer comments on which parts they objected to as being illegible. Mr Welch said in closing submissions that the transcript provided by the claimant did help.

56. The tribunal was able to read parts of the original document and is satisfied that the claimant's transcript does represent what is written in the original document. The tribunal admitted the claimant's transcript into evidence.

57. The tribunal had regard to that document in making its findings of fact on the disputed issues about this meeting. In doing so it has taken into account that these are the notes of one party (the claimant), not approved by the other (Mr Persaud), that in taking a contemporaneous note in a stressful meeting during a period when he was on sick leave with work related stress, the claimant may not have recorded the conversation verbatim, also that Mr Persaud denied that the document was a true record of the meeting. Mr Welch suggested in closing submissions that the occupational health referral, drafted during the meeting by Mr Persaud, was a record of the meeting that the tribunal should prefer. The tribunal does not accept that the few notes about the claimant's health made on that document represent a clearer or more complete record than the notes made by the claimant.

58. It is not in dispute that the claimant and Mr Persaud discussed Person A at this meeting and the claimant's view of how Mr Persaud dealt with matters on 22 June 2021. There was some dispute as to who had raised the issue of a potential move for the claimant. The tribunal found the evidence in this matter to be unclear but did not feel that it was necessary to make a finding of fact on who raised the matter first in order to reach a judgment on the claim.

59. Mr Persaud completed an occupational health referral form as the claimant had been absent through illness for over six weeks. His entries on the form are as follows:

CSM Khan is feeling stressed and anxious due to differences of opinions with myself his Area Manager, we had a member of staff pass away due to Covid in late July and his perception of how I dealt with this along with some other development and personality clash issues he now feels that he is unable to work with me anymore. The areas of his job that are of concern to me are the safety critical aspects both operationally and decision making whilst he is on his current medication and feeling not in a mental state to be able to carry out these duties safely.

And

Would a change of location be conducive to CSM Khan returning to his full duties? Are there any alternative medications or a different dosage that he could be prescribed that would not restrict him from Safety Critical duties.

60. It is the claimant's case that this is a mischaracterisation of his relationship with Mr Persaud. It was not immediately clear to the tribunal exactly what this complaint was about, and the claimant's submissions on whether there was a complaint that it was Mr Persaud who had raised a possible move and not the claimant, were also unclear. The wording in the list of issues is that *'the content of the referral form to Occupational Health on the 22 September 2021'* was a detriment. In the claimant's witness statement, he states: *'[Mr Persaud] completed an Occupational Health form including a statement that our relationship had broken down due to his handling of the Person A's death and a personality clash and asked whether a change of location would benefit me. He said he would not necessarily follow any recommendations from Occupational Health. I believe that this treatment by Mr Persaud constituted a further detriment due to my disclosures about Person A. He wanted to move me away even whilst I was off sick there was no duty of care.'*

61. In cross examination Mr Welch said to the claimant that he had told Mr Persaud that he did not want to work with him. The claimant's response was *'I would like to elaborate. The discussion was that the health and safety incident had not been investigated, and I did not feel safe in the area, but I never said personality clash'*. Mr Welch said, '*Before this you say he threatened to throw you off a boat and threatened your job, so you did not want to work with him.'* The claimant said, '*For health and safety reasons yes'*. The tribunal asked the claimant to clarify whether he accepted that the wording in the occupational health referral form was true and the claimant said that it was all true except for the personality clash. The focus of the claimant's cross examination of Mr Persaud was that there was no personality clash and that Mr Persaud had deliberately and wrongly characterised the claimant's complaints about health and safety as a personality clash. When asked by the tribunal to explain what his complaint was about the occupational health referral form, he said *'It is framed as a personality clash – we did not have a personality clash.'* Then, in closing submissions, the claimant said that Mr Persaud was using the form to frame his criticisms about health and safety as a personality clash and a reason for a move.

62. In Mr Persaud's oral evidence, when the claimant asked him if he recalled the meeting he said '*You said you were unhappy and did not like the way I handled Person A. You wanted a hardship move and did not feel you could work with me anymore. I said we can work this out and you said I cannot work with you anymore.'* The claimant asked Mr Persaud if he, the claimant, had asked to be moved. Mr Persaud said *'you asked me to support a hardship move.'* The claimant did not put it to him that this was untrue. In response to a question from the tribunal about the use of the phrase personality clash, Mr Persaud stated that the phrase was *'my description for the breakdown in our relationship'.*

