



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Reast

Respondents: Practice Plus Group Hospitals Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Southampton

On: 19 to 22 January 2026

Before: Employment Judge Gray

Appearances

For the Claimant: In person

For the Respondent: Mr Boyde (Counsel)

RESERVED JUDGMENT

The judgment of the tribunal is that the Claimant's complaints of detriment on the grounds of whistleblowing fail and are dismissed.

REASONS

1. THE CLAIM

2. By a claim form submitted on the 20 July 2024 the Claimant complains of detriment because of whistle blowing.
3. The Claimant relies upon an ACAS certificate dated 6 June 2024 to 28 June 2024. Therefore, things complained about on the 7 March 2024 and after would be in time. Based on the detriments complained about, no time limit jurisdictional issues arise in this claim.

4. THE HEARING

5. For reference at this hearing the Judge was provided with:
 - a. A 378-page bundle (to which was then added two further pages, being a copy of the agreed terms of reference for investigating the Claimant's disclosure matter, then a further four pages being copies of extracts from Linked In profiles, then finally four documents being an email, copy letter, meeting transcript and an Autism awareness information leaflet).
 - b. Witness statement bundle with statements from:
 - i. The Claimant
 - ii. On behalf of the Respondent:
 1. Natalie Rickaby (the Claimant's line manager) (NR)
 2. Janine Turner (Regional HR Manager) (JT)
 3. Sherry McBain (Head of Nursing) who did not attend this hearing, so her statement was given less weight on matters of factual dispute (SM)
 - c. Chronology
 - d. Cast List
 - e. Essential reading list
 - f. Closing written submissions from both parties.
6. The list of issues as previously agreed at the case management preliminary hearing before Employment Judge Roper and which are set out in Annex A below, was confirmed. It was confirmed that the Respondent accepts the three alleged detriments happened and can amount to a detriment but disputes the reason, asserting they were not done on the grounds of the protected disclosure.
7. At the start of the hearing the Claimant's neuro diversity (as set out in her witness statement) was discussed and whether any reasonable adjustments were needed to assist her. Through that process it was agreed that the Claimant could request breaks when she needed them and with the agreement of the Respondent, she could use her own marked up evidence bundle when giving

her evidence, Respondent's Counsel having been given opportunity to review it before confirming.

8. The hearing timetable was confirmed in line with that already agreed with Employment Judge Roper at the case management preliminary hearing. It was also agreed that matters of liability would be addressed first.
9. During the Claimant's evidence it was identified that the Claimant's witness statement had not presented full details of the protected disclosure to the Tribunal. The hearing bundle also lacked full details. This appeared to have happened because the Respondent had prior to this final hearing conceded the Claimant made a protected disclosure as alleged. However, it was identified by the Judge that they still needed to determine that a disclosure had been made and what it was, as that was then key to understanding whether the asserted detriments happened on the ground of it.
10. The Claimant was able to identify her further and better particulars in the hearing bundle (pages 22 to 25) which she wanted to rely upon. Respondent's Counsel indicated that the parties may also be able to submit a copy of the agreed terms of reference for investigating the Claimant's disclosure matter, which would also assist. The Claimant was therefore released from giving evidence so that the parties could resolve this matter. After an adjournment the parties then submitted a copy of the terms of reference (pages 379 and 380) and the Claimant's evidence then resumed. This did mean though that the Claimant's evidence was concluded in the morning of day two, instead of at the end of day one as originally timetabled. However, the Respondent's evidence then concluded at the end of day two as timetabled.
11. During the Respondent's evidence the Claimant asserted when cross examining Janine Turner that the Chief Nurse referred to in paragraph 35 of Sherry McBain's statement was Lesley Boler. This was not accepted by Janine Turner who thought it was Sarah Brown. The parties agreed that this matter could be investigated by them during a break and upon resuming the Judge was provided with copies of extracts from Linked In profiles that showed Sarah Brown became Chief Nurse in June 2023. This was therefore consistent with the evidence of Janine Turner. The four pages of Linked In extracts were added to the end of the hearing bundle.
12. It was agreed that submissions would be made in the morning of day three. This happened, but the process took longer than initially estimated as the Claimant needed a copy of the Respondent's written submissions that had been emailed to her printed to assist her reading of them and needed a copy of her written submissions printed for her to refer to when oral submissions were made.

13. Further, the Claimant had disclosed three further documents to the Respondent in the evening of day two being a copy letter, meeting transcript and an Autism awareness information leaflet. The reason for disclosing the meeting transcript was to support the extract of that meeting provided at page 358 of the bundle. In short, the Claimant asserted this proved that Leslie Boler had drafted the second investigation report (a matter she refers to in paragraph 4 of her witness statement). The Respondent maintained that it was Linda Davies (Head of Nursing and Clinical Services) who had drafted the report and submitted that the one reference to Leslie in the meeting notes was an error. The Respondent also submitted a copy of an email from Linda Davies which it says supported she was the author of the report. By consent, copies of these documents were provided to the Tribunal, and it was agreed they would be considered as necessary in deliberations.
14. Discussion was had with the parties as to how a judgment was then given to the parties and the process for requesting written reasons. The Claimant confirmed that she did not believe she would be able to absorb an oral judgment and requested a written judgment. It was therefore considered proportionate to reserve this Judgment.

