



EMPLOYMENT TRIBUNALS

Heard at: London South

On: 22 to 26, and 29 and 30 September 2025

Claimant: Miss M McGhee

Respondent: The members of the Executive Committee at the relevant time of the unincorporated association known as 'Samphire'

Before: Employment Judge Ramsden

Ms J Cook

Ms G Mitchell

Representation:

Claimant In person

Respondent Mr D Brown, Counsel

RESERVED JUDGMENT

Background

1. The Respondent is a charity which operates out of a site in Dover. It works both locally in community engagement seeking to improve social cohesion between migrant and British communities, and nationally, providing advice and support to ex-detainees.
2. The Claimant was employed by the Respondent as its Director from 4 January 2022 until she was summarily dismissed on 12 July 2022.
3. The Respondent says that the Claimant was dismissed for gross misconduct; the Claimant says she was dismissed for the reason, or principal reason, that she made protected disclosures.

4. Following a period of ACAS Early Conciliation which began on 18 July and ended on 2 August 2022, the Claimant presented a claim to the Employment Tribunal on 11 October 2022.
5. The Claimant's complaints, as defined in a Preliminary Hearing for Case Management before Employment Judge Rhodes on 6 September 2023, are that:
 - a) She was automatically unfairly dismissed for the reason, or principal reason, that she made protected disclosures, contrary to section 103A of the Employment Rights Act 1996 (the **1996 Act**);
 - b) She was subjected to 17 acts of detriment done on the ground that she had made protected disclosures, contrary to section 47B of the 1996 Act;
 - c) She was wrongfully dismissed (i.e., owed notice pay);
 - d) She suffered unauthorised deductions from her wages, in breach of section 13 of the 1996 Act, in respect of:
 - (i) Unpaid compensation for the Respondent's Time Off In Lieu (**TOIL**) arrangements; and
 - (ii) The salary paid to her for work performed in the period 1 April 2022 to the termination of her employment on 12 July 2022, because her salary was set by reference to NJC salary scales that were increased in relation to this period after her employment ended; and
 - e) She is owed compensation for accrued but untaken holiday pursuant to the Working Time Regulations 1998 (the **WT Regulations**).
6. The Respondent resists each of these complaints.
7. While raised in her Claim Form, the Claimant withdrew her complaint of disability discrimination contrary to the Equality Act 2010, and that complaint was dismissed by EJ Rhodes on 7 September 2023.

The hearing

Representation

8. The Claimant presented her own case, and was supported by her brother, Mr McGhee.
9. The Respondent was represented in the hearing by Mr Brown, Counsel.

Adjustments

10. The correspondence from the parties with the Tribunal indicated that the Claimant would seek for correspondence to be sent to her in hard copy, and for those documents to:
 - a) Be printed black ink on white paper;
 - b) Be in Century Gothic font;

- c) Use size 12 or 14 font; and
 - d) Express information in plain English with limited jargon/acronyms.
11. This was clarified in a Preliminary Hearing for Case Management before EJ Rhodes on 6 September 2023, where it was recorded that:
- “The claimant has difficulty processing large amounts of information electronically. Although the claimant can deal with routine correspondence by email, any substantial letters and all pleadings, documents and statements should be sent to her by hard copy as well as by email.”*
12. However, the Claimant failed to provide medical evidence when Ordered (on a number of occasions) to show why this is needed, or why the adjustments sought were reasonable.
13. The Final Hearing was listed by EJ Rhodes in September 2023. Those Orders provided that the hearing was to take place by video. The date of the Final Hearing was changed by EJ Wright on 16 September 2024 (following a joint request by the parties to postpone it) to this hearing window. The Final Hearing was stated, in those Orders, to be an in-person hearing.
14. There appeared to be some confusion between the parties as to whether this hearing was to be conducted remotely or in-person, but both parties attended the Tribunal on the first day of the hearing. The Tribunal had the benefit of reviewing the witness statements sought to be admitted into evidence by the parties, and noted that, while not medical evidence, the witness evidence to be provided by the Claimant’s mother and sister described the Claimant’s depression, anxiety and agoraphobia, as well as bladder and bowel incontinence brought on by situations of stress, including (when the Claimant lived in Dover) anticipating seeing her former colleagues.
15. With this in mind, the Tribunal invited the parties to make representations about whether it may be appropriate to convert the hearing to be a CVP hearing.
- a) The Claimant wished for the hearing to be converted to be held remotely, saying that because of her health problems and the anxiety she was feeling in connection with the hearing, she had not eaten or drunk anything. She also noted that, because she needs to print all documents off, working remotely would save her carrying lots of files around.
 - b) The Respondent noted that there was no reason why its witnesses needed the hearing to be in-person and, indeed, Mrs Stephens expressed that a benefit of switching the hearing to be held via CVP was that it would save her a long journey to and from the Tribunal. However, Counsel for the Respondent considered an in-person hearing more conducive to the Tribunal evaluating the oral evidence of witnesses, but the Tribunal reassured him that it is accustomed to doing so over CVP as well as in-person. He was invited to bring it to the Tribunal’s attention if he considered the evidence available to the Tribunal to be impaired by the quality of the

video of any witness as the hearing progressed, but he did not do so. While there were a few of the common technological difficulties with CVP hearings, these were all overcome.

16. In light of the Claimant's anxiety and the anticipated length of her evidence, as well as the fact she is a litigant-in-person, the Tribunal suggested that a further adjustment might be to allow her, and all the witnesses, to have a blank piece of paper and a pen should they wish to make a note of any matter they wished to return to in re-examination. Mr Brown did not object to this.

Hearing window and size of Claim/evidence

17. While the six-day hearing had been listed to determine liability and remedy, the Tribunal was presented with 198 pages of witness evidence, nearly 50 pages of which was the Claimant's densely presented statement. The Bundle and Supplementary Bundle amounted to more than 1,000 pages of documentary evidence. Each party intended to call five witnesses, so ten in total, with the Claimant's evidence alone anticipated to take 1.5 days by Mr Brown. Given Mrs Stephens would speak to nearly every allegation and would be cross-examined by a litigant-in-person who, for all her advocacy experience in migrant rights, is not a professional legal advocate, the Tribunal anticipated that her evidence would be of a similar length.
18. It was therefore decided, upon discussion with the parties, to confine the Tribunal's examination of the case to liability only, which would reduce the Claimant's witnesses by two, and slightly reduce the issues to be determined.

Correct legal name for the Respondent

19. On the first day of the hearing the Employment Judge asked the Respondent about its legal personality. This question caused some difficulty, and on the fourth day of the hearing Mr Brown indicated that, upon enquiry, it appeared that the Respondent is an unincorporated association.
20. Consequently, the singular "the Respondent" is used throughout this judgment as a convenient shorthand for the aggregation of the members of the Executive Committee of Samphire at the time of each of the acts or omissions that gave rise to the Claimant's complaints. It is that combination of individuals who in fact employed the Claimant at the relevant time (*Affleck v Newcastle Mind* [1999] ICR 852), and who will jointly bear any liability for complaints relating to matters which occurred while they were members of that Executive Committee (*Chandra v Mayor* [2017] 1 WLR 729).
21. Some due diligence was undertaken by the solicitors for the Respondent in the course of the hearing to identify the correct persons who should be named as the legal persons resisting this Claim, and their conclusions are that Joy Poppe Stephens, Sara Jones, Rebecca Sawbridge, Sara Hutchinson, Liza Seed, Duanne Poppe, Dominic Howden, Martin Burrell and Kumba Krubally were the

members of the Samphire Executive Committee (the Trustees) in the time periods with which this judgment is concerned.

List of issues

22. A list of the issues in the case had been compiled in the Case Management Hearing of September 2023 (and that list is appended to this judgment). That list, among other things, set out the protected disclosures upon which the Claimant intended to rely, identifying four.
23. As is usual, those Orders provided that either party may identify any errors or omissions from the list of issues within them, provided they did so within 14 days of the date of the Orders, but if no such communication was received by the Tribunal in that time, that list would be treated as final unless the Tribunal decided otherwise. No such communication was received from either party in that 14 day timeframe.
24. However, the Claimant produced a table on 17 September 2025, which apparently expanded both the disclosures she was seeking to rely upon and the list of detriments asserted.
25. In this hearing when the 17 September document was discussed, the Employment Judge outlined that the scope of the Claimant's Claim is as set out in her Claim Form and Particulars of Claim, and enquired whether she wished to make an application to amend, explaining the legal test and considerations. The Claimant confirmed that she did not wish to make an application to amend.
26. The Employment Judge revisited the matter of the disclosures relied upon by the Claimant later on in the hearing, taking the view that the list of four disclosures set out in EJ Rhodes' Orders (as confirmed by the Claimant as the correct at the outset of this hearing) did not include all of the disclosures identified in the Claimant's Particulars of Claim. In particular, in a section of her Particulars of Claim containing the heading "*Details of the protected disclosures - whistleblowing*" the Claimant had included reference to the four disclosures in the list of issues, but also to:
 - a) A telephone call on 16 February 2022 to Sara Jones, a Trustee and the Treasurer of the Respondent; and
 - b) Another email on 15 March 2022.
27. The Claimant did not wish to rely on 15 March 2022 email as a disclosure (that was the date that she said she suffered a detriment at the hands of Mrs Stephens), but she did wish to rely on the telephone call. The Respondent objected to this as an expansion of the Claimant's claim. This objection was rejected by the Employment Judge, in light of the following:
 - a) The scope of a claimant's claim, and a respondent's response, is defined by an objective analysis of the pleadings (*Moustache v Chelsea and Westminster Hospital NHS Foundation Trust* [2025] EWCA Civ 185).

- b) A list of issues is not a pleading – it is a case management tool (*Parekh v Brent LBC* [2012] EWCA Civ 1630), the purpose of which is to summarise the existing pleadings, not to amend them (*Moustache*). A list of issues, even if devised by the parties, only becomes the list of issues in the case when adopted by the Tribunal. It is an extremely useful tool, but it is only that. The true scope of the claim, or the response, as appropriate, is determined by the relevant pleadings (and any subsequent permitted amendment).
 - c) The Tribunal conducting the Final Hearing is not required to stick slavishly to the list of issues agreed where to do so would impair the discharge of its core duty to hear and determine the case in accordance with the law and the evidence (*Price v Surrey CC* UKEAT/0450/10/SM). The Tribunal needs only decide enough to reach a conclusion on the claims that have been pressed (*Moustache*). It does not have a general duty to take proactive steps to prompt some expansion or modification of the case advanced by a party where that might be to their advantage (*Moustache*).
 - d) A Tribunal will usually be entitled to confine its attention to the issues on the list, but there are at least two categories of situation where it is necessary in the interests of justice to depart from the list of issues, which include where a pleaded complaint has been omitted from the list in circumstances that do not amount to abandonment of the complaint (the case law in this regard concerns complaints that were obvious – where the pleaded case “shouted out”, for example, a discriminatory reason for dismissal – *McLeary v One Housing Group Ltd* UKEAT/0124/18).
28. The Employment Judge considered that the disclosure referred by the Claimant as having been made to Ms Jones on 16 February 2022 met this “shout out” test, and therefore was within the scope of the Claimant’s claim given it had not been expressly abandoned by the Claimant.
29. In addition, the list of issues created by the Tribunal on 6 September 2023 did not refer to any time limit issues. However, 14 of the Claimant’s allegations of protected disclosure detriment relate to matters which occurred more than three months before the presentation of the Claim Form (allowing for ACAS Early Conciliation). These complaints are, on-the-face-of-it, outside the Tribunal’s jurisdiction to determine, and so this is a matter the Tribunal needed to proactively raise, even though it had not been raised by the Respondent. The Employment Judge took some time on the first day of the hearing to explain this to the Claimant, and the applicable legal test for extension of time, as well as the fact that the 1996 Act confines consideration of time limits to the last occurrence of any “series”. The Employment Judge explained to the Claimant that arguments about time limit matters are usually made in submissions. The Respondent did not object to any of this explanation.