63. The tribunal also had the notes of the meeting of 22 September 2021 written by the claimant. Mr Persaud accepted that the claimant had tried to give him these notes after the meeting, and he had refused to accept them. There was no dispute that the notes in the bundle were the notes that the claimant made during that meeting. The claimant has written in the notes that Mr Persaud said, '*it looks like you don't want to work with me'*, the claimant responds that he wanted to work in a safe environment and later asked what his options were. A discussion was then had about move options. The claimant records himself as saying at one point *'I have worked here in this line since 2007'.* He does not record himself as saying that he did not want a move. Additionally, Mr Persaud has recorded on the claimant's non-attendance record for 7 September 2021:

    CSM Khan also reiterated his desire to move off the area although he did not want to discuss the specifics again. He had previously conveyed that due to differences between myself and him and how he perceived my handling of the sad passing of one of our colleagues as a big part of why he wants to move areas.

    The claimant denies that he said he wanted to move during this conversation.

64. From his answers in oral evidence, the tribunal understands the claimant's complaint to be about Mr Persaud deliberately downplaying a health and safety concern by describing it as a personality clash. The tribunal finds that he did not do this. Mr Persaud was completing an occupational health referral for an employee who was on long term sick. The object of the report was to obtain information about how the claimant could be helped back to work. The claimant was off sick with work related stress. Mr Persaud is candid in the form in that he highlights that the claimant is upset with him specifically, and this information is pertinent to the task that occupational health will carry out. An occupational health referral form is not an appropriate document in which to set out the specifics of a health and safety dispute. The tribunal does not accept that the use of the phrase 'personality clash' was anything other than Mr Persaud searching for and settling upon what he thought was neutral language to convey the nature of the problem.

65. It is not clear to the tribunal who first raised the matter of a potential move, but the tribunal does not find that there is evidence that Mr Persaud was trying to or wanted to force a move against the claimant's wishes.

66. It is the claimant's case that on the same day he was denied funding by Mr Persaud to continue his membership with the Chartered Management Institute. There is no information about this in the pleadings or in the claimant's witness statement other than the bare assertion. In his witness statement he says it happened 'subsequently', as in subsequent to the meeting of 22 September 22021. The tribunal asked him to clarify whether the request was made at the meeting, and he said it was difficult to remember but yes.

67. The claimant accepted that Mr Persaud was not senior enough to approve or deny funding for study, as set out in the respondent's Professional Sponsorship Guidelines, but said that discussion with, and support from, Mr Persaud, his line manager, was required as per the Guidelines at paragraphs 3.1.5 and 3.1.6. Mr Persaud said that he had never been asked to support such an application and had never heard of the Chartered Management Institute. He said if he had been asked for support he would have provided it.

68. The tribunal noted that there was no reference to this conversation in the claimant's handwritten notes of the meeting of 22 September 2021. There was no evidence in the bundle that the claimant was already a member of the institute or had received previous support from the respondent. The claimant made no complaint about this matter other than raising it, again with a bare assertion, in his harassment and bullying complaint on 17 October 2021. The tribunal notes that at the time of the alleged incident the claimant was on long term sick leave with work related stress and extremely unhappy with Mr Persaud. It seems an odd matter to be discussing in that environment.

69. The tribunal finds that Mr Persaud did not deny funding to the claimant for membership of the Chartered Management Institute on 22 September 2021, as this matter was not raised with him.

70. The claimant raised a harassment and bullying complaint on 17 October 2021. The complaint covered most of the matters complained of in this claim, as well as other complaints. The complaint was investigated by Danny Asare. Mr Asare issued an outcome letter on 5 April 2023. He did not uphold the complaint.

Submissions

71. Both parties provided written submissions which the tribunal read in full. Both also made brief oral submissions which are summarised below.

72. For the respondent, Mr Welch said that the disclosure in the AMT was too vague to be a qualifying disclosure and that the parties had agreed that the disclosures on 24 June 2021 and 10 August 2021 were the same, so that all three must fall. He said that Mr Persaud did not know about the CIRAS report until after the detriments, so it did not matter whether or not that was a protected disclosure. He noted that there had been no reference to a breach of legal duty in the evidence. He said that the tribunal should take into consideration the factual accuracy of the disclosures when considering whether the claimant had a reasonable belief they were in the public interest. He said they were not factually accurate. The claimant was ill informed and

ultimately wrong. He said the detriments were either not made out or where the matters complained of had taken place, they did not meet the definition of detriment.