15. THE FACTS

16. The Judge found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after considering the closing submissions made by and on behalf of the respective parties
17. The Claimant commenced her employment with the Respondent as a Theatre Practitioner on the 12 February 2020 (a copy of her employment contract is at pages 103 to 116). The Claimant's employment is ongoing.
18. It is not in dispute that on the 3 March 2022 the Claimant raised a formal concern regarding a number of issues.
19. As confirmed in the agreed list of issues ... "on 3 March 2022 the claimant raised a formal concern to the respondent alleging unsafe training practices which were happening in the ophthalmology department which had led to the risk of, and actual harm to patients to the effect that (i) the respondent was failing to follow Standard Operating Procedures; (ii) nurses were inappropriately carrying out medical procedures without having completed the necessary specialist training; (iii) and that consultant doctors employed by the respondent and its training Partner the University of Portsmouth were fraudulently signing off nurses as competent when they were not."
20. The Respondent has conceded that this disclosure was a protected public interest disclosure, and the parties agreed that on 22 September 2023 the

Claimant raised the same concerns again, but that this was not a separate new disclosure.

21. The Claimant sent an email to Jason Riley, Human Resources Director – Secondary Care, on the 3 March 2022 (pages 161 and 162) that is referred to in the essential reading list as the “Claimant’s disclosure”.
 22. The relevant part of the email appears to be ... “Here is my true dilemma. There are many parties involved in what I need to expose. And unfortunately following PPGs Whistle blowing policy is not easy. Especially if I am to report to the Chief Clinical governance nurse Lesley Boler. Who knows every concern I raised during my training as an Ophthalmic Nurse Specialist/ Intravitreal Injector(IVI) for Age related Macular Degeneration. She also allowed many breaches of a PPG policy to speed up the service. A policy she was author on.”.
 23. During the Claimant’s evidence it was identified that there was limited evidence presented in her witness statement about the factual ingredients necessary to prove a protected qualifying disclosure being made to the Respondent. This was rectified by the Claimant confirming she relied upon her further particulars (pages 22 to 25), and then a copy of the terms of reference that were agreed to investigate the disclosure (added to the bundle in the afternoon of day one), being confirmed as her disclosure (pages 379 to 380).
 24. From that the content of the disclosure is ...”... alleged breaches by management of the Standard Operating Procedure relating to the training programme (“Intravitreal Injections for Mascular Disease by non-medical health professionals”, reference number PPG-HC-CC-SS, ratified June 2021) and the alleged improper adoption and implementation by management of a replacement Standard Operating Procedure (“Intravitreal injections and guidance on related medical retinal clinic practices, PPG Ophthalmology” backdated to October 2021).
- 2) And that in so doing;
- KR’s concerns relating to the alleged breaches of the Standard Operating Procedure(s) were ignored and not acted upon and that as a result of raising these concerns KR was allegedly subject to harassment, bullying, and coercion by Julia Waldron
 - Concerns raised by KR were allegedly deliberately concealed
 - An alleged health and safety risk was posed to patients/the public
 - A number of individuals within management allegedly conducted themselves in a manner likely to damage the reputation of Practice Plus Group
 - A number of individuals within management allegedly failed to comply with their legal and professional obligations
 - Practice Plus Group Finances were allegedly mismanaged”

25. And as also confirmed in the Claimant's further particulars (page 22):

"3. In summery [sic] my concern exposed fraud within company by means of policy adaption, to down grade the volunteer programme I was on, from being consultant led to nurse led to speed up a contract exchange. This realisation came to light when I was exposed to extreme measures of harassment to authorise a press release to hurry the start of a service before adequate numbers of Health Care Professionals (HCPs) were ready. Misconduct by lead Consultants and clinical governance teams meant they extended that misconduct to infiltrate the University of Portsmouth (UoP) and further fraud being exposed internally by its faculty, in creation of fraudulent certification of incompetent practitioners going live on the public all across the United Kingdom (UK)."

26. It is not in dispute that these concerns are then investigated on three separate occasions following the disclosure in March 2022 and the Claimant raising the same matters again on 22 September 2023 and then on the 30 June 2024. The Claimant's concerns were not upheld in the way she asserts.

27. By letter dated 21 September 2022 (pages 339 to 341) from Jason Riley to the Claimant it is confirmed that the investigation concluded that ... "there were deficiencies in the way the Nurse Injector role was managed due to poor communication between the SMT in Rochdale and Southampton, inaccurate information being shared and a lack of clarity in response to your concerns ... There was no evidence that Patients/Public were placed at risk."