Documentary evidence

30. The Final Hearing of the Claim had originally been listed for 25 to 28 March 2024, and the parties prepared and agreed a hearing bundle of 806 pages in anticipation of that. However, the Final Hearing was postponed on the joint application of the parties, and they agreed a Supplementary Bundle of 253 pages so as to minimise amendments needed to witness statements already exchanged by that March 2024 hearing window.
31. At the start of the second day of the hearing the Respondent disclosed two further documents:
- a) A copy of the whistleblowing report made by the Claimant on 10 May 2022 to Martin Burrell and Kumba Krubally (both Trustees of the Respondent). This document already appeared in the Bundle as Appendix 1 to the Claimant's Form Grievance made on 13 June 2022, and so neither Party sought to add this to the documentary evidence admitted by the Tribunal; and
 - b) An email from Rev Burrell to Joy Poppe (Chair of Trustees of the Respondent) on 16 May 2022, where Rev Burrell forwards to Mrs Poppe the Claimant's whistleblowing report of 10 May 2022. That document was sought to be relied upon by the Claimant, and was admitted into evidence by the Tribunal and added to the back of the Supplementary Bundle.

Witness evidence

32. The Tribunal heard evidence from:
- a) The Claimant;
 - b) Shehrazade Mamjan; and
 - c) Rebecca Sawbridge,
- in support of the Claimant's Claim, and from:
- d) Mrs Poppe (also known as Mrs Stephens);
 - e) Julie Lawrence;
 - f) Dr Krubally;
 - g) Rev Burrell; and
 - h) Sara Jones,
- on behalf of the Respondent,
33. Each of the Respondent and the Claimant made submissions in support of their respective positions.

Facts

The Respondent's constitution

34. The Respondent's constitution was amended on 29 September 2016. As amended, that constitution included the following terms:

- a) *"... the Charity and its property shall be administered and managed in accordance with this constitution by the members of the Executive Committee, constituted by clause G of this constitution ("the Executive Committee")."* (Clause B)
- b) *"The Executive Committee shall ensure that a register of names and contact details of the members is kept, which must be made available to any member upon request."* (Clause E(2))
- c) *"The Executive Committee shall consist of not less than 4 or more than 16 members... The Executive Committee may in addition appoint not more than 3 co-opted members... Each appointment of a co-opted member shall be made at a special meeting of the Executive Committee..."* (Clause G).
- d) *"(1) Subject to the provisions of sub-clause (2) of this clause no member of the executive committee shall acquire any interest in property belonging to the Charity (otherwise than as a trustee for the Charity) or receive remuneration or be interested (otherwise than as a member of the Executive Committee) in any contract entered into by Executive Committee.*

(2) Any member of the Executive Committee for the time being who is a solicitor, accountant or other person engaged in a profession may charge and be paid all the usual professional charges for business done by him or her or his or her firm when instructed by the other members of the Executive Committee to act in a professional capacity on behalf of the Charity..." (Clause I)

Prior to the Claimant's employment – Sara Hutchinson as Chair of Trustees and then Interim Director

- 35. Mrs Stephens was a Trustee of the Respondent from September 2018 to September 2023.
- 36. Sara Hutchinson, at that time, Chair of Trustees of the Respondent, indicated in late 2020 that she intended to look for employed work in the next year or so, and so would be stepping down from her role as Chair in that timeframe. Ms Hutchinson suggested that Mrs Stephens might consider taking on the role of Chair. Mrs Stephens began to shadow Ms Hutchinson with a view to upskilling on those areas of the role of which Mrs Stephens had less experience from January 2021.

37. In June 2021, Tanya Long, who was the Respondent's then-Director, confirmed that she would be leaving the organisation in August 2021. The unchallenged evidence of Mrs Stephens is that the Respondent struggled to recruit a replacement Director.
38. Mrs Stephens and her husband, Duane (also a Trustee of the Respondent), suggested that Ms Hutchinson might be well-suited to taking on some tasks that would fall to be performed by the Director on an interim *and paid* basis, while the Respondent looked to recruit someone into the role. Ms Hutchinson was concerned about being both Chair and Director in terms of governance, and noted that she would need to arrange childcare.
39. The possibility of Ms Hutchinson taking some of the work that would otherwise fall to the (still unfilled) post of Director was discussed at a Trustee meeting in July 2021. The minutes of that meeting record that:
"Following recent recruitment to replace Tanya, the response was disappointing therefore, Trustees were happy to support Sara H take up interim Directorship in the short to medium term. On this basis governance requires Sara to step down as a Trustee with immediate effect. It was agreed to re-advertise the role in the autumn...".
40. Ms Hutchinson resigned as Chair and a Trustee on 4 August 2021. Mrs Stephens took up the post of acting Chair until confirmed in post at the September 2021 annual general meeting of the Respondent (the **AGM**).
41. During an Extraordinary General Meeting of Trustees on 14 August 2021 it was agreed that Ms Hutchinson would be engaged on a professional services consultancy basis, at the rate of £150 per day.
42. On 17 August 2021 Mrs Stephens contacted the Charity Commission (the **CC**) by its online portal, asking *"whether [the CC] see any conflict of interest in this proposed action?"*
43. Mrs Stephens followed up to chase a reply on 1 September 2021.
44. Mrs Stephens' evidence was that she took the CC's lack of response as indicating there was no objection to this course, and she also regarded it as consistent with the terms of the Respondent's constitution, and Clause I in particular, which prohibited members of the Executive Committee receiving remuneration from the Charity, of which Ms Hutchinson was now a former member of the Executive Committee. Mrs Stephens did not regard the Respondent's constitution as prohibiting payment for services to a person who was a former member of the Respondent's Executive Committee. Consequently Ms Hutchinson's remunerated work for the Respondent commenced in early September 2021.
45. However, the CC replied to Mrs Stephens' enquiry on 8 October 2021, stating that Clause I *"prohibits you from employing a trustee. This would also apply to a former trustee or a trustee who steps down from trusteeship for employment with the charity"*. The CC went on to note that the amendment clause in the

constitution would allow for this to be changed with the consent of the CC, but they would not do so retrospectively.

46. Mrs Stephens emailed Julie Lawrence (Finance and Office Manager of the Respondent) on 11 October 2021, asking her to hold off from paying Ms Hutchinson's invoice. Ms Hutchinson ceased working as Interim Director.
47. This was discussed at a Trustee Meeting on 25 October 2021, where the Trustees concluded that:
 - a) They could not pay Ms Hutchinson for her services;
 - b) They could pay Ms Hutchinson in respect of the expenses she incurred whilst carrying out the Interim Director role; and
 - c) Ms Hutchinson was to be reinstated as a Trustee.

The parties agree that the Claimant will commence employment with the Respondent, in January 2022

48. The Respondent wrote to the Claimant, confirming that the Trustees of the Respondent had approved the Claimant's appointment as Director of the Respondent, on 2 December 2021. That email attached a written contract of employment, and provided some further context on the salary the role would attract:

"The trustees have recently granted Samphire staff a provisional 1.75% cost of living increase pending the finalization of the NJC scale for 2021-22. This is still under negotiation at this date – employers have offered 1.75%, but unions are holding out for a higher figure... Further details are in the draft contract which I attach for your perusal. If all is well, you and I can sign it on 21st December".

49. The Claimant was to work the hours equivalent to three days a week as Director, and a further day a week in an advocacy role, for which the same terms and conditions applied.
50. The Parties agree that the terms that governed the Claimant's employment are set out in the attachment to that email, although a signed version is not included in the Bundle.
51. That Contract provided that:

- a) *"Your annual salary will be based on NJC Pt 30, currently £33,782 pa, pro rata... Samphire staff have been awarded a provisional 1.75% cost of living rise for 2021-22, pending the outcome of ongoing NJC salary scale negotiations. With the 1.75% rise, you will be paid £27,499 for 4 days per week... Your salary will be reviewed annually, with any cost of living increases payable from the 1st April";*
- b) *"Some evening and weekend work may be required for which you will be entitled to time off in lieu";*

- c) Under the heading “*HOLIDAYS*”, “*You are entitled to 25 working days per year pro rata excluding bank holidays.. The leave year runs from 1 April to 31 March of the following year*”; and
 - d) “*During your probationary period, you will be entitled to, and are required to give, one week’s notice of termination of employment*”.
52. The Claimant commenced employment as Director of the Respondent on 4 January 2022, reporting to the Chair of Trustees who, at that time, was Mrs Poppe.

The initial averred protected disclosures

53. The Claimant emailed Mrs Stephens, Ms Hutchinson and Ms Jones on 14 February 2022 at 17:04. In that email the Claimant referred to the need for the Respondent to have evidence in the form of receipts, or bank statements showing expenditure, for expenses reimbursed to Ms Hutchinson. This is said by the Claimant to be her first protected disclosure (**Averred PD 1**).
54. The Claimant says that she had a telephone call with Ms Jones on 16 February 2022, where Ms Jones tried to get her to ignore concerns about the payment of Ms Hutchinson. This is said by the Claimant to be her second protected disclosure (**Averred PD 2**).
- a) There is a dispute between the parties about whether this telephone call took place, with the Claimant saying it did, and Ms Jones saying it did not.
 - b) The evidence in favour of the Claimant being correct is as follows:
 - (i) The Claimant has referred to it in her Particulars of Claim, and so it was at the forefront of her mind when she presented her Claim.
 - (ii) Ms Jones (understandably, given the passage of time) is less confident of her recollection, and initially said that she did not recall having this conversation, but became more confident in denying that the call took place as her evidence went on.
 - (iii) Ms Jones sent the Claimant an email on 16 March 2022, which referred to “*You mentioned the governance with me when we met a few weeks ago*”, and while this is clearly referring to the AGM-related governance concerns the Claimant raised, it seems likely that the Claimant would also have discussed the absence of receipts for Ms Hutchinson’s expenses to Ms Jones as Treasurer of the Respondent in the same call, given the Claimant was corresponding about that evidence at the approximate time of the telephone call.
 - c) The evidence in favour of Ms Jones being correct is as follows:
 - (i) Ms Jones generally seems to have a good recollection of her reaction to the Claimant.

- (ii) Ms Jones in oral evidence said that it would be wholly out-of-character for her to tell another person to ignore a concern raised, as the Claimant alleges happened on this call. The Tribunal notes that Ms Jones is a professional woman, with considerable experience in corporate business as a senior manager, and currently works at Goldman Sachs as a consultant, and this experience would make dismissal of a concern of this kind surprising.
- d) On balance, we prefer the Claimant's evidence that a call took place. However, as to what was said on the call we find her position less credible than that of Ms Jones. We do not consider that Ms Jones would have advised the Claimant to "*ignore the payment*" to Ms Hutchinson. Moreover, if Ms Jones had done so it would inconsistent with the terms of Ms Jones' later email on 16 March 2022, where Ms Jones referred to a meeting she and the Claimant had "*a few weeks ago*", and the fact that "*I understood that we were to discuss this further at the next trustee meeting and review your recommendations*". While this related to AGM-related governance concerns it would be surprising if Ms Jones were to say that those concerns should be given attention "*as a priority*" (as recorded in the 16 March email) but the purported payment of a Trustee ignored. It is much more probable that the conversation took place, and that Ms Jones agreed with the Claimant that the Claimant was to seek to ensure that the Respondent was provided with receipts or other appropriate evidence to support the payment made to Ms Hutchinson, with the Claimant reporting to the Trustees at their next Trustee meeting what had taken place.
55. The Claimant emailed the people she knew to be properly-appointed Trustees, which included Mrs Stephens, on 11 March 2022 at 15:12. The Claimant had removed two individuals from the trustee email group – Ms Hutchinson and one other person, "DS". She had done so because she was concerned that they had not been properly co-opted, because the period of notice required of their intended co-option by the Respondent's constitution had not been satisfied. The parties agree that the Claimant did not explicitly tell any of the Trustees, or would-be trustees, of her concern that the co-option was flawed, nor that she had taken Ms Hutchinson and DS out of the email list. The Claimant's email attached a draft recruitment policy and a Trustee role description. By that email the Claimant asked the Trustees to send her various pieces of documentation (the list of Members of the charity, and the minutes and notice of the last AGM). The next sentence read:

"If I'm sent notices of last couple of committee meetings that are shown to be in line with co-option requirements of course I can forward this to others."

This email is said by the Claimant to be her third protected disclosure (**Averred PD 3**).