73. The claimant said that he had a reasonable belief that his disclosures showed a health and safety breach. He said that there was evidence that there had been discussion following the AMT entry and Mr Persaud had admitted that he may have had those conversations. The claimant said that the CIRAS report showed that it had been circulated to managers and very soon afterwards Mr Persaud made a threat to him about not having a job. He perceived this to be directed at him. Mr Persaud has said he may have had a conversation with the claimant on 10 August 2021. At the meeting on 22 September, he was raising a safety concern and Mr Persaud used the occupational health referral form to frame this as a personality clash and a reason for a move. After the disclosures there was a sudden change in relationship, and the claimant suffered detriment.

Law, Decision and Reasons

74. Protected disclosures ("whistleblowing")

The Employment Rights Act 1996 (ERA96) contains the following provisions:

43B Disclosures qualifying for protection.

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

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

…

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

…

43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure —

(a) to his employer, …

47B Protected disclosures.

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

48(2) Complaints to employment tribunals

…

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B

…

(2) On a complaint under subsection 1A it is for the employer to show the ground on which any act or deliberate failure to act was done.

75. In *Kilraine v Wandsworth London Borough Council [2018] EWCA Civ 1436* the court held that 'in order for a statement or disclosure to be a qualifying disclosure... it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in [s43B(1)(a-f)].

76. Whether any disclosure made by the claimant was factually correct is not relevant to the tribunal's assessment of whether it was a qualifying disclosure for the purposes of s43B ERA96, in circumstances where the claimant reasonably believed it to be true.

77. In *Fecitt and others (respondents) and Public Concern at Work (intervener) v. NHS Manchester (appellant) [2012] IRLR 64 (para 45*), Lord Justice Eilas set out that '*s.47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower*.'

78. The claimant claims to have made four protected disclosures during the period 23 June 2021 to 10 August 2021, and to have suffered, as a result, four detriments during the period 30 July 2021 to 22 September 2021.

<u>Protected Disclosure 1: the entry on the Respondent's Attendance Management System on the 23 June 2021</u>

79. The tribunal accepts that the entry was a qualifying disclosure in that in the reasonable belief of the claimant this was a matter in the public interest and one which tended to show that the health and safety of an individual had been endangered. The entry records that Person A was clinically vulnerable, that he was sent to a location against his will, and in the circumstances the location may have been hazardous to him. The tribunal does not accept Mr Welch's submissions that his entry is not sufficiently detailed so as to meet the test in *Kilraine.* The alleged breach of health and safety is clear as are the facts relied upon. The entry was made on the AMT system, which the claimant's employer will have accessed frequently, and the tribunal has found that Mr Persaud had seen it by 24 June 2021, as he discussed it with Ms Bishop and the claimant on that date.

<u>Protected Disclosure 2: in his conversation with Mr Persaud on the 24 June 2021</u>

80. The tribunal has found that the claimant did raise with Mr Persaud on 24 June 2021 that there had been a health and safety breach in respect of the relocating of Person A to Seven Sisters on 22 June 2021. It was agreed between the parties that the claim is that the claimant raised the same issue as set out in the AMT entry with Mr Persaud in this meeting. The tribunal accepts that the disclosure was a qualifying disclosure in that in the reasonable belief of the claimant this was a matter in the public interest and one which tended to show that the health and safety of an individual had been endangered.

Protected Disclosure 3: in his report to the Respondent's confidential protected disclosure procedure on the 27 July 2021

81. The tribunal accepts that the report was a qualifying disclosure in that in the reasonable belief of the claimant this was a matter in the public interest and one which tended to show that the health and safety of an individual had been endangered. The report does not refer to a single event but to an ongoing problem. Mr Welch cross-examined the claimant on this matter (i.e. there being an ongoing problem) in relation to Person A but this is not what the report sets out. A further incident relating to another employee in which Mr Persaud is reluctant to send a sick colleague home during the pandemic is set out in the witness statement of Julie Bishop. This evidence was not contested by the respondent.

82. The tribunal found that the report was made on 26 July 2021 and not 27 July 2021.

Protected Disclosure 4: in his conversation with Mr Persaud on the 10 August 2021

83. The tribunal found that the claimant did raise with Mr Persaud on 10 August 2021 that there had been a health and safety breach in respect of the relocating of Person A to Seven Sisters on 22 June 2021. It was agreed between the parties that the claim is that the claimant raised the same issue as set out in the AMT entry with Mr Persaud in this meeting. The tribunal accepts that the disclosure was a qualifying disclosure in that in the reasonable belief of the claimant this was a matter in the public interest and one which tended to show that the health and safety of an individual had been endangered.

84. As the tribunal has found that all four of the disclosures claimed were protected disclosures it must now consider whether the detriments complained of took place, and if so whether they were as a result of one or more of the disclosures.