28. The investigation concluded that there needed to be improvements to the way job descriptions, training and standard operating practices are communicated.

29. The letter concludes ... "Lastly, please may I thank you for bringing these matters to my attention and I would be grateful if you could accept my apologies on behalf of Practice Plus Group with regard to the matters referenced above. As we said, your concerns were clearly raised in good faith and you should not suffer any detriment for having done so. Please be assured we will be implementing the recommendations specified in the investigatory report and, by heeding the lessons learned, improve the way in which we select and train Nurse Injectors in the future."

30. As is confirmed in the chronology the second formal concern was not upheld on the 29 May 2024 and the third concern not upheld on the 25 October 2024.

31. It is in this context the Claimant asserts that on the grounds of her disclosure she was subjected to three detriments:

- a. Making an unauthorised deduction of 85 hours pay from the Claimant's monthly salary to 26 June 2024; and
- b. Suspending the Claimant on full pay by letter dated 20 December 2024; and
- c. Commencing a formal capability process which resulted in a Stage 2 (final written) warning by letter dated 3 February 2025.

32. It is not in dispute that these three things happened, nor that they amount to detriments.

33. The dispute is as to the reason they happened, the Claimant asserting they were done on the grounds of her protected disclosure, that is they were materially influenced by the disclosure.

34. The Tribunal was presented with three witness statements on behalf of the Respondent. NR and JT attended to give evidence, SM did not.

35. However, through the presentation of the Claimant's evidence and her cross examination of the Respondent's witnesses, it was clear that there was little factual dispute between the parties and the Claimant's reason for maintaining her allegations was because of the way she felt. This is demonstrated in the case the Claimant presented on each detriment:

- a. As to the sick pay, the Claimant asserted that she had received full pay for a period of work-related stress absence in 2022 proximate to her disclosure. This was not disputed by JT in her oral evidence, although it was not known by the Claimant or JT whether the Claimant had exhausted her sick pay at that time. JT recalled making a call to the Head of Nursing, Madeline Donson, when it was raised with her by the Claimant in 2022, and the Head of Nursing authorised sick pay for the Claimant's absence. The Claimant felt that she should have been treated the same way in June 2024, by effectively being paid special paid leave while absent due to health issues she believed arose in connection to her disclosure. About JT's statement the Claimant confirmed in her cross examination of JT that she thought JT's statement was very honest and very clear.
- b. As to the suspending of the Claimant on full pay by letter dated 20 December 2024, the Claimant asserted that she should have been suspended sooner, as the incident happened on the 13 December 2024, and this made her feel it was linked to the disclosure rather than the incident.

- c. Finally, as to commencing a formal capability process which resulted in a Stage 2 (final written) warning by letter dated 3 February 2025, the Claimant asserted that it felt connected because the Respondent was collating statements about her personally, rather than about the incidents themselves.
36. The second and third detriments are said to be done by SM in her witness statement. The suspension letter dated 20 December 2024 is from SM to the Claimant (pages 227 to 228). The warning letter dated 3 February 2025 is from SM to the Claimant (pages 295 to 297). SM did not attend to be challenged about her witness statement, opting not to do so on health grounds, but the content of her statement was not disputed by the Claimant, with the Claimant's evidence being consistent with what SM states.
37. About SM, the Claimant described her in cross examination as the one person she felt safe with, and she accepted that SM was trying to help her and that she had great compassion for SM. The Claimant also accepted when referred to the capability meeting notes (page 289) that SM's approach to the capability issues was not treating the Claimant badly as a whistle blower, but to put scaffolding around her to support and hold her.
38. The Claimant also accepted that paragraph 35 of SM's statement was SM being honest and the Claimant confirmed that SM is a genuine person. SM's paragraph 35 includes the statement ... "I was never influenced in my assessment or management of Mrs Reast but was offered support and guidance from HR and from my Chief Nurse in terms of process and welfare support for Mrs Reast."
39. According to the evidence presented by JT and the copies of the Linked In extracts the Chief Nurse at that time was Sarah Brown and not Leslie Boler as the Claimant had suspected. It was the Claimant's belief in the overarching influence of Leslie Boler as to why she felt what happened was on the grounds of her whistle blowing. The Claimant has not proven that Leslie Boler was SM's Chief Nurse at the time that SM got support and guidance when assessing and managing the Claimant.
40. The other reason why the Claimant suspected an overarching influence of Leslie Boler on matters was the Claimant believed that Leslie Boler was the author of the second investigation report. The Claimant relies upon an extract from minutes of a feedback session in October 2024 (page 358 and the further disclosure) at which Shen Tinsdale is recorded as saying ... "... the big overarching investigation, so of course the I presume you have seen the final report with all of the attachments, so there's the, the big report that Leslie did with all of the, you know, that sort of has everything referenced in it.". This is the only reference to Leslie in the meeting notes and Respondent's Counsel submits it was a miss speak, as the second report was prepared by Linda

Davies (Head of Nursing and Clinical Services). This does fit with the evidence presented as it is not in dispute that Linda Davies was the person who interviewed the Claimant in the second investigation and she does write an email dated 16 February 2024 saying ... "Please find attached the completed report – Charles and Janine have reviewed and there are no further changes to be made. I trust that the FTSU guardians will now take this forward- is there anything else you need from me". Considering the evidence presented, the Claimant has not proven on the balance of probability that Leslie Boler was the author of the second investigation report, nor an overarching influence in the alleged detriments.