The WhatsApp call between the Claimant and Mrs Stephens, 15 March 2022

56. On 15 March 2022 the Claimant and Mrs Stephens had a WhatsApp call, when Mrs Stephens was on holiday in Nepal.
- a) The Claimant says that, during this call, Mrs Stephens instructed the Claimant to ignore the concerns she was raising, and applied pressure to try to get her to do so, by telling the Claimant that she was being pedantic and did not understand the Respondent's Constitution. This is asserted by the Claimant as a detriment she suffered on the ground that she had made a protected disclosure (**Allegation 1**).
 - b) On the factual dispute between the parties, the evidence supporting the Claimant's position is as follows:
 - (i) The Claimant took handwritten notes of that call, which she disclosed, and which she typed. Those notes support the Claimant's contention that Mrs Stephens called her "*petty*", and *a bit pedantic*", and "*It has been working well for us very well up until [now]*", "*Your building this all up too much*"; "*You're not going about this right way*".
 - c) Mrs Stephens' evidence was that she was mainly listening to the Claimant on this call, and that she (Mrs Stephens) did not take notes of what was said on the call. Mrs Stephens denies having called the Claimant "*petty*" or "*pedantic*" on this occasion
 - d) The Tribunal finds that Mrs Stephens did not instruct the Claimant to ignore the concerns she was raising, or apply pressure to get her to do so, for the following reasons:
 - (i) An email from Mrs Stephens shortly after the call ended on the same date, 15 March 2022, thanked Claimant for it, and said that "*I feel confident that the issues you raised can be sorted out*". 'Sorting out' issues is very different from ignoring them;
 - (ii) In that same email, Mrs Stephens wrote: "*to aid us in this, please put your specific points in writing to me*" – again, this would jar with any recent instruction to ignore or drop the concerns she was raising; and
 - (iii) The Claimant's notes do not record that Mrs Stephens told the Claimant to ignore the matters she was concerned about, or that Mrs Stephens told the Claimant that the Claimant did not understand the Constitution.
 - e) The Tribunal finds that Mrs Stephens did say that the Claimant was being "*a bit pedantic*" and "*petty*", as recorded in the notes. This is plausible – not least because Mrs Stephens expressed those views of the Claimant in her oral evidence to the Tribunal.

57. On the same day Ms Hutchinson asked the Respondent for bank details so she could repay the expenses paid to her.

The Claimant raised further concerns, 17 March 2022

58. The Claimant raised some further concerns about a lack of Trustee governance, as well as staff dissatisfaction with the Trustees, on 17 March 2022. This is not cited by the Claimant as a protected disclosure.
59. Mrs Stephens responded to the Claimant's 17 March 2022 email, proposing an Extraordinary Meeting of the Trustees be held on 11 April 2022.
60. On 7 April 2022 the Claimant tested positive for Covid-19, and sent her apologies for the Extraordinary Meeting of the Trustees, offering to answer any Trustee questions by email. Mrs Stephens replied, expressing sympathy, and seeking to reconvene to the meeting to be held at a date when the Claimant could attend. The Claimant replied to Mrs Stephens, urging the meeting to proceed. Mrs Stephens in turn replied, on 10 April 2022:
- a) Asking the Claimant to "*substantiate, with concrete evidence*", the points of concern the Claimant had raised on 17 March 2022;
 - b) Noting that "*You have had 3 weeks now to reflect on what you have said. Please be aware that if staff are mentioned, we will have to confer with them, or invite them, anonymously, to submit their concerns to us*";
 - c) "*The only matter you raise on which I have some clarity, is your concern about the incorrect appointment of trustees [DS] and Sara Hutchinson. I acknowledge that you are absolutely correct on this matter – and have taken steps to rectify it... However, the way in which you raised this matter was inappropriate and was not constructive (namely, removing Sara H's address from the Trustees Group email, without consulting or informing myself or Sara herself). You could have had a private word with me, pointing out the inconsistencies with our Constitution and asking me, courteously, to correct the matter at the earliest opportunity. You overstepped your authority by refusing to attend a meeting with Sara Hutchinson (as agreed before my departure), and not informing me or Sara of the reasons for your refusal....*";
 - d) "*Mhairi – I wish that you would understand that we are on the same side as you. This manner of doing things is not Samphire's ethos; it is not in the best interests of Samphire... We are a team; we all pull together in the same direction... This is becoming a huge distraction from the work of our programmes, and a sad state of affairs for Samphire. I am at a loss to understand how, in the space of 6 weeks, we went from my [positive] feedback letter to you of 3rd February (attached), to your letter to us of 17th March. This is why it is essential that we meet with you, face-to-face.*"

The Claimant says that, by this email of 10 April 2022, from Mrs Stephens characterised the Claimant's raising of concerns as being "*inappropriate and not constructive*", and that this was a detriment on the ground of the Claimant having made a protected disclosure (**Allegation 2**). The Tribunal disagrees that Mrs Stephens was critical of the Claimant's raising of concerns – rather, by this email, Mrs Stephens characterises the Claimant's manner of raising concerns as being inappropriate and not constructive.

61. The Trustee meeting took place on 11 April 2022, and the minutes record that:
- a) There was a lack of substantive evidence from the Claimant to validate her concerns about staff disillusionment and that they feel undermined by the Trustees;
 - b) Various steps had been taken by the Executive Committee in response to the governance concerns raised by the Claimant;
 - c) Mrs Stephens had sought independent legal advice on the payment made to Ms Hutchinson and the Charity Commission's view that payment to a former Trustee was not permitted by the Respondent's Constitution, and that advice queried the Charity Commission's position. An action was agreed to provide details of that, together with evidence and minutes relevant to what happened, to the Charity Commission;
 - d) The Executive Committee considered that "*the manner by which Communications have been delivered was wholly inappropriate in light of the ethos of Samphire. This was felt to be especially true since Executive Committee (EC) are still at the stage of building relationships of trust with her*";
 - e) "*There were also concerns that the Director consistently refuses to take calls from the Chair... a very serious matter. The EC felt that the Director needs to understand that they are directly accountable to the Chair of the EC and the EC as a whole*"; and
 - f) "*The Executive Committee (EC) felt it vital that the Director is... provided the opportunity to voice grievances*".

Mrs Stephens attended the Respondent's offices, 14 April 2022

62. On 14 April 2022, Mrs Stephens, upon her return to the UK, visited the Respondent's offices. Because the Claimant had not informed her that she had tested negative for Covid-19 and was returning to the office, Mrs Stephens did not expect to see the Claimant. Mrs Stephens had a chat with Mrs Lawrence. Neither knew that the Claimant was in her office, in earshot of their conversation in the open-plan area. The Claimant says that she overheard Mrs Stephens saying to Mrs Lawrence:

- a) That the Claimant was stirring up trouble; and

- b) That the Claimant was struggling to manage, and asking Mrs Lawrence to report back to her (Mrs Stephens) if the Claimant did anything wrong. This, the Claimant says, was a detriment done on the ground that she had made protected disclosures (**Allegation 3**).
63. The Respondent agrees Mrs Stephens and Mrs Lawrence had a conversation on this date, but denies that the things alleged were said, with Mrs Stephens and Mrs Lawrence both giving evidence to that effect.
- a) Mrs Stephens said that Mrs Lawrence brought up some things to do with the Claimant, and that she listened to what Mrs Lawrence had to say. Mrs Stephens said that Mrs Lawrence had been feeling a great deal of anxiety, and that it was possible that she (Mrs Stephens) said words to the effect that Mrs Lawrence could come and talk to her about things that made her anxious. Mrs Stephens denied being critical of the Claimant, or asking or telling Mrs Lawrence to come back and report any mistakes made by the Claimant to her. Mrs Stephens said that she tried to reassure Mrs Lawrence, that the Claimant was new to the job and it was natural that she would have questions about the accounts (an area Mrs Lawrence was responsible for) and want to be familiar with them. Mrs Stephens said that this was the one and only occasion when she said that the Claimant was being “*pedantic*” in making sure everything was correct.
- b) Mrs Lawrence’s account was similar to that of Mrs Stephens. Mrs Lawrence said that she had raised the worries she had about the Claimant with Mrs Stephens – that she was concerned that Ms Hutchinson should be paid expenses for the work she did for the Respondent as Interim Director, that she was worried that the Claimant intended to spend the unrestricted funds in a way that meant that the Respondent would not have sufficient monies to pay salaries, and that the Claimant had not been raising the funds needed to keep the Respondent afloat. Mrs Lawrence said that Mrs Stephens did not say anything critical to her about the Claimant.
64. The evidence of Mrs Lawrence on this point was very persuasive. She spoke clearly and articulately about the mental toll that she had felt from the atmosphere in the office, her feeling that the Claimant was constantly demeaning her and questioning her abilities, and the distress she felt at her colleagues’ similar stress. We accept her evidence that it was her who raised concerns about the Claimant’s behaviour with Mrs Stephens, and not the other way around.

Recruitment concerns, April 2022

65. As noted above, the Claimant had sent a draft recruitment policy for consideration by the Trustees on 11 March 2022.
66. On 14 April 2022, “IL”, an immigration lawyer employed by the Respondent, sent an email to the Claimant, Mrs Stephens and others, expressing concern about

- the arrangements for cover when a colleague, “KM”, left the Respondent’s employment in two weeks’ time.
67. The Claimant replied to that email, acknowledging IL’s concerns and ascribing the blame for the delayed recruitment on the Trustees not having provided feedback on her draft recruitment policy, and the fact that she was awaiting sign-off on some adjustments to the arrangements for some external funding.
 68. Mrs Stephens replied a few days later, on 18 April 2022, which included: *“This is an emergency situation. No need to wait for formal approval of your draft Recruitment Policy... Please try to get the Job vacancy ad posted by Wednesday 20th latest... Other points you raise we can discuss in your Line Management meeting on Thursday. It looks like we are facing quite juggling act ! Don’t worry – we will get through this together”*. The Claimant points to this email as Mrs Stephens instructing her in an all-staff email to advertise for extra staff immediately, and in so doing, undermined the Claimant in front of her team. This is said by the Claimant to be a detriment done on the ground that she had made protected disclosures (**Allegation 4**).
 69. The version of the email from Mrs Stephens on 18 April 2022 disclosed in the Bundle does not show to whom it was sent or copied, but it contained an instruction (phrased as a firm request, but evidently an instruction) from the Claimant’s line manager to *“try to get”* the job vacancy advertised within two days. The Tribunal finds this email did not undermine the Claimant – it is perfectly within a manager’s right to issue an instruction, and this was not done in an undermining but rather a supportive way, acknowledging the competing priorities and heavy workload, and offering to pitch in to get it done together. The part of Allegation 4 that relates to Mrs Stephens issuing the Claimant with an instruction succeeds, but not the part of the allegation that relates to that instruction undermining the Claimant.

The face-to-face meeting between the Claimant, Mrs Stephens and Rev. Burrell, 20 April 2022

70. The desired face-to-face meeting between the Claimant, Mrs Stephens and Rev. Burrell was due to take place on 20 April 2022, and an agenda was sent to the Claimant two days ahead of that meeting. That agenda included as the first item *“Purpose of meeting and manner of discussion”*, followed by *“Request better understanding of any disability; and how best to support Mhairi in her role”*, which the Respondent says was prompted by the fact that the Claimant sometimes included a message in her email signature that noted *“I need plain English for access as a reasonable adjustment”*. A number of other items followed.
71. The meeting took place, Rev. Burrell prepared a note of it, recording what he says was discussed by the group under a number of headings. The Claimant was sent Rev. Burrell’s note for comment on 24 April 2022 by Mrs Stephens, asking

the Claimant to point out if there is anything missed or needs correction, which she subsequently did as part of her Formal Grievance raised on 13 June 2022.

72. The Claimant avers that in this meeting, and/or in the minutes of it, Mrs Stephens:
- a) Implied that the Claimant's disability may have resulted in her "*misunderstandings*"; and
 - b) Misrepresented the Claimant's disability as an eyesight complaint,
- and these, she says, were done on the grounds that she had made protected disclosures (**Allegation 5**).
73. The only records available to the Tribunal of what was said at the meeting are Rev. Burrell's notes and the Claimant's comments on them. Neither indicates that there was any confusion between agenda items 1 and 2: this is not supported by the evidence. Moreover, the Claimant has offered no evidence of what disability she discussed with them. The Claimant has not satisfied the Tribunal that Mrs Stephens did the matters alleged, and so Allegation 5 does not succeed.