Detriment 1: Mr Persaud's implied threat to his employment on the 30 July 2021

85. The tribunal has found above at paragraph 40 that Mr Persaud did not make an implied threat to the claimant's employment on 30 July 2021.

Detriment 2: being denied the opportunity to act up for Mr Persaud on or around the 30 July 2021

86. The tribunal has found above at paragraph 50 that the claimant was not denied the opportunity to act up for Mr Persaud.

87. Detriment 3: the content of referral form to Occupational Health on the 22 September 2021

88. The claimant's case is that the use of the phrase 'personality clash' in that document was a detriment as it was an avoidance of acknowledging, or a deliberate mischaracterisation of, his complaint about a health and safety breach, and there was no personality clash. The tribunal has considered the

case law on what constitutes a detriment. Mr Welch drew the tribunal's attention to a number of authorities on this matter and it agrees that a clear account of the established position is set out in *Jesudason v Alder Hey Childrens NHS Foundation Trust[2020] EWCACiv 73* at paragraphs 27 and 28:

> 27 In order to bring a claim under section 47B, the worker must have suffered a detriment. It is now well established that the concept of detriment is very broad and must be judged from the viewpoint of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment. The concept is well established in discrimination law and it has the same meaning in whistleblowing cases. In *Derbyshire v St Helens Metropolitan Borough Council (Equal Opportunities Commission intervening) [2007] ICR 841, para 67*, Lord Neuberger of Abbotsbury described the position thus:
> In that connection, Brightman LJ said in *Ministry of Defence v Jeremiah [1980] ICR 13, 31A* that a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment. That observation was cited with apparent approval by Lord Hoffmann in *Chief Constable of the West Yorkshire Police v Khan [2001] ICR 1065, para 53*. More recently it has been cited with approval in your Lordships' House in *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337*. At para 35, my noble and learned friend, Lord Hope of Craighead, after referring to the observation and describing the test as being one of materiality, also said that an unjustified sense of grievance cannot amount to detriment. In the same case, at para 105, Lord Scott of Foscote, after quoting Brightman LJ's observation, added: If the victim's opinion that the treatment was to his or her detriment is a reasonable one to hold, that ought, in my opinion, to suffice.
>
> 28 Some workers may not consider that particular treatment amounts to a detriment; they may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way. But if a reasonable worker might do so, and the claimant genuinely does so, that is enough to amount to a detriment. The test is not, therefore, wholly subjective.

89. The tribunal finds that the use of the term personality clash amounts to a detriment. The claimant had said to Mr Persaud on at least three occasions before 22 September 2022 that he believed there had been a breach of health and safety guidelines in respect of Person A. He said that again on 22 September 2022 and this time he saw an official record of that conversation in a document which he understood as ignoring his concerns and appearing to downplay or misrepresent the nature of his complaint. It is the view of the tribunal that it was not unreasonable, in all the circumstances, for him to feel that way. The tribunal kept in mind that the intention of the employer is not relevant to whether the matter complained of is a detriment.

90. Having accepted that the use of the phrase personality clash in the occupational health referral form was a detriment, the tribunal then went on to consider whether the detriment was done on the ground that the claimant had made protected disclosures on 23 June 2021, 24 June 2021 and 10 August 2021.

91. The tribunal finds that the respondent has shown that the detriment was not done because the claimant had made a protected disclosure. The claimant was on long term sickness absence, and it was the responsibility of Mr Persaud in those circumstances to refer the claimant to occupational health. In order to do so he had to complete a referral form. The referrer is asked to supply as much detail as possible in relation to the sickness absence, the object being to find ways, if appropriate, of helping the claimant back to work.

He has set out that the claimant is unhappy with him. He stated clearly in evidence that he thought the phrase was appropriate as it described what the claimant was saying to him. It is the decision of the tribunal that Mr Persaud, did the detriment because he needed to complete the form to help the claimant back to work and he understood the claimant to be describing a personality clash. The tribunal finds that although the claimant's unhappiness with Mr Persaud was because he perceived him to have breached health and safety, a matter about which he had made disclosures, Mr Persaud did not use the phrase on the ground that the claimant had made a protected disclosure.

Detriment 4: being denied funding by Mr Persaud on 22 September 2021 to continue his membership with the Chartered Management Institute

92. The tribunal has found at paragraph 69 above that Mr Persaud did not deny funding the claimant.

93. As the tribunal has concluded that the claimant did not suffer any detriment on the ground that he had made a protected disclosure, his claim of protected disclosure detriment is dismissed.

Approved by:

Employment Judge W Anderson

Date: 23 September 2025

Sent to the parties on:

24 September 2025

For the Tribunal Office