41. Considering then each of the detriments. Firstly, the sick pay (26 June 2024). There is no dispute that the deduction is made and it would be to the Claimant's detriment.
42. NR in her witness evidence explains (paragraphs 11 and 12) that from 30 May to 13 June 2024, the Claimant was absent from work due to her mental health and work-related stress (page 163). The Respondent's Sick Absence Policy refers to an employee's contract which sets out their entitlement to sick pay (page 145). This contractual entitlement had increased from 75 hours full pay to 150 hours as of 2 February 2023 (pages 375 to 378). Those hours were used up by the Claimant when she was absent due to carpal tunnel surgery between 23 January 2024 and 20 February 2024 (page 164). The Claimant therefore had no sick pay entitlement left as of May/June 2024.
43. At paragraph 13 of NR's statement ... "I spoke to Ms Reast on 14 June 2024 when she returned to work. Mrs Reast asked me if she would be paid in full for her absence due to her mental health and stress. I cannot fully remember precisely the conversation because it was so long ago, but the gist was that Mrs Reast believed she should be paid for her absence because it was due to work-related stress, and that she was going to speak to ACAS regarding this. I told Mrs Reast that I understood she had already exhausted her full sick pay because of her carpal tunnel surgery, so she would be paid SSP."
44. Then at paragraph 14 ... "I emailed Dave Surrige, Data Quality Manager on the same day (165) to inform him that Mrs Reast has taken issue with her sick pay, and I copied in Janine Turner, Regional HR Manager so that she could provide advice. After I told them that the correct number of hours Mrs Reast was off for was 85 and not 75, Mr Surrige confirmed he would update the hours pending Ms Turner's advice (165). Ms Turner emailed back on 17 June 2024 to confirm, as I suspected, that Mrs Reast's absence for stress fell under the Policy and her contractual entitlement in terms of payment, and that the type of ill health work-related stress was not treated any differently from other types of ill health (167). Mrs Reast was therefore paid SSP for 85 hours (168) as opposed to full pay because she had already exhausted her full sickness entitlement."

45. JT also confirms this in paragraphs 4 to 6 of her witness statement, noting (from paragraph 6) ... "My involvement at this point was to confirm that stress-related absence is treated under the Sick Absence Policy, that it was not treated any differently to any other reason for absence, and I advised that payment should be made in accordance with her contract (167). Whilst I did not review the terms of Mrs Reast's contract when providing my advice, I can see now from reviewing the contract, and the email of 2 February 2023, that Ms Rickaby's decision to pay SSP was correct."
46. There is no dispute that the Claimant was absent from work due to stress related illness on the 30 May 2024 to the 13 June 2024. It is not in dispute that by this time the Claimant had exhausted her sick pay entitlement. The decision to make the deduction is therefore in line with the policy and contract.
47. Based on the evidence submitted by the Claimant to this Tribunal, her belief is, she was paid additional sick pay in 2022 when absent for stress related illness proximate to her disclosure, so the same should apply for this absence in 2024, which she also links to the disclosure. The detriment is therefore that an exception was not made for the Claimant to be paid after she had exhausted her sick pay entitlement in 2024. It has not been proven that the Claimant had exhausted her sick pay in 2022 to make this an exact match. Further, the circumstances of the 2024 sick pay enquiry are different, as the sickness absence and the enquiry about sick pay are not proximate to the disclosure. Further, there is a different Head of Nursing in post (SM was in the role at this time in 2024). I accept as submitted by Respondent's Counsel in his written closing submissions that ... "There is no suggestion that someone in materially the same circumstances as C who had not blown the whistle would have been treated any differently."
48. About the decision to suspend the Claimant on full pay by letter dated 20 December 2024. There is no dispute that this happened and that it would be to the Claimant's detriment.
49. SM sets out in her witness statement (paragraphs 15 to 17):
- "15. On 13 December, a near miss incident occurred in which Mrs Reast appeared to have signed a prescription chart to indicate that she had given medication to a patient when in fact it had not been administered (214-223). The incident was reported on 20 December 2024 and I was notified at 12:22pm (218), which was before my meeting with Mrs Reast was set to take place. A copy of the chart is attached to the report (223) and it shows, in the middle of the page in the "Pre- med" table, that medication was "Given" by "K Reast". There is then a comment "NO GIVEN KR Error". It was also reported to me that Mrs Reast had stated she "didn't want to fuck the lists up" in a loud voice in front of patients, when she was asked to assist with a task in the PAT area.