Supervision meeting, 21 April 2022

74. The Claimant contends that, in supervision meetings of 21 April 2022 and 16 May 2022, Mrs Stephens removed or threatened to remove managerial responsibilities from the Claimant, and made threats about terminating the Claimant's employment (**Allegation 6**). It was made clear by the Claimant that the "*managerial responsibilities*" she was referring to were:
- a) The decision as to how to spend unrestricted funds held by the Respondent;
 - b) Recruitment of Respondent staff; and
 - c) The line management of Mrs Lawrence, which the Claimant says was removed from her in the meeting of 21 April 2022.
75. (Consideration of this allegation in relation to the 16 May 2022 supervision appears below.)
76. The notes of the 21 April 2022 supervision meeting record that "*in future, any change in use of funds must be referred to Trustees*". The Claimant clearly regarded this as a change, the Respondent did not. The Claimant's job description does not specify whether the Director was able to determine a change in the use of unrestricted funds or not. It does say that the Claimant is to keep the Board of Trustees "*abreast of the organisation's activities and financial situation*", and "*Oversee Samphire programme expenditure*" - but it does not say who sets that programme. The allegation is brought by the Claimant, and it is for her to persuade us that the facts underlying it are correct. We are not satisfied that she has done so, and consequently we find that there was no removal of managerial responsibilities from the Claimant at the 21 April 2022 meeting.

77. There is nothing in the notes about any removal of recruitment responsibilities from the Claimant, or the line management of Mrs Lawrence. The Tribunal heard evidence from the Claimant and Mrs Stephens on these matters, and naturally they contradict each other on these points.
78. The Claimant was sent the notes of the 21 April 2022 meeting, and replied on 25 April. She did not pass any comment on the fact that those notes do not record that she has had the responsibility for staff recruitment and line management of Mrs Lawrence removed from her. We think it out of character that the Claimant would not have sought to ensure that the notes recorded these important matters, and this persuades us that in fact those responsibilities were not removed from the Claimant in this meeting.
79. Similarly there is no record in those notes of any threat to terminate the Claimant's employment – which again, the Claimant and Mrs Stephens have conflicting recollections about. We find that the most reliable evidence in this regard is the record of the Claimant's appraisal meeting shortly afterwards, on 3 May 2022. It is inconceivable to the Tribunal that Mrs Stephens would have threatened to terminate the Claimant's employment on 21 April and would then, in the Claimant's mid-probation appraisal, have recorded that the Claimant "has hit the ground running", and has an "impressive" grasp of detail, and that her work in untangling budget lines has been "particularly strong". The mid-probation meeting included some significant areas of improvement, but if Mrs Stephens was threatening to terminate the Claimant's employment at that time, it is improbable that she would have praised aspects of the Claimant's performance in this way. Consequently we find that no threats to terminate the Claimant's employment were made in the 21 April 2022 meeting.

25 April 2022

80. On 25 April 2022 Mrs Stephens emailed the Claimant with "*full correspondence with CC attached*".
81. Also on 25 April 2022 the Claimant emailed the Charity Commission raising issues of concern. This email is said by her to amount to a protected disclosure (**Averred PD 4**).
82. The Claimant avers that, at the Trustee meeting of 25 April 2022 (which she attended), the Respondent removed her ability to spend unrestricted funds without prior approval. This, she says, was a detriment done on the grounds that she had made protected disclosures (**Allegation 7a**). The notes of that meeting record that:

"[Ms Jones] recommends that [the £35,000 held in the Respondent's reserves] be the minimum level maintained to cover liabilities in the event Samphire must be closed down. Use of these reserves to ease short-term cash flow problems must be justified with arrangements in place to restore the reserves to their

minimum level. Action: Sara Jones will prepare guidelines for management of Samphire's reserve fund."

83. As described above in relation to the 21 April 2022 meeting, the Claimant has not satisfied us that this represented a removal of responsibilities that previously had rested with her. Consequently, this Allegation 7a does not succeed.

Mrs Stephens proposes that the Respondent approaches the Charity Commission, 2 May 2022

84. On 2 May 2022, following on from the meeting between the Claimant, Mrs Stephens and Rev. Burrell of 20 April 2022, Mrs Stephens wrote to the Claimant attaching a draft letter to be sent to the Charity Commission, updating them on governance matters. Mrs Stephens asked the Claimant for any comments she may have on that letter.

Mid-appraisal meeting, 3 May 2022

85. As noted above, the Claimant attended a mid-appraisal meeting on 3 May 2022 with Mrs Stephens and another of the Respondent's Trustees, Dominic Howden. Parts of the Claimant's performance were commended (as described above), and some areas for improvement were discussed.
86. The Claimant says that Mrs Stephens wrongly recorded that the Claimant had agreed to the removal of the Claimant's ability to spend unrestricted funds in this meeting, and this forms the basis for her complaint that this was a detriment done on the ground that the Claimant had made protected disclosures (**Allegation 7b**).
87. The Tribunal does not uphold this allegation on the facts. The notes of this meeting included in the Bundle record each agenda item in ordinary text, and the discussion points beneath them in italicised text. The previous agenda items include italicised text indicating that the Claimant had agreed to those matters, but there is no italicised text under the agenda item "Use of Unrestricted Funds. Any change in budgets, or the use of unrestricted funds needs to be cleared with the Chair and Treasurer first". The notes of this meeting clearly do not record that the Claimant had agreed with this.
88. Allegation 7b does not succeed.

Notes of mid-appraisal meeting, 3 May 2022

89. The Claimant also contends that Mrs Stephens infringed her privacy by sharing the notes of her appraisal meeting with of 3 May 2022 with Mrs Stephens' husband, Mr Poppe, who was also a Trustee of the Respondent. It is agreed between the parties that Mrs Stephens put those notes in a plastic wallet and gave that to Mr Poppe asking him to pass it on to the Claimant, which he did, in front of one of the Respondent's other employees, IL.
90. This is said by the Claimant to be a detriment done on the ground that she had made protected disclosures (**Allegation 8**).

The Claimant comments on the draft letter to the Charity Commission, 6 May 2022

91. On 6 May 2022 the Claimant replied to Mrs Stephens with some comments on the draft letter to the Charity Commission.
92. Mrs Stephens incorporated the Claimant's comments and sent that letter to the Charity Commission on 10 May 2022.

The Trustees' exploration of the feelings of the Respondent's staff

93. The Claimant contends that, at some point after 17 March 2022, Rev. Burrell asked questions of the Claimant's colleagues, IL and KM, about the Claimant's managerial and professional abilities. This, the Claimant says, was detrimental, and was done on the ground that she had made protected disclosures (**Allegation 9**).
94. The Respondent agrees that Rev. Burrell spoke to staff members on 27 April 2022, 2 May 2022 and 12 May 2022. The records of the notes Rev. Burrell took from his individual meetings with staff members at this time were not included in the Bundle. However, a report of the collated feedback is in the Bundle, and that report is dated 12 May 2022.
95. The Claimant says that Rev. Burrell asked questions about the Claimant's managerial and professional abilities of the Claimant's colleagues, IL and KM – but it is clear to the Tribunal that Rev. Burrell's enquiries of these individuals was focused on their evaluation of the performance of *the Trustees*. Moreover, this feedback was sought in light of the concerns raised by the Claimant in her email of 17 March 2022 that *"the staff are disillusioned and frustrated by the lack of knowledge, engagement and management shown by the Executive Committee. All have considered leaving... Staff describe and I have experienced this same pattern of undermining and denouncing those raising concerns and completely ignoring or trying to avoid/dismiss criticisms and requests for support"*.
96. The questions asked by Rev. Burrell were not about *the Claimant's* managerial and professional abilities, but about *the Trustees'* governance and knowledge, whether staff would feel comfortable raising a concern about governance or improper financial dealings with the Trustees, etc. These were questions directly driven by the concerns the Claimant had raised.
97. Allegation 9 is not made out on the facts. Rev. Burrell did not ask these individuals about the Claimant's abilities.

Whistleblowing report, 14 May 2022

98. The Claimant sent a document entitled Whistleblowing Investigation Report (the **WIR**) to Rev. Burrell and Dr Krubally on 14 May 2022. This is said by the Claimant to be her fifth protected disclosure (**Averred PD 5**).

Supervision meeting, 16 May 2022

99. The Claimant covertly recorded the meeting of 16 May 2022, and while parts of the transcription of that recording are not agreed by the parties, it is notable that this transcript is offered by the Claimant as a record of the meeting and it does not contain:
- a) Any removal, or threats to remove, any responsibilities the Claimant had for determining the use of unrestricted funds, recruitment or line management of Mrs Lawrence; or
 - b) Any threats to terminate the Claimant's employment.
100. The transcript contains reference to Mrs Stephens saying that the Claimant is on probation, and so the Trustees would expect to be a bit more "*hands on*" than the normal way of things, but there is no threat in the Claimant's transcription of the meeting to terminate the Claimant's employment. Indeed, the transcript records that Mrs Stephens thanked the Claimant "*for getting on with the recruitment*".
101. Consequently, Allegation 6 does not succeed. The Claimant has not established the factual basis for the matters it relates to.
102. The Claimant says that, in this supervision meeting, Mrs Stephens told her that she, Mrs Stephens, had been appointed as the person to report back on and direct the investigation into the Claimant's disclosures. The Claimant avers that this was a breach of the Respondent's whistleblowing policy, and that this was a detriment done on the grounds that she had made protected disclosures (**Allegation 10**).
103. The Claimant relies on the transcript of the meeting between her and Mrs Stephens of this date to support that contention, which transcript includes the following:
- Mrs Stephens: "*So you want proof that we're handling you? You want us to give, say what we've done, but what we are doing.*"
- The Claimant: "*I'd like you to follow the whistleblowing policy, yes.*"
- Mrs Stephens: "*Samphire's whistleblowing policy on some other policy that we're not aware of and give you a report on those things from us.*"
- The Claimant: "*Well, I'm sure, Martin and Kumba are on it right? So*"
- Mrs Stephens: "*Well, I'm the one that will, you know, ask them to do it. Yes. So they report to me and I will report to you. But if you don't want it. That way round, I'll ask Martin to do it.*"
104. This exchange does not support the Claimant's contention that Mrs Stephens told her that Mrs Stephens would "direct the investigation". That part of Allegation 10 is not supported by the evidence the Claimant relies upon.
105. As for the contention that the notion that Mrs Stephens would report back to the Claimant with the outcome of the investigation breached the Respondent's policy,

the Tribunal was provided with a copy of the Respondent's "*Reporting a suspected malpractice (whistleblowing) policy*". Having reviewed it, the Tribunal cannot see that that Policy specifies who will report back to a whistleblower with the outcome of an investigation into their concerns.

106. The factual bases for the Claimant's contentions in Allegation 10 are not supported by the evidence, and therefore this allegation does not succeed.
107. The parties accept that, at the time of this meeting, Mrs Stephens was unaware of the WIR. Rev. Burrell sent the WIR to her later that day, with a covering email which read:

"Hi Joy,

following our chat just now, herewith is Mhairi's report which she sent only to me and Kumba. She clearly thinks she is the one at the helm with the responsibility to sort everything out. I think you should have sight of her report. She should not be involving me and Kumba.

I hope you get clear guidance from HR as to how to proceed with the warning.

Call me if you need to.

It may have to get worse before it gets better, but the end of all this will come.

Martin".

Trustee meeting, 23 May 2022

108. The Trustees held a meeting on 23 May 2022. Those Trustees present were: Mrs Stephens, Ms Jones, Mr Poppe, Mr Howden, Rev. Burrell, Liza Seed and Ms Hutchinson. Miss Sawbridge sent her apologies. No record is included of Dr Krubally, but she gave oral evidence to the Tribunal that she was abroad at the time, and not easily contactable.
109. The minutes of the meeting record that: "*Members present were unanimous in their opinion that the continued employment of the current Samphire Director was not in the best interests of Samphire. Given the implications and risks attendant with dismissal, the members agreed to retain the services of specialist HR consultants on a one year contract.*"

Whistleblowing investigation closed, 26 May 2022

110. Mrs Stephens informed the Claimant by email on 26 May 2022 that the Trustees were satisfied that they have addressed all of her disclosures, and they now consider the matter to be closed.

The Claimant is informed that an HR consultant has been retained, 9 June 2022

111. On 9 June 2022 Mrs Stephens emailed the Claimant to inform her that the Trustees have retained the services of an HR consultant, and that part of the

package they offer is to review all of the Respondent's employment policies and documentation.

112. The Claimant says that this email undermined her, because:

- a) She ought to have been involved in the decision to enter into such a contract; and
- b) The engagement of an HR consultancy removed key responsibilities from her remit,

and she says this was a detriment done on the ground that she had made protected disclosures (**Allegation 11**).

113. The Tribunal agrees that the decision to retain the services of an HR consultant was an operational matter, and therefore it would ordinarily have been appropriate for the Claimant to have been involved in the decision to engage those services.

The Claimant raised a formal grievance, 13 June 2022

114. The Claimant raised a formal grievance on 13 June 2022 . In that document the Claimant said that:

- a) She had been pressured to ignore, cover up or participate in behaviours that she considered put the Respondent's clients, staff, assets and reputation at risk; and
- b) She had been victimised and harassed since raising concerns.

115. The Claimant met with Rev. Burrell, and a member of the HR consultant's team, to discuss her grievance on 14 June 2022, and again on 17 June 2022 (at which she was accompanied by Miss Sawbridge).

116. The Claimant says that the Respondent failed to conduct a proper investigation into this grievance, and that this was a detriment on the ground of the Claimant having made protected disclosures (**Allegation 12**).

117. Rev. Burrell interviewed five people in connection with this grievance: an unnamed employee, Mrs Lawrence, IL, Ms Jones and Ms Hutchinson. The Claimant has been critical of the questions asked of some of the individuals, noting (for example) that while her grievance complained about what she says she overheard in a conversation between Mrs Stephens and Mrs Lawrence on 14 April 2022, Mrs Lawrence was not asked about that.

118. The Tribunal notes, also, that Mrs Stephens was not interviewed by Rev. Burrell, when many of the Claimant's complaints relate to her.

119. We find that the Respondent did fail to conduct a proper investigation into the Claimant's formal grievance.

Mrs Lawrence raised a grievance against the Claimant, 15 June 2022

120. On 15 June 2022, Mrs Lawrence raised a formal grievance against the Claimant. In that grievance, Mrs Lawrence alleged that she had suffered bullying, derogatory remarks, goading, undermining and aggressive behaviour at the hands of the Claimant, and that the Claimant's behaviour to her and colleagues had "*totally destroyed the pleasant working atmosphere that the charity once had*".

Mrs Stephens' correspondence with the HR consultant, 16 and 17 June 2022

121. Mrs Stephens wrote to the HR consultant on 16 June 2022, saying that she had spoken to Mrs Lawrence about her grievance and got some more context on it. Mrs Stephens wrote that "*Things are building to a head*", and that she intended to go into the office that day to demonstrate concern for the wellbeing of the staff.
122. Mrs Stephens met with Ms Jones on 16 June 2022, and they formed a plan for Ms Jones to take the lead on the Claimant's end of probation appraisal when Ms Jones would be available to do it, on 4 July.
123. Mrs Stephens wrote to the HR consultant the next day, 17 June 2022 and shared that intention with them, asking them how that timing would work given the Claimant's six month probation period would expire around that time.

Investigation of Mrs Lawrence's grievance, 20 June 2022

124. Dr Krubally met with Mrs Lawrence to investigate her grievance on 20 June 2022, with someone from the HR consultancy present.

IL raised a grievance against the Claimant, 22 June 2022

125. IL raised a grievance against the Claimant on this date in an eight-page, detailed document, which described the impact on IL's mental health of conduct by the Claimant, and stated that the Claimant has "*[driven] this organization to the edge of collapse (because most of old members of staff want to leave)*".

24 June 2022

126. Rev. Burrell wrote to the Claimant twice on 24 June 2022 with the outcome of each of the grievance hearings of 14 and 17 June 2022 – not upholding the Claimant's complaints. The letters noted that the Claimant had the right to appeal those outcomes, each within five working days of the letter concerned.
127. On the same day, the Claimant was suspended from work by the Respondent on 24 June 2022. The letter of suspension from Dr Krubally set out that the reason for the suspension was:
- "because the allegations made against you are of a serious nature and pose a risk to the business, the individuals involved"*, and noted that:

"I have considered whether, instead of suspension, you could continue to work from home; however, this is not feasible because the risk to the business and the individuals would remain, which includes you unduly influencing the said individuals".

128. The letter included the following text:

"Please note that during the period of suspension you are not permitted to attend any of the company's premises, events or contact any of the company's customers, clients, suppliers, trustees, or employees".

129. The Claimant says her suspension was a detriment done on the grounds that she made protected disclosures (**Allegation 13**).

130. The Tribunal disagrees. The Claimant had been raising concerns about the Respondent's governance and financial management since February 2022, shortly after her employment with the Respondent began. As a matter of law (discussed in the Application section below), the Tribunal finds that the Claimant made protected disclosures on each of 25 April 2022 and 14 May 2022 – but her suspension was nearly six weeks after the later of those disclosures. The Tribunal considers that the 'thing that changed' and prompted the Trustees to suspend the Claimant was the serious concerns raised by Mrs Lawrence and IL about the Claimant's conduct. Allegation 13 therefore does not succeed.

131. In light of the prohibition on contacting Trustees, the Claimant emailed Dr Krubally on 27 June 2022, stating: *"I need to be able to be in contact with Samphire people in relation to the ongoing informal grievance process. Please confirm this is understood and acceptable ASAP"*.

132. Dr Krubally's emailed reply on 28 June 2022 stated that:

"outcomes for both your 'informal' grievance hearing and your subsequent formal grievance hearing, have been delivered to you and so this matter is closed and the terms of your suspension do apply which is for you to refrain from contacting any employees of Samphire".

133. The Claimant replied: *"I am entitled to and wish to appeal the grievance. Are Samphire denying my right to appeal?"*

134. No further reply is included in the Bundle.

135. The Claimant says that the Respondent failed to allow her the right to appeal the Grievance outcome on the grounds that the Claimant had made protected disclosures (**Allegation 14**). The Tribunal agrees that the Claimant was denied the right to appeal the Grievance outcome.

Invitation to disciplinary meeting on 5 July 2022, 1 July 2022

136. Dr Krubally on behalf of the Respondent invited the Claimant to attend a disciplinary meeting on 5 July 2022 by letter dated 1 July 2022. The specific ten allegations of misconduct were described in that letter, over two A4 pages. The

Claimant was warned that dismissal was a possible outcome. Enclosed with that letter were:

- a) Notes from investigation meetings with five Respondent employees;
 - b) Records of communications with a contact at a funding organisation;
 - c) Some emails the Respondent referred to in the conduct described; and
 - d) The Respondent's Disciplinary Policy and Procedure
137. Dr Krubally closed the letter with: *"Meanwhile, if you have any queries or need any further information for the meeting, please do not hesitate to contact me"*.
138. The Claimant avers that she was misled about the purpose of 5 July 2022 meeting, following which she was dismissed, and that the Respondent misled her because she had made protected disclosures (**Allegation 15**). The Claimant stated in her witness statement that she understood the meeting was to *investigate*, not to determine the disciplinary outcome.
139. While the letter sent to her on 1 July 2022 set out that:
- a) The Respondent was concerned by allegations made to it or misconduct on the part of the Claimant which were set out in that letter, and appended documentary evidence the Respondent had collated on them;
 - b) The purpose of the meeting was to discuss those allegations before a decision is made by the Respondent about its response to them;
 - c) The possible outcome of the process for the Claimant could include dismissal,
- the letter also stated *"We will discuss these issues at the meeting... No decision will be made before the meeting however if your reply is not considered satisfactory then the formal stages of the disciplinary process will be applied which may include up to and including a dismissal"*.
140. The Tribunal agrees that the Claimant could reasonably assume that drafting to indicate that there would be further stages to the process after the meeting, and so whilst we consider that she was not misled as to the purpose of the meeting, she was misled about its effect (i.e., that there would not be further stages to the process).

Dismissal, 12 July 2022

141. The Claimant was summarily dismissed on 12 July 2022, apparently for ten forms of misconduct described in a dismissal letter. That letter was sent to the Claimant on this date, and recorded that:
- "The gravity of your misconduct is such that the Chairty believes the trust and confidence placed in you as its employee has been completely undermined. Having considered all the facts, listened to what you have to say, any mitigating circumstances, the Charity's decision is to summarily dismiss you from its*

employment on the grounds of gross misconduct which takes effect from 12th July 2022”.

142. The Claimant says that her dismissal:
- a) Was for the sole or principal reason that she had made protected disclosures, contrary to section 103A of the 1996 Act (**Allegation 16**); and
 - b) Was wrongful, i.e., that the Respondent did not have a basis to dismiss her summarily for gross misconduct, and that she is owed notice pay (**Allegation 17**).
143. The dismissal letter asked the Claimant to return any property belonging to the Respondent by 15 July 2022.
144. The Claimant says that she was not paid for the holiday that she had accrued during her employment with the Respondent but not taken (**Allegation 18**).
145. She also says that the Respondent made unauthorised deductions from her wages in three ways:
- a) She says that the salary she was paid for the period 4 January 2022 to 31 March 2022 was lower than it should have been, because the NJC pay award for 2021/2022 should have been applied to those earnings (**Allegation 19**);
 - b) She says that the salary she was paid for the period 1 April 2022 to 12 July 2022 was lower than it should have been, because the NJC pay award for 2022/2023 should have been applied to those earnings (**Allegation 20**); and
 - c) She had accrued time off in lieu (**TOIL**), and the payment made to her on the termination of her employment in respect of that TOIL was too low and did not reflect all the TOIL she had accrued (**Allegation 21**).

Post-dismissal

146. The Parties agree that the Claimant did not return the Respondent's property by 15 July 2022 (three days after the dismissal letter). The Claimant says she had a breakdown and was in too poor health to do so. The Respondent wrote to the Claimant on 4 August 2022, which contained the following:

“We have taken advice with regard to the electronic devices you have not returned... there may be personal data stored on the devices. As you are no longer an authorised member of staff, retaining or accessing such data may be a criminal offences... We therefore highly recommend that you return the devices along with any personal data without further day, but certainly within the next seven days. If you do not, we may report this to the Police or the ICO as a potential infringement of the law.”

The Claimant avers that the Respondent harassed and threatened her when it sent her this letter, which she says was a detriment on the ground that she had made protected disclosures (**Allegation 22**).

147. The Tribunal finds that this letter did threaten the Claimant.

Law

Protected disclosures

148. The term “*protected disclosure*” is set out in section 43A of the 1996 Act:

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

149. In the case of a dispute between parties as to whether a protected disclosure has been made, that dispute can be answered by addressing a series of questions derived from the conditions in sections 43A to 43L (as applicable):

- a) Did the averred communication happen as a matter of fact?
- b) Did the claimant make it?
- c) When making it, did the claimant disclose information?
- d) Was that disclosure in the public interest?
- e) When making it, did the claimant have a reasonable belief that it was in the public interest?
- f) Did the disclosure tend to show one or more of the matters described in section 43B(1)?
- g) Did the claimant have a reasonable belief that the disclosure tended to show that matter?
- h) Was it made to the claimant’s employer, some other responsible person, or another person described in the applicable provision of sections 43D to 43KA?

150. Section 43B(1) provides:

“(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—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

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

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

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

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

...

(5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).”

151. Disclosing information involves conveying facts, not simply allegations (*Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] ICR 325). The fact that a disclosure is an allegation does not preclude it from also disclosing information - the relevant question is whether it is a disclosure of information, and whether it is also an allegation is nothing to the point (*Kilraine v London Borough of Wandsworth* [2018] ICR 1850).
152. More than one communication can be read together to consider whether collectively they amount to a qualifying disclosure, even if each taken on its own would not (*Norbrook Laboratories (GB) Ltd v Shaw* [2014] ICR 540), provided that the second communication expressly or by necessary implication refers to or incorporates the information in the earlier disclosure (*Robinson v HRH Al Qasimi* [2020] IRLR 345).
153. The law protects the *disclosure* of information (which meets the relevant tests), not the *investigator* who seeks either to establish that it is wrong or to show that their concerns are reasonable (*Bolton School v Evans* [2007] ICR 461).
154. A disclosure must, “*in the reasonable belief of the worker making it*”, be made “*in the public interest*” to be capable of being a qualifying disclosure (section 43B(1)). This requires both that:
 - a) The worker believed, at the time of making the disclosure, that the disclosure was in the public interest; and
 - b) The worker’s belief was reasonable.
155. The phrase “*in the public interest*” is not defined in the legislation, and the leading case on this condition is that of the Court of Appeal decision in *Chesterton Global Ltd (t/a Chestertons) v Nurmohamed (Public Concern at Work intervening)* [2018] ICR 731. In order for a disclosure to be in the public interest it must serve the interests of persons outside the workplace.
156. The fact that a disclosure relates to a breach of the person’s own employment contract (or another kind of personal interest) does not preclude it from also being in the public interest – it will depend on the facts. There is no requirement that the public interest is the person’s predominant motive in making it (*Chestertons*).
157. Underhill LJ, giving the leading judgment in *Chestertons*, observed that:

“The statutory criterion of what is “in the public interest” does not lend itself to absolute rules, still less when the decisive question is not what is in fact in the public interest but what could reasonably be believed to be”,

and therefore that whether a particular disclosure is *“in the public interest”* will fall to be answered by the tribunal on a consideration of all the circumstances of the case.