16. I considered the potential consequences of Mrs Reast's actions. The potential consequence of failing to administer medication to patients could be extremely harmful to a patient, and it was right that this was reported as a near miss. I thought that Mrs Reast's actions were very serious she was a trained nurse and had failed in one of her most vital tasks. I was also concerned about the reputational impact of Mrs Reast's reported swearing. I thought it would protect our patients if Mrs Reast was suspended from duty on capability grounds, under the Policy, whilst I investigated the issues. There were no alternatives to suspension because I had no other work to give Mrs Reast that did not involve patients. I had already tried a purely administrative role looking at the POCT and this proved to be unsuitable. I had tried reducing the stress by placing her in the PAT area with less responsibility as a clinician and the near miss had occurred. I concluded that I had no other option than to suspend her temporarily whilst I investigated the concerns raised.

17. I confirm that the fact that Mrs Reast had previously raised whistleblowing concerns played no part in my decision to temporarily suspend Mrs Reast under the Policy.”

50. As already referred to, the Claimant didn't present a different factual account to SM's and was positive about SM in her evidence. The near miss incident happened, and SM acted in response to that when informed on the 20 December 2024. The suspension letter dated 20 December 2024 from SM to the Claimant (pages 227 to 228), makes clear the reasons for the Claimant's suspension, being the medication near miss and the swearing. This is then reinforced as being SM's reason as she is recorded in the minutes of the capability meeting on 31 January 2025 as saying (page 279) ... “The medication incident, did raise to the fore that to prevent there being a serious patient safety incident, I need to suspend you and instigate the capability process”.
51. It is not disputed that the third detriment of commencing a formal capability process which resulted in a Stage 2 (final written) warning by letter dated 3 February 2025 happened and is to the Claimant's detriment.
52. It is not in dispute that in advance of the issues considered in the capability process the Claimant undertook a period of special paid leave from the 28 June 2024 to the 8 July 2024.
53. The Claimant confirmed that her mental health started to suffer around September 2024, as is recorded in the Capability Meeting minutes (page 285) the Claimant says ... “I was doing well in September and then it just stopped, and stupidly took on something else, in between, so by the time I got to the PAT team, my head is just wanting to complete so many uncomplete areas. I just lost it ...”.

54. There are no concerns at this time though as to the Claimant's performance. As NR states in paragraph 15 of her witness statement ... "It was my role to complete Mrs Reast's yearly appraisals and I completed one on 24 September 2024 (176-183). At that time, I had no concerns about her performance. I knew that Mrs Reast had a lot of things going on in her personal life, but her performance at that time was not an issue and accordingly I confirmed that she had "met expectations".".
55. It is around November 2024 that NR states that the Claimant became increasingly difficult to manage (paragraphs 18 to 20). NR states about the Claimant at this time that:
- a. She was regularly speaking about her experiences at PPG and specifically about the whistleblowing investigations to a wide variety of individuals, including theatre staff, Surgeons, Anaesthetists, agency staff, students, and colleagues from other departments, despite the confidentiality of the investigations and the Claimant being directed to discuss them with NR, the Theatre Deputy, SM, the Freedom to Speak Up Champions, or a member of the mental health support team.
 - b. Issues arose concerning her concentration, attitude, and emotional regulation in theatre. Several surgeons requested not to work with the Claimant, and other staff had expressed similar preferences. There were also reports of the Claimant leaving theatre to make phone calls and send emails.
 - c. Concerns regarding the Claimant's clinical performance, including her ability to scrub for certain procedures.
 - d. That during a stressful urology list, the Claimant was involved in a heated exchange with a colleague in an empty theatre, raising her voice and appearing visibly upset. Despite attempts by NR and a Team Leader to de-escalate the situation, the Claimant became angry, shouted and swore, and ultimately left the premises. NR reported these issues to SM on 12 November 2024 (pages 269 to 270).
56. It is not in dispute that at this time the Claimant is experiencing a mental health crisis and is moved off patient facing work to undertake project work instead.
57. Further, at paragraph 23 of NR's witness statement ... "Mrs Reast sent an email to the SMT and copied in a number of people, including me, my Deputy, Team Leaders, and admin staff, on 22 November 2024 (189). I do not know why I was copied in because Ms McBain was handling this and I was not part of the SMT, but I do know that Ms McBain was concerned about the tone of the report which Mrs Reast produced. Ms McBain asked me how Mrs Reast had performed in theatres and I explained that a number of colleagues had raised concerns. Ms

McBain asked if they would be prepared to explain their concerns in writing. I spoke to colleagues and passed on to Ms McBain any statements that were shared with me.”.

58. The statements obtained refer to an incident on 7 November 2024 and evidence that the Claimant got into conflict with a Consultant, Mr. Nigel Borley (pages 245, 248 and 257). There was a poor atmosphere in theatre and voices were raised, as well as issues involving the Claimant coming into the office and “ranting” (page 250).