158. He went on to find that factors relevant to assessing whether a disclosure which raises a personal interest is also in the public interest may include:
 - a) *The numbers in the group whose interests the disclosure served* – noting that the broad intent behind section 43B(1) is that workers making disclosures in the context of private workplace disputes should not attract whistleblowing protection, but also that there may nevertheless be features of such a case that make it reasonable to regard disclosure as being in the public interest as well as their own;
 - b) *The nature of the interests affected, and the extent to which they are affected by the wrongdoing disclosed* – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;
 - c) *The nature of the wrongdoing disclosed* – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people; and
 - d) *The identity of the alleged wrongdoer* - the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e., staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest.
159. While a qualifying disclosure commonly becomes a protected disclosure because it is made to the person’s employer by section 43C(1)(a), qualifying disclosures made to other persons can become *“protected”* if they fall within one of the other categories in sections 43D to 43K.
160. The Charity Commission of England and Wales is a prescribed person by section 43F(1)(a) and the Public Interest Disclosure (Prescribed Persons) Order 2014 (as amended). A worker making a disclosure to the Charity Commission must, in order for that disclosure to be a protected disclosure, reasonably believe:
 - a) That there has been a relevant failure concerning the proper administration of charities and of funds given or held for charitable purposes; and
 - b) That the information disclosed, and any allegation contained in it, are substantially true.

Automatic unfair dismissal: dismissal for having made a protected disclosure

161. Section 103A of the 1996 Act provides:

“An employee who is dismissed shall be regarded for the purposes of this Part 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.”

162. It is for the employer to show the reason, or if more than one, the principal reason for the dismissal (section 98(1)(a) of the 1996 Act).

163. It is for the tribunal to determine, on the facts of the case (findings of primary fact on the basis of direct evidence, or by reasonable inferences from primary facts established by the evidence), what was the reason, or if more than one, the principal reason, for dismissal.

164. Save in obvious cases, this will involve consideration of the mental processes of the decision-maker, and a determination of *why* they acted in the way they did (Lord Nicholls in *Nagarajan v London Regional Transport* [1999] IRLR 572). This is matter for the tribunal to determine.

165. If the tribunal does not accept the reason proffered by the employer, it is not bound to accept that averred by the employee (*Kuzel v Roche Products Ltd* [2008] ICR 799).

Distinguishing the manner of disclosure from the disclosure itself: the ‘separability principle’

166. There are times when the *manner* of the claimant’s disclosure can appropriately be distinguished from the *fact* that they made a protected disclosure. In other words, while the protected disclosure attracts protection from detriment or being the sole or main reason for dismissal, the manner of disclosure could properly be regarded as misconduct for which the claimant could appropriately be disciplined, or even dismissed.

167. This distinction was shown in *Bolton School v Evans* [2007] ICR 461, where a teacher hacked into his employer’s IT system to demonstrate flaws in its security. The disciplinary sanction applied to him was because of his conduct in hacking and causing damage to the school’s IT system – it was not because he made a protected disclosure by doing so (and showing the system’s flaws).

168. In *Kong v Gulf International Bank (UK) Ltd* [2022] ICR 1513 the claimant worked in a compliance role. She raised concerns about the Bank’s communications to investors about a new product. This led to a confrontation between her and the Bank’s head of legal, where the claimant questioned the head of legal’s knowledge and integrity. The claimant was dismissed by the Bank, and the question arose as to whether the claimant’s conduct as part of the confrontation was separable from her making of protected disclosures. The case reached the Court of Appeal, which concluded that:

- a) Once the reasons for particular treatment had been identified by the tribunal, it was for the tribunal then to evaluate whether the reasons identified were separate from the protected disclosure, or whether they were so closely connected with it that a distinction could not fairly and sensibly be drawn.
 - b) In this case, the tribunal found that it was not the protected disclosure that was the reason for dismissal, but the way the claimant had questioned the head of legal's competence or integrity, which was not a necessary feature of making the protected disclosures. The protected disclosure was the context for the misconduct, but the protected disclosure was not the reason for the dismissal.
169. Simler LJ gave the leading judgment in *Kong*, and she and Laing LJ observed that some things are necessarily inherent in the making of protected disclosures and are unlikely to be properly viewed as distinct from it, such as:
- a) The upset the protected disclosure causes; and
 - b) The fact that the discloser is, inherently, being critical by the making of the disclosure.
170. Where there are several decision-makers it is essential to consider the question of separability discretely in each case.

Time limits – protected disclosure detriments, section 48 of the 1996 Act

171. Section 48 of the 1996 Act governs the bringing of complaints under section 47B where a worker has been subjected to a detriment by their employer done on the ground that the worker has made a protected disclosure. Section 48(3) stipulates:
- “(3) An employment tribunal shall not consider a complaint under this section unless it is presented-*
- (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where the act or failure is part of a series of similar acts or failures, the last of them, or*
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.”*
172. The Court of Appeal in *Arthur v London Eastern Railway Ltd* [2006] EWCA Civ 1358 considered the meaning of the phrase “a series of similar acts or failures”. The Court concluded that:
- a) The facts must be examined, taking account of all the surrounding circumstances;
 - b) To amount to a “series”, there must be a link, or similarity, between the acts/failures; and

- c) A “series” is contrasted with an isolated incident or a discrete act.
173. In *Arthur*, the Court posed the following questions by way of elucidation of the necessary link or similarity:
- a) Were the acts/failures all committed by fellow employees?
 - b) If not, what connection, if any, was there between the alleged perpetrators?
 - c) Were their actions organised or concerted in some way?

Protected disclosure detriments

174. Section 47B(1) of the 1996 Act provides:

“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.”

175. The protection afforded workers by section 47B is from detriment by his employer done *on the ground that* the worker has made a protected disclosure, so a claimant pursuing a claim under section 47B must show:
- a) That they made a protected disclosure;
 - b) That they suffered some identifiable detriment;
 - c) That detriment was at the hands of their employer; and
 - d) There was a causal connection between the act or failure and the protected disclosure – that the detriment was on the ground of their protected disclosure.
176. It is not a “but for” test, but rather whether the detriment is “*on the ground*” of the protected disclosure is to be understood as meaning that the protected disclosure “*materially influences (in the sense of being more than a trivial influence) the employer’s treatment of the whistleblower*” (*Fecitt v NHS Manchester* [2012] ICR 372). This requires an examination of the mental processes (conscious or unconscious) of the decision-maker – what caused or influenced them to act (or fail to act) as they did (*London Borough of Harrow v Knight* EAT/0790/01).
177. Mr Justice Lewis in the EAT in *Panayiotou v Chief Constable of Hampshire Police* [2014] IRLR 500 considered that:
- “Depending on the circumstances, it may be permissible to distinguish between the disclosure of the information and the manner or way in which it was disclosed.*
...”

Unauthorised deductions from wages

178. Section 13 of the 1996 Act provides:

“(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract; or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction...

*(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages **properly payable** by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion” (emphasis added).*

179. Section 27 of the 1996 Act defines wages as “*any sums payable to the worker in connection with his employment*”, and that includes, in subsection (a), “*any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise*”.
180. The words “*properly payable*” in section 13(3) mean there must be some legal entitlement to the sum in question (*New Century Cleaning Co Ltd v Church* [2000] IRLR 27).
181. There is no requirement for the sum to be payable or paid during the currency of the worker's contract for it to be covered by section 13 (*Robertson v Blackstone Franks Investment Management Ltd* [1998] IRLR 376).

Compensation related to entitlement to leave

182. Regulation 14 of the WT Regulations applies where:

*“(a) a worker's employment is terminated during the course of his leave year, and
(b) on the date on which the termination takes effect (“the termination date”), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.”*

In other words, Regulation 14 applies if the worker has taken more or less annual leave than their *pro rata* entitlement for the portion of the leave year they have worked.

183. It requires that:

“(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave...”

Gross misconduct/wrongful dismissal

184. Where a contract of employment between an employer and an employee is fundamentally breached, the innocent party may accept that fundamental breach

and bring the contract to an immediate end. Where an employer has purported to accept a fundamental breach by the employee and do that, but the employee says that the conditions to do so were not made out, the employee may bring a complaint of wrongful dismissal.

185. The tribunal must then examine:
 - a) Whether the employee breached the contract of employment;
 - b) Whether the breach was fundamental, going to the heart of the contract (*Wilson v Racher* [1974] ICR 428); and
 - c) Whether the employer accepted that breach without affirming the contract.
186. The examination undertaken by the tribunal when considering a wrongful dismissal complaint is an objective one: whether, on the balance of probabilities the tribunal finds *as a matter of fact* that, on the evidence before the employer at the time of dismissal, the employee committed a repudiatory breach of the contract of employment which was then accepted by the employer without affirmation of that contract. The employer's reasonable belief is not a part of that consideration (as shown by cases such as *Shaw v B and W Group Ltd* EAT 0583/11).
187. Where the issue is the employee's conduct, that conduct must be a deliberate and wilful contradiction of the contractual terms or amount to gross negligence (*Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 1 WLR 698).
188. A series of acts which, individually, are insufficient to amount to a fundamental breach of contract may, in aggregate, demonstrate a pattern of behaviour of sufficient seriousness to justify dismissal (*Mbubaegbu v Homerton University Hospital NHS Foundation Trust* EAT 0218/17).

Application to the complaints here

Was Averred PD 1 (the Claimant's email of 14 February 2022 to Mrs Stephens, Ms Hutchinson and Ms Jones) a protected disclosure?

189. As set out in the Law section above, the questions relevant to determining whether an averred protected disclosure was in fact a protected disclosure are:
 - a) Did the averred communication happen as a matter of fact?
 - b) Did the claimant make it?
 - c) When making it, did the claimant disclose information?
 - d) Was that disclosure in the public interest?
 - e) When making it, did the claimant have a reasonable belief that it was in the public interest?
 - f) Did the disclosure tend to show one or more of the matters described in section 43B(1)?

- g) Did the claimant have a reasonable belief that the disclosure tended to show that matter?
 - h) Was it made to the claimant's employer, some other responsible person, or another person described in the applicable provision of sections 43D to 43KA?
190. In respect of those questions:
- a) The parties agree that the Claimant sent the email included in the Bundle on 14 February 2022 at 17:04 (the first and second questions).
 - b) The Respondent disputes that the Claimant disclosed information by that email, but we find that she did: she stated that receipts are required for a volunteer to claim expenses, she gave examples of the kind of expenses the Respondent could reimburse, and she gave examples of the kind of evidence that would be sufficient for this purpose.
 - c) The disclosure that receipts are required to support expenses reimbursed out of charitable funds is in the public interest, and we find she had a reasonable belief that it was.
 - d) However, we also find that this disclosure did not tend to show one or more of the matters in section 43B(1). The Claimant says that the disclosure tended to show that the Respondent had breached a legal obligation by paying Ms Hutchinson the amounts claimed by way of expenses without appropriate evidence, but that is not what the Claimant wrote. Rather, the Claimant's email is very clearly facilitative – she does not object to Ms Hutchinson receiving the expenses (and indeed she offers examples of other kinds of expenses that the Respondent could cover for Ms Hutchinson in the period concerned), she just wants the evidence to be provided to support the payment, and she appears (at this stage at least) to believe that that evidence can be provided. There is nothing in her email to indicate that there is anything amiss, nor that she thought there was – she was expecting the evidence to be forthcoming.
191. Therefore we conclude that Averred PD 1 was not a protected disclosure.
192. At the outset of this hearing the Claimant sought to expand the email relied upon here to include a further email she sent on 16 February 2022 to Ms Hutchinson in which the Claimant tells Ms Hutchinson that she “*must NOT return any expenses for which [she had] been reimbursed*”, but rather “*We’ve just got to communicate about it correctly and carefully and get our ducks in order*”. This was resisted by the Respondent, and the Tribunal does not consider that this email is naturally brought into consideration of Averred PD 1 because:
- a) It was not identified as such by the Claimant when she presented her claim, and nor was her claim amended to do so; and

- b) It is not expressly or by necessary implication incorporated into the 14 February 2022 email (as per *Robinson*) (it came chronologically later).
193. In any event, the Tribunal finds that the email sent on 16 February 2022 also does not tend to show one or more of the matters described in section 43B(1) (the categories of wrongdoing), or that the Claimant had a reasonable belief that it did. Moreover the email does not make any disclosure “in the public interest”, and nor did the Claimant have a reasonable belief that it was in the public interest, because the Claimant is, by describing ways in which various kinds of expenses could be evidenced, is seeking to facilitate the resolution of the expenses evidence matter rather than have Ms Hutchinson return the expenses monies to the Respondent. We find that Averred PD 1 did not include the email of 16 February 2022, but even if it had done, it still would not amount to a protected disclosure.

Was Averred PD 2 (the telephone call of 16 February 2022 with Ms Jones) a protected disclosure?

194. There was a dispute between the Claimant and Ms Jones as to whether this telephone call took place. As set out in the Facts section above, we find that a telephone call took place between them, but the content of that call was not as the Claimant asserts. Rather, we find that on that telephone call Ms Jones agreed with the Claimant that the Claimant was to seek to resolve the issue of evidence for the expenses payment to Ms Hutchinson, with the Claimant reporting to the Trustees at their next Trustee meeting what had taken place.
195. While we find the communication took place, involving the Claimant, and the Claimant raised the issue of the receipts for Ms Hutchinson’s expenses, we do not consider that the Claimant asserted that any wrongdoing of any kind listed in section 43B (1) had occurred – merely that the Respondent needed to have its ducks in order (as she had written to Ms Hutchinson on the same day).
196. For the same reason we find that the Claimant did not have a reasonable belief that her disclosure on the 16 February 2022 telephone call tended to show any wrongdoing of the section 43B(1) kind.
197. We therefore conclude that the Averred PD 2 was not a protected disclosure.

Was Averred PD 3 (the Claimant’s email of 11 March 2022 to all Trustees) a protected disclosure?

198. As noted in the Fact section, the part of the 11 March 2022 email which the Tribunal considers to be the relevant content to the Claimant’s assertion that the email amounted to a protected disclosure is the sentence which read:

“If I’m sent notices of last couple of committee meetings that are shown to be in line with co-option requirements of course I can forward this to others.”

199. The Respondent does not question that the Claimant sent this email. It does, though, aver that this email did not disclose any information, it was not in the public interest and nor could the Claimant have reasonably believed that it was in the public interest.
200. The Tribunal finds that the sentence quoted above was an enquiry from the Claimant – she was asking the people she was confident were Trustees to send her documentation she expected to be in place but which had not yet been provided to her. The way the request is phrased suggests a scepticism on her part as to whether the requested documents existed or could be provided, but she does not say that. The Tribunal finds this investigative request is the precursor to the Claimant communicating to the Trustees that she believes they have not complied with the terms of their Constitution in the co-option of Mr Sharif and Ms Hutchinson. As per the *Bolton Schools* case, this enquiry is part of an investigation, and not a disclosure of information. It therefore cannot be a protected disclosure.

Was Averred PD 4 (the Claimant's report to the Charity Commission of 25 April 2022) a protected disclosure?

201. The email sent by the Claimant to the Charity Commission on 25 April 2022 is included in the Bundle. The Respondent does not question that the Claimant sent it, or whether it disclosed information. It also does not challenge that Averred PD 4 tended to show one or more of the matters described in section 43B(1), or that it was reasonable for the Claimant to believe that it showed one or more of those matters.
202. The Respondent contends, though, that the disclosure to the Charity Commission was not made in the public interest, and nor could the Claimant have had a reasonable belief that it was in the public interest. In particular, the Respondent notes that:
 - a) By 25 April 2022: Mrs Stephens had been fully engaging with the Charity Commission about the payment that had been made to Ms Hutchinson, and about the relevant terms of the Respondent's Constitution relating to the wider governance matters.
 - b) The Claimant had met with Mrs Stephens and Rev. Burrell on the same day that the Claimant made Averred PD 4, and they had agreed a remedial plan to try to resolve any outstanding governance concerns on the Claimant's part.
203. The Respondent relies on the *Chestertons* case, and points in particular to the second and third potentially relevant factors identified in that case:
 - a) The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed; and
 - b) The nature of the wrongdoing disclosed.

204. The Respondent says that, by 25 April 2022, the charity's monies had been returned by Ms Hutchinson, and the Respondent had taken steps to correct the faulty co-option of Ms Hutchinson and DS, and had committed to carry out diligence to enable a members' list to be compiled. The Respondent says that the Claimant cannot reasonably have believed that her disclosure to the Charity Commission by this time was in the public interest.
205. The Tribunal disagrees. We find that the Claimant considered that the Trustees still did not appreciate the terms of the charity's constitution, and she was concerned that they were looking to alter the constitution to permit payments to Trustees or former Trustees. This was a small charity, and the resources it has are relatively small – that, we find, is a relevant consideration in the second factor (the extent to which the interests are affected by the wrongdoing).

Was Averred PD 5 (the report the Claimant sent to Reverend Burrell and Dr Krubally on 14 May 2022) a protected disclosure?

206. It is not contested that the Claimant sent the WIR on 14 May 2022, and that it disclosed information tending to show one or more of the matters described in section 43B(1). Again, the Respondent says that the disclosure was not made in the public interest, and nor could the Claimant have reasonably believed that it was.
207. The Respondent says that:
- a) By this date the Claimant had fed her comments into a letter that was sent by Mrs Stephens to the Charity Commission on 10 May 2022 – the Claimant cannot have considered the disclosures in the WIR that covered the same ground as the Charity Commission letter to be in the public interest.
 - b) In relation to the matters not covered in Mrs Stephens' letter to the Charity Commission, the Respondent's attitude is significant: it acknowledged that it needed to upskill and was willing to do so, the Trustees were looking to work with the Claimant to resolve her concerns so that focus could resume on pursuing the Respondent's charitable purposes.
 - c) A number of the matters raised in the WIR are of a minor nature, and the Chestertons case shows that the 'bar should not be set too low' for a disclosure to attract the statutory protection of whistleblowing.
208. The Tribunal agrees with much of what the Respondent says – the Claimant cannot have believed in the public interest of disclosing to the Respondent the matters it had already been liaising with the Charity Commission about (e.g., the AGM and membership governance matters), and a number of the matters raised by the Claimant in the WIR were of a relatively trivial nature (e.g., the concern the Claimant raised about computers), or a subject matter that is not of "public" interest even if important to the Respondent organisation (e.g., matters about

staff roles and pay). However, some of the new matters were very far from insignificant, and were of public importance, such as

- a) The allegation that a Trustee had directed the Respondent not to act in a space that conflicted with another organisation with which that person was involved;
- b) Concerns raised about financial and fundraising reporting;
- c) Safeguarding and data protection concerns; and
- d) Staff feeling discriminated against, when the Respondent's staff work with vulnerable members of the public.

209. The Tribunal finds that Averred PD 5, the WIR, did contained protected disclosures.

What was the reason or principal reason for the Claimant's dismissal?

210. The Claimant was dismissed by a collective decision of the Trustees of the Respondent at the time of her dismissal, namely Mrs Stephens, Ms Jones, Miss Sawbridge, Ms Hutchinson, Ms Seed, Mr Poppe, Mr Howden, Rev. Burrell and Dr Krubally. Most unfortunately, no written record of the Trustee meeting at which this was decided has been located by the Respondent.

211. In determining the reason or principal reason for the Claimant's dismissal, the Tribunal needs to examine the reason or principal reason that applied to the Trustees as a collective decision-making body (*Nagarajan*).

212. The Claimant says that the sole reason or the principal reason for her dismissal was the fact that she had made protected disclosures. The Respondent (i.e., the body of Trustees listed above) says that the reason for her dismissal was conduct – as described in the dismissal letter sent to her.

213. In assessing whether the Claimant's complaint of automatic unfair dismissal is made out, the Tribunal is mindful that it is not looking at the fairness of the dismissal process in the way that it would to answer an allegation of ordinary unfair dismissal, however the absence of a fair dismissal process could point to dismissal being a pre-determined outcome, which may be relevant in assessing the cogency of the arguments presented by the parties.

214. As is clear from the statute (section 98(a)(a) of the 1996 Act) and case law (*Jhuti*), the Tribunal starts its examination with the reason(s) proffered by the Respondent.

215. The Respondent says that the Claimant was dismissed for ten instances of misconduct, each of which it characterises as 'gross' misconduct, which for these purposes signifies the seriousness of the misconduct the Respondent found to be made out on the evidence. Those ten forms of misconduct included some matters which the Tribunal considers really very serious, e.g., the allegations that the Claimant behaved in a manner that was threatening and intimidating towards

Mrs Lawrence, and others which seemed to the Tribunal to be less so, e.g., the allegation that the Claimant moved around the appointments in a colleague's diary. Surprisingly, these two forms of misconduct have been characterised in the same way by the Respondent.

216. The oral evidence from Mrs Stephens, Rev. Burrell, Ms Jones and Dr Krubally points to the detrimental impact of the Claimant's conduct on staff and staff morale as being the key reason for the Claimant's dismissal. They say, in effect, that they genuinely believed the future of the Respondent to be put at risk by the Claimant's behaviour because all staff, or most of them, were at risk of resigning because of the distress caused to them by the Claimant.
217. The Tribunal considers it significant that the evidence shows that in fact the Trustees had taken a provisional decision to dismiss the Claimant on 23 May 2022 – subject to advice from an HR consultant advising them that dismissal was a course of action open to them. That decision was taken *before* Mrs Lawrence's formal grievance was presented (on 15 June 2022), and before the email from IL was received by them making another serious complaint about the Claimant's conduct. However, this decision was taken *after* Mrs Stephens had spoken to Mrs Lawrence on 14 April 2022, when Mrs Lawrence expressed some concerns about the Claimant's behaviour.
218. We find that the Trustees had real concerns about the Claimant's behaviour before Mrs Lawrence's grievance was raised and before IL's email. Those concerns were that:
 - a) The Claimant's conduct was combative and not co-operative;
 - b) The Claimant was focused on what the Trustees regarded as the wrong things – that while governance concerns were appropriately raised, the Claimant was not accepting that the Respondent's remedial actions (that the Claimant had apparently supported in the meeting of 20 April 2022) were sufficient to enable her to get on with the central work of the Respondent in pursuing its charitable purposes;
 - c) The Claimant was resistant to criticism and management by the Trustees; and
 - d) The Claimant was reticent to communicate with Mrs Stephens, who was the Chair of Trustees.
219. We consider that the Trustees had taken the decision to end the Claimant's employment ahead of the emergence of staff concerns, but that those concerns when they were revealed were regarded by the Trustees as so serious as to risk the implosion of the charity through the departure of key individuals.
220. The Claimant was a whistleblower, and the Tribunal is strongly conscious of the fact that whistleblowing inherently involves criticism and can be the cause of upset, particularly when people senior to the Claimant – the Trustees – were finding their competence questioned. However, the Tribunal accepted the

evidence of Mrs Stephens and Rev. Burrell (who spoke about this the most, but Dr Krubally and Ms Jones also gave consistent evidence on this point) that they genuinely thought it important that the Claimant had pointed out the things that she was concerned had not been done appropriately by the Trustees, that that was the Claimant's job and her duty, and that they wanted to address those concerns and reform any practices that were found wanting. This case is firmly, in the Tribunal's view, one where the separability principle applied: the Trustees were accepting or welcoming of the Claimant's whistleblowing, but they regarded the Claimant's conduct as separable from that. That conduct being, initially, the matters listed above, and from 15 June onwards, what they regarded as very serious misconduct towards staff which had potentially catastrophic consequences of the Respondent, which was entirely divorced from the Claimant's protected disclosures.