59. As SM sets out in paragraph 23 of her witness statement:

“23. I then commenced the investigation process and spoke with several of Mrs Reast's colleagues regarding her performance at work. I collected the witness statements at 244-255 and 257-277 of the bundle, which are self explanatory and most of which had already been provided to Ms Rickaby by staff. To summarise, the following concerns were raised by Mrs Reast's colleagues:

23.1 Ms Reast was not present on occasion in theatre to scrub;

23.2 she disappeared from theatre during the day without permission or notifying others, leaving the team depleted and searching for her;

23.3 she used a personal laptop or mobile phone in theatre during procedures;

23.4 Mrs Reast did not listen to safety briefs in theatre;

23.5 Mrs Reast upset staff with demands regarding the removal of equipment from clinical areas;

Additionally Mrs Reast:

23.6 produced the POCT report in which the tone was inappropriate and the extent of the report was outside the scope of the initial request;

23.7 used the title of "Prospective Practice Development Lead" she had used this to my knowledge in her email to the SMT (Senior Management Team) on 22 November 2024 (189);

23.8 swore within earshot of patients whilst working in the PAT office; and

23.9 signed that she had given medication to a patient which she had not given.

If this was an accurate reflection of Mrs Reast's performance, this would amount to not working to the standard expected from a capability perspective.”.

60. This is all consistent with what has been evidenced to this Tribunal, and it was these matters and the near miss incident on the 13 December that led SM to organise a stage 2 capability meeting.

61. The Respondent's capability policy does permit it to escalate matters to stage 2 or 3 without undertaking the first stage or an informal process (page 130).

62. The Claimant was referred to a number of the witness statements from her colleagues in cross examination as well as her comments made about them in the Capability Meeting minutes. In the main the Claimant accepted what they said. She explained that she was trying to juggle too many things at that time, was suffering a mental health crisis and was psychologically not focused on her job. Relevant comments recorded as being said by the Claimant in the capability meeting include:

"KR: Absolutely, I'm not in denial, people have the right to 'freedom to speak out' and I'm actually quite proud that people did, because how can we make change on [sic] manage someone's capability without people having the 'freedom to Speak Up', so this is a positive thing for me. To see so many people write, it's a good thing, I don't like being the centre of what they have written, and I clearly do need managing and the ability, even if it means starting again. I am fully open to that. I can't reject what anybody said, but it clearly states to me, that I was spiralling in the situation where I lost focus, it doesn't mean that I'm not repairable." (page 279)

"KR: (KR Upset) Most of those letters we're [sic] from my own Line Manager, I affected her sleep, that she finds me unmanageable, that I caused her distress and that hurts me, that I did that. She has had to disclose her own personal feelings, which would have been hard to do and I'm sorry that I put her through that. I'm sorry, it's hard receiving those letters on the very last day of my 6-week suspension to read the night before. It is very hard, I couldn't move yesterday, I went from feeling really well and ready for this, to absolutely broken, because I have hurt so many people." (page 280)

63. When the Claimant is asked if she would do anything differently given the reflections she has had she is recorded as saying ... "KR: I wouldn't juggle so much, I would focus on one role, I wouldn't blur the lines. I can only be loyal in one role and that is the role, that I am contracted too. If they say that I'm not good enough for my role, then I would have to learn again. I want to go back to being me again, back to before 2022. I wanted to do good, and do good in everything else, but I'm human." (page 289).

64. In her evidence the Claimant asserted that her mental state at this time was a consequence of the disclosure she had made and pursued, as well as her recently identified neuro diversity. In short, the Claimant was asserting because of her disclosure this caused her stress and led to a mental health crisis, which

then impacted on how she performed her role. Even if this is right, by this assertion the Claimant is acknowledging it is the performance issues that fuel the capability process and not the protected disclosure.