221. The evidence the Tribunal heard from the Trustees who gave evidence was very consistent with this.
 - a) Mrs Stephens expressed a fear that two members of staff whom she regarded as key (IL and Mrs Lawrence) would leave the charity, damaging its ability to continue to function, as well as her own perception that the Claimant could not move past the subject matter of the disclosures (which Mrs Stephens regarded as minor by the time of the WIR when steps had been taken to address past shortcomings) to focus on the work at hand;
 - b) Rev. Burrell was extremely concerned at the disarray among the staff, and the need to focus on the mission of the charity;
 - c) Dr Krubally felt a genuine fear that the internal turmoil among the staff would lead to the collapse of the charity, and she has a strong commitment to the work and mission of the charity;
 - d) Ms Jones regarded the Claimant's conduct as deliberately divisive, and therefore could not see a future for the charity with her at the helm.
222. Moreover, while there had been concerns about the Claimant's performance in some of these respects (such as her willingness to follow the direction of the Trustees) at an earlier stage, Mrs Stephens and Rev. Burrell (who had been most closely involved in the these matters) had come to realise that there was no means of repairing the relationship between the Claimant and the staff. Mrs Stephens gave evidence that she had wondered if she had been the problem, and whether if she resigned as Chair or as a Trustee, the Claimant might work better with a new Chair, but she came to see the Claimant as a totally divisive character whose behaviour could not be improved by Trustee input.
223. For these reasons, the Tribunal finds that the sole reason for the Claimant's dismissal was her conduct. Allegation 16 therefore does not succeed.

Protected disclosure detriment complaints

224. As noted in the Facts section above, we find that the factual matters that form the basis for Allegations 2, 5, 6, 7a, 7b, 9, 10, 12 and 13, and the main part of Allegation 1, are not made out, and so those complaints cannot succeed and are dismissed.
225. In any event, we have found that only Averred PD 4 and Averred PD 5 were in fact protected disclosures, and so any detriments that pre-dated those protected disclosures – which occurred on 14 May 2022 in the case of Averred PD 5, and at the earliest (if the Respondent knew of it on the day it was made, which both parties agree it did not) on 25 April 2022 in the case of Averred PD 4 - cannot have been because of them. This means that Allegation 3 (if adjusted to refer to Mrs Lawrence rather than Mrs Stephens) and the parts made out on the facts of:
- a) Allegation 1 (that Mrs Stephens called the Claimant “*pedantic*” and said that she did not understand the Respondent’s Constitution in a WhatsApp call of 15 March 2022); and
 - b) Allegation 4 (that Mrs Stephens issued an instruction to the Claimant to advertise for staff immediately),
- cannot succeed. Those matters occurred prior to the protected disclosures, and so cannot have occurred on the grounds that the protected disclosures were made.
226. In relation to **Allegation 8**, the facts are not contested by the parties. This complaint concerns Mrs Stephens asking Mr Poppe to pass the notes of the Claimant’s appraisal meeting on to her in a clear plastic wallet in front of IL. The Tribunal cannot see that the Claimant was put to any detriment by this. There is no evidence before us that IL read the Claimant’s appraisal notes, or any suggestion from the Claimant that this happened. The Tribunal has no concern with Mr Poppe being entrusted with the notes – he was a Trustee and entitled to see them. We see no improper practice or detriment to the Claimant at all by this. Allegation 8 therefore does not succeed.
227. In relation to **Allegation 11**, while Mrs Stephens did not explain to the Claimant on 9 June 2022 why the Trustees had retained the services of an HR consultant, it is absolutely plain that they did so in order to obtain advice on the tricky issues they were navigating with the Claimant. This was because the Trustees had conduct concerns about the Claimant, and those conduct concerns arose partly in the context of the Claimant having made protected disclosures. The reason for engaging the HR consultancy was to obtain advice about what they regarded as the Claimant’s misconduct. Seeking advice in those circumstances was a sensible and responsible thing to do. It did not subject the Claimant to detriment – the Trustees had already decided to dismiss her, the HR advice was to help them do so without exposing the Respondent to liability. The context of some of these misconduct issues was that the Claimant had made protected disclosures,

but the conduct which they wished to respond to (and therefore seek advice about) was entirely separable from the fact that the Claimant had made protected disclosures (*Kong*). Allegation 11 therefore does not succeed.

228. In relation to **Allegation 14**, the denial of the Claimant's ability to appeal the Grievance outcome was a clear detriment. The reason she was put to it, though, was that Dr Krubally had misunderstood the advice received from the HR consultant not to deal with the Grievance at that time. She did not appreciate that that meant the right of appeal should be extended so as to be capable of being exercised after resolution of the disciplinary matter. This misunderstanding had the consequence of denying the Claimant the time-limited right of appeal – but the Tribunal accepted Dr Krubally's compelling evidence that she was not in *any* way (let alone a more than trivial way - *Fecitt*) influenced by the fact the Claimant had made protected disclosures. Allegation 14 therefore does not succeed.
229. As for **Allegation 15**, the letter inviting the Claimant to the disciplinary meeting on 5 July 2022 did create understandable confusion about whether there would be a further stage in the disciplinary process. However, as above, the Tribunal is satisfied that Dr Krubally's decision to send the letter in those terms was not in any way influenced by the fact that the Claimant had raised protected disclosures. Dr Krubally was relying on the expertise of the HR consultant in the drafting of the letter, and believed it was appropriate to send it in those terms based on advice. Allegation 15 does not succeed.
230. The Tribunal was surprised by the terms of the letter written by the Respondent on 4 August 2022 concerning property that had not been returned to the Respondent (**Allegation 22**). The Respondent had a legitimate and reasonable concern to ensure that its property was returned to it, and the Claimant had failed to return it for the best part of a month, despite being asked on several occasions to do so. However, the tone of the letter was threatening and heavy-handed – evidently detrimental. The Tribunal notes that the letter is signed by Mrs Lawrence, and we also note the evidence that Mrs Lawrence gave about her poor treatment at the hands of the Claimant. We find that Mrs Lawrence's anger and considerable distress at the Claimant were the sole reasons the letter was written in that tone. We find the terms of the letter were not influenced in any way by the fact that the Claimant had made protected disclosures. Allegation 22 does not succeed.

Wrongful dismissal (Allegation 17)

231. The Tribunal's task when considering this complaint is to look objectively at the evidence of the Claimant's conduct to determine whether it was such as to amount to a repudiatory breach of her contract of employment.
232. As noted above, we take a different view to some of the conduct matters designated as gross misconduct by the Respondent in the letter dismissing the Claimant on 12 July 2022, but we consider that, if objectively supported by

evidence, any of the misconduct pertaining to Mrs Lawrence – bullying, treating her in an aggressive manner, making her feel threatened and intimidated, causing her to feel trapped and scared on a staircase while on her way to the office was blocked by the Claimant – would on its own support a finding of gross misconduct.

233. The Claimant sought to persuade the Tribunal that the Respondent could have interviewed people in the open plan office about the staircase incident, so as to help it decide between the truth of the Claimant's and Mrs Lawrence's conflicting accounts, but the Tribunal notes that Mrs Lawrence's description of the event indicates that there would not have been raised voices. Mrs Lawrence referred to the Claimant as blocking her way, and being intimidating and threatening, but not shouting. It is therefore unlikely that any further investigation would have added to the evidence it already had, being the conflicting accounts from the Claimant and Mrs Lawrence. The Tribunal considers it appropriate to prefer Mrs Lawrence's account because of the evidence provided by another employee, IL, of different but also threatening and intimidating behaviour on the part of the Claimant. We wish to make it clear that we do not believe that this was the Claimant's intention, but that this is how Mrs Lawrence would reasonably have perceived the Claimant's behaviour in times of heightened emotion on both sides. We therefore consider that this incident alone was sufficient to fundamentally breach the Claimant's contract of employment.
234. Moreover, the Tribunal's assessment is not confined to the Respondent's cited reasons for dismissal when considering whether the Claimant committed a repudiatory breach of her contract of employment with the Respondent. We find that there were other aspects of the Claimant's behaviour that should be taken into account that demonstrate a pattern of behaviour of such seriousness to justify summary dismissal (*Mbubaegbu*), namely:
- a) The fact that the Claimant's conduct was at times combative and not co-operative;
 - b) The Claimant was resistant to criticism and management by the Trustees (such as refusing to acknowledge that she should have approached her email of 11 March 2022 differently), and reticent to communicate with Mrs Stephens, who was the Chair of Trustees; and
 - c) The Claimant refused to say what remedial actions she would find acceptable to the governance concerns she had raised, despite repeated requests from the Trustees, and in so doing caused the Trustees to consider that she would never focus on 'the job at hand'.
235. The combination of these matters resulted in a total breakdown of the relationship between the Claimant the staff she was responsible for managing, as well as the Respondent's Trustees, who were responsible for managing her. The Tribunal is satisfied that these relationships could not be 'worked on' or mediated – they were irremediable. In particular, it was absolutely essential for the Trustees to

have confidence that the Respondent's Director – the person leading the Respondent's operations – would follow their instruction and respect their decisions, and would work with them to further the Respondent's charitable objects. There is a clear pattern of conduct by the Claimant that showed resistance to doing so.

236. We find that the Trustees were entitled to accept the Claimant's deliberate and willful misconduct fundamentally breaching her contract of employment and dismiss her summarily.

237. Allegation 17 therefore does not succeed.

Unpaid holiday pay (Allegation 18)

238. The Claimant has made it clear that she took no holiday leave, and therefore had accrued a right to holiday pay on the termination of her employment. However, the Bundle contains a payslip that shows a payment of £1,850.94 was made to her on 21 July 2022 by way of holiday pay. The Claimant has not given the Tribunal any explanation as to what is incorrect about that amount. The Tribunal finds that the Claimant has not discharged the burden – that sits with her – to demonstrate that she is owed any holiday pay.

Unauthorised deductions from wages pertaining to NJC awards (Allegations 19 and 20)

2021/2022 award (Allegation 19)

239. While a post-termination entitlement to wages is capable of being "*properly payable*" for section 13(3) purposes (*Robertson*), there must be a clear legal entitlement to the sum in question for the Tribunal to find that it is in fact "*properly payable*" (*New Century Cleaning*). Therefore, in order to succeed with an unauthorised deductions complaint, the Claimant would need to demonstrate to the Tribunal that the NJC pay award, agreed after the termination of her employment, was properly payable to her.

240. This might be done by pointing us to a provision in the Claimant's contract of employment, or an employment policy, or Respondent custom and practice, that otherwise would make this pay award "*properly payable*" to her for the purposes of section 13(3) of the 1996 Act.

241. As described in the Facts section above, the relevant parts of the Claimant's contract stated that:

- a) "Your salary will be based on NJC Pt 30"; and
- b) "Samphire staff have been awarded a provisional 1.75% cost of living rise for 2021-2022, pending the outcome of ongoing NJC salary scale negotiations".

242. In relation to the NJC pay arrangements, the parties informed the Tribunal that the Claimant's employment was not covered by any collective agreement, but

rather, in the terms and conditions of employment between them the parties agreed to replicate the NJC Pt 30 pay levels. Moreover, there is no policy or custom and practice pointed to by the Claimant. Whether she has an entitlement to a post-termination NJC pay award therefore comes down to a proper construction of the Claimant's employment contract.

243. While the clauses quoted above could be read as indicating that an NJC pay award will be applied to any period of employment it covers, they could equally be read as providing that the contractual commitment from the Respondent is simply to replicate NJC pay awards agreed during employment. There is no clear entitlement in the Claimant's contract of employment for her to be paid an NJC award agreed post-termination covering a period of her employment with the Respondent. Absent that clear entitlement, she has not satisfied the Tribunal that the post-employment-awarded NJC award was "*properly payable*" to her, and so her unauthorised deduction from wages complaint does not succeed.

2022/2023 award (Allegation 20)

244. The same analysis and conclusion applies to the NJC pay award in respect of 2022/2023.

Unauthorised deductions from wages pertaining to TOIL compensation (Allegation 21)

245. The Claimant has never particularised the hours she worked that attracted TOIL (which, pursuant to her contract of employment, was only evening and weekend work), or identified any contractual provision, or other arrangement (such as custom and practice) that would support a contention that payment in lieu of TOIL on termination of employment was "*properly payable*" for the purposes of section 13(3) of the 1996 Act. Consequently, the Tribunal cannot uphold this complaint and it is dismissed.

Time limits

246. In light of our findings that none of the Claimant's protected disclosure detriment complaints are well-founded, there is no need for the Tribunal to consider the time limits matter.

Conclusions

247. For all of the above reasons, none of the Claimant's complaints are well-founded, and the Claim is dismissed.

Employment Judge Ramsden

Date 5 October 2025

JUDGMENT AND REASONS SENT TO THE PARTIES ON

DATE 24 October 2025

O.Miranda

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