65. The performance concerns about the Claimant have not been made up. They are the reason SM commences a formal capability process.
66. As already referred to, the Claimant described SM in cross examination as the one person she felt safe with, and she accepted that SM was trying to help her and that she had great compassion for SM. The Claimant also accepted when referred to the capability meeting notes (page 289) that SM's approach to the capability issues was not treating the Claimant badly as a whistle blower, but to put scaffolding around her to support and hold her. It can also be noted from the meeting notes that SM is recorded as saying to the Claimant ... "No one is saying that you are not a good nurse or a good theatre practitioner" (page 279) and ... "... we need to put a line in the sand, start afresh and have a clear plan of where we go and what we do and where the perimeters [sic] are for you." (page 280).
67. The Claimant is issued a stage 2 final written warning on the 3 February 2025 (pages 295 to 297), which is a permitted outcome under stage 2 of the capability policy (page 132). The final warning letter sets out supportive objectives with the provision of support and training such as a "Buddy" to work alongside the Claimant. The outcome letter is consistent with the reasons and motives of SM as expressed in her witness statement. The outcome letter provides a right of appeal for the Claimant which she does not exercise. The capability process also progressed positively from this point with the Claimant being removed from the monitoring review process in June 2025 (as confirmed by letter dated 11 June 2025, pages 334 to 335).
68. As SM states at paragraph 27 of her witness statement ... "I issued the warning because Mrs Reast's performance was poor, and not because she raised a concern in March 2022, or because she reiterated those concerns thereafter."
69. Further at paragraph 34 of her statement ... "Throughout this process, my actions were guided by the need to ensure patient safety and ensure the team could perform without disruption, however, I also sought to provide the appropriate support to Mrs Reast. I believe I offered considerable support to Mrs Reast throughout my short tenure as Head of Nursing and Clinical Services. The decision to suspend was made in light of serious concerns about her performance, particularly the medication error. The capability procedure was followed in accordance with the Policy, with opportunities for Mrs Reast to respond to the concerns. She ultimately accepted that her performance was poor and needed to improve and, as I understand it, has worked to raise her standard of performance to an acceptable level.". I accept what SM says which

is consistent with the evidence, from the documents and witness testimony presented to this Tribunal.

70. THE LAW

71. Protected disclosures (relevant sections from 43A to 43L ERA 1996)

72. Under section 43A of the Employment Rights Act 1996 (ERA) a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. Section 43B(1) provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

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

74. A disclosure of information can still amount to a qualifying disclosure if the information was already known to the recipient (section 43L (3)).

75. In this claim, the Respondent accepts that the Claimant made a protected qualifying disclosure to her employer.

76. Initially the factual matters relevant to prove such were not apparent from the Claimant's witness statement or the hearing bundle (being referred to page 161 and 162 which was not clear), however with the Claimant then relying upon her further particulars in the bundle, the late addition of the terms of reference to the bundle and the Claimant confirming they reflected her disclosure, it was possible to accept that the Claimant had made a disclosure as alleged and as conceded to by the Respondent and as set out in the above fact find.

77. Detriment on the ground of a protected disclosure (section 47B)

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

79. Under section 48(2) of the Act, on a complaint to an employment tribunal it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

80. Section 47B and Section 48(2) provides:

...47B Protected disclosures

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

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

...48 Complaints to [employment tribunals]

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

81. Considering **Fecitt and Ors v NHS Manchester [2011] EWCA Civ 1190; [2012] ICR 372 [2012] IRLR 64.**

82. The test to be applied when considering whether a detriment was done "on the ground" of a protected disclosure is for the Tribunal to determine whether a protected disclosure was a significant influence" on the decision to act or not act. An influence is significant provided it is "more than trivial". To do so the Tribunal must focus on the "mental processes (conscious or subconscious) of whoever caused the detriment."

83. The Court of Appeal indicated that an employer will breach the worker's right not to be subjected to a detriment if the worker's disclosure "materially

influences (in the sense of being more than a trivial influence)" the treatment meted out to the worker.

84. Noting then that a worker is subjected to a detriment on the grounds of a protected disclosure if the protected disclosure was a material (more than trivial) influence on the alleged perpetrator's treatment of the whistleblower (Fecitt at paragraph 45).

85. In respect of the operation of the burden of proof LJ Elias said as follows in Fecitt:

"41...The fact that it was the claimants, the victims of harassment, who were redeployed was obviously not a point lost on the tribunal. It was evidence from which an inference of victimisation could readily be drawn. But the tribunal was satisfied that the employer had genuinely acted for other reasons. Once an employer satisfies the tribunal that he has acted for a particular reason - here, to remedy a dysfunctional situation - that necessarily discharges the burden of showing that the proscribed reason played no part in it. It is only if the tribunal considers that the reason given is false (whether consciously or unconsciously) or that the tribunal is being given something less than the whole story that it is legitimate to infer discrimination in accordance with the principles in Igen Ltd v Wong.

...51.... I entirely accept that, where the whistleblower is subject to a detriment without being at fault in any way, tribunals will need to look with a critical—indeed sceptical—eye to see whether the innocent explanation given by the employer for the adverse treatment is indeed the genuine explanation. The detrimental treatment of an innocent whistleblower necessarily provides a strong prima facie case that the action has been taken because of the protected disclosure and it cries out for an explanation from the employer."

86. As reminded by Respondent's Counsel in his written closing submissions ... "While section 48(2) ERA provides that it is for the employer to show the ground on which any act, or deliberate failure to act was done, it does not follow that once a claimant asserts that he or she has been subjected to a detriment, the respondent must disprove the claim. Rather it means that once all the other necessary elements of a claim have been proved on the balance of probabilities by the claimant i.e. that there was a protected disclosure, that there was a detriment, and the respondent subjected the claimant to that detriment, the burden will shift to the respondent to prove that the worker was not subjected to the detriment on the ground that he or she had made the protected disclosure."

87. Further, the Respondent submits, on the causation question, the cases of **Commissioner of Police of the Metropolis v Keohane [2014] ICR 1073** and **Bolton School v Evans [2007] IRLR 140** are informative. While Keohane was

a discrimination claim, the Respondent submits that the principle at the heart of the case is still applicable in a whistleblowing context. The case involved a pregnant female police dog handler who argued, in essence, that her police dog had been removed “because of” her pregnancy pursuant to section 18 of the Equality Act 2010. Critically, the Tribunal drew a distinction between discriminatory acts and the context in which they are done:

“22 Pregnancy, sex, race, disability, age and the other characteristics identified as protected in the Equality Act 2010 are an inherent part of the identity of a person. They are thus always liable to be present when any decision if made or act is done in respect of that person. Often, and perhaps almost inevitably, those characteristics will shape the context and the circumstances within which that decision or act is taken or done. The purpose of the Equality Act put generally is to proscribe criteria or behaviour which are responsive, not to the context generally, but specifically to the characteristics concerned.”.

88. Equally, in Bolton School where a teacher hacked into the School’s IT system to demonstrate that it was insecure, and in doing so make a public interest disclosure, the warning he received was – in causation terms – not because he made a public interest disclosure but the manner in which he went about it.
89. Detriment has been broadly interpreted in the whistleblowing and discrimination context and will be made out if a reasonable worker would or might take the view that the treatment had been to their detriment; it does not require a physical or economic consequence (**Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337**).

90. THE DECISION

91. It is not in dispute that the Claimant made a qualifying protected disclosure, and I accept this to be the case.
92. It is also not in dispute that the three asserted detriments took place and were to the Claimant’s detriment.
93. As to the reason for those detriments. I do not find that they were done on the ground that the Claimant had made the protected disclosure. The Respondent has satisfied me that it acted for a reason that was not on the grounds of the Claimant’s disclosure.
94. The decision about sick pay made in June 2024 is on the grounds of the understood sick absence policy and contractual provisions, it is not materially influenced by the Claimant’s disclosure.

95. The decision to suspend the Claimant on the 20 December 2024 is because of the Claimant's conduct at that time (the medical near miss on the 13 December 2024) and not materially influenced by the Claimant's disclosure.
96. The decision to commence a formal capability process which resulted in a Stage 2 (final written) warning by letter dated 3 February 2025 is because of the Claimant's performance at that time and not materially influenced by the Claimant's disclosure.
97. It is therefore the judgment of the tribunal that the Claimant's complaints of detriment on the grounds of whistleblowing fail and are dismissed.

Approved by:
Employment Judge Gray
Dated: 22 January 2026

Judgment sent to parties on
7 February 2026

Jade Lobb
For the Tribunal Office

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

ANNEX A – AGREED ISSUES:

1. Protected Public Interest Disclosures ('Whistle Blowing')

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

1.1.1 What did the claimant say or write? When? To whom? The Claimant relies on this disclosure:

1.1.1.1 The Disclosure: on 3 March 2022 the claimant raised a formal concern to the respondent alleging unsafe training practices which were happening in the ophthalmology department which had led to the risk of, and actual harm to patients to the effect that (i) the respondent was failing to follow Standard Operating Procedures; (ii) nurses were inappropriately carrying out medical procedures without having completed the necessary specialist training; (iii) and that consultant doctors employed by the respondent and its training Partner the University of Portsmouth were fraudulently signing off nurses as competent when they were not.

1.1.1.2 The respondent concedes that this Disclosure was a protected public interest disclosure, and the parties agree that on 22 September 2023 the claimant raised the same concerns again, but that this was not a separate new disclosure.

1.1.2 Were the disclosures of 'information'?

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

1.1.4 Was that belief reasonable?

1.1.5 Did the claimant believe it tended to show that:

1.1.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation; and/or

1.1.5.2 the health or safety of any individual had been, was being or was likely to be endangered.

1.1.6 Was that belief reasonable?

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

2. Whistle Blowing Detriment (s 47B of the Act)

2.1 Did the Respondent do the following things:

2.1.1 Detriment 1: making an unauthorised deduction of 85 hours pay from the claimant's monthly salary to 26 June 2024; and

2.1.2 Detriment 2: suspending the claimant on full pay by letter dated 20 December 2024; and

2.1.3 Detriment 3: commencing a formal capability process which resulted in a Stage 2 (final written) warning by letter dated 3 February 2025

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

2.3 If so, was it done on the ground that the claimant had made the protected disclosure(s) set out above?

3. Remedy – Detriment s47B of the Act

3.1 What financial losses has the detrimental treatment caused the claimant?

3.2 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

3.3 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

3.4 Is it just and equitable to award the claimant other compensation?

3.5 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did either party unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the claimant and, if so, by what proportion up to 25%?

3.6 Did the claimant cause or contribute to the detrimental treatment and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?

3.7 Was the protected disclosure made in good faith? If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?