



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Natalie Shaw

v

Engage Health Systems Limited

Heard at: Norwich Employment Tribunal (via CVP)

On: 11th, 12th and 13th November 2025

Before: Employment Judge King

Appearances

For the Claimant: Mr Frame (Solicitor)

For the Respondent: Mr Witte (Director of Respondent)

RESERVED JUDGMENT

1. The claimant's claim for unfair dismissal contrary to s103A Employment Rights Act 1996 is not well founded and is dismissed.
2. The claimant's claim for detriments contrary to s47B Employment Rights Act 1996 is not well founded and is dismissed.

REASONS

1. The case was listed for four days but due to judicial time availability listing time was limited to three days and this resulted in the decision having to be reserved as submissions concluded on the third day.
2. I heard evidence from the claimant. I heard evidence from Claire Flynn and Jon Witte on behalf of the respondent. The claimant and respondent having exchanged witness statements in advance, there was an agreed bundle which ran to 265 pages. The respondent also produced a supplementary bundle which had been exchanged with the claimant in advance which ran to 40 pages largely of logs for log ins/access to slack.

3. Both sides provided additional statements, in the claimant's case this was from her partner Mr Sharma and in the respondent's case Mr Jay. Once the statements, bundle and issues were considered EJ King raised with the parties that neither statement went to the issues in the case and given time constraints with the listing, it was agreed that both statements would be admitted as they had been read but neither witness would give evidence and be cross examined. The statements were considered but were of limited relevance.
4. At the outset of the case the issues were considered and clarified in discussion with the parties. There were two claims both concerning protected disclosures and whether the claimant had made these and whether she was subject to detriments on the grounds of having made a protected disclosure and whether her dismissal was automatically unfair under s103A Employment Rights Act 1996.
5. It is important to note that the claimant did not have sufficient service to claim ordinary unfair dismissal. It was not in dispute she was an employee. It was not accepted as a matter of fact (for verbal disclosure) and as a matter of law that the claimant had made a protected disclosure. Regarding termination, it was not disputed that the claimant was dismissed or that factually some of the alleged detriments had taken place but the respondent took issue with the way they were set out in the issues. For example re email/message contact whilst at sick – factually these were evidenced and not disputed but the respondent took issue with the detriment and the way it was pleaded. The list of issues was edited before we heard evidence. The Tribunal made the physical changes to the draft list provided and discussed this with the parties before the evidence was heard and provided an edited copy to all parties at the outset of the second day.
6. There were many factual issues in dispute. Before hearing evidence, it was key to establish dates and examples of detriments etc in the list of issues. The Employment Tribunal had expressed some concern about the list of issues at the last hearing but it had not been finalised between the parties in advance of this hearing.
7. There were disputes over evidence. One document that was in the agreed bundle, Mr Frame requested be provided unredacted as a slack conversation on day 1. This was not previously raised but the respondent supplied this voluntarily at the hearing. The respondent maintained that messages between the claimant and others could be accessed by the claimant only and she was given extended access to download anything. She also made a DSAR request which was fulfilled. The claimant was also given extended access to systems post dismissal. I am told but make no finding about whether the respondent gave her an offer of access to systems. I therefore reach my decision on the evidence I have heard and which had been referred to as evidence from the bundle or in witness statements.

The issues

8. As set out above the parties list of issues as amended on day one by the Tribunal with the parties was as follows:

9. Protected disclosures

10. Did the Claimant make the following disclosures:

10.1.1 The Claimant raising with the first Respondent's Chief Operating Officer, Claire Flynn, and MW, that she was not being paid correctly commencing in the first week of August 2023 both verbally and via the Respondent's internal slack chat system;

- a. "I will receive an email today confirming that my August pay will contain a rise of £750.00"; [pg 229]
- b. "The email will also confirm that by 31st of August, I will have written confirmation of my base salary increment....." [pg 229]
- c. "I am emotionally exhausted by the will you won't you attitude" – To Clair Flynn and MW (August 2023) verbal
- d. "I believe that my good nature and duty of care have been taken advantage of and have been detrimental to my well-being and capacity to be happy within the workplace" written in her grievance of 25.03.24

The Claimant's position is that the above was repeated a number of times verbally and via internal communications and WhatsApp messages from August 2023 onwards.

10.1.2 The Claimant saying to Claire Flynn and MW that she was struggling with her mental health commencing from August 2023 to both until March 2024 to Jon Witte and Claire Flynn;

- a. To MW and Claire Flynn – "the lies and stress is affecting my anxiety" – August 2023 until December 2023 and then onwards to Jon Witte and Claire Flynn from March 24 until dismissal. Verbally to all and in WhatsApp to Claire Flynn
- b. To all (CF, MW and JW) from August 2023 – "I am the sole carer for two children and this treatment of affecting my health"

10.1.3 The Claimant's email (page 73) and voice message to Jon Witte with attached fitnote being a protected act on 14 March 2024;

- a. voice message to Jon Witte on 14 March 2024 – I am going to the GP today due to the treatment I have received from you which has

caused me concerns and has now had a detrimental impact on my mental health and I need to take some time out – or words to this effect. (this was raised due to the alleged broken promises)

10.2 Do each of the disclosures above amount to disclosure of information?

10.3 If so, did the Claimant have a reasonable belief that those disclosures were in the public interest and tended to show one or more of the matters listed at s43B(1)(a) to (f) Employment Rights Act 1996 (ERA 1996). The Claimant relies on the following:

10.3.1 Did the Claimant believe that it tended to show that the Respondent has failed, is failing or is likely to fail to comply with any legal obligation to which it is subject under Section 43B(1)(b) ERA in failing to pay contractual pay and/or to provide a safe working environment under the Health and Safety at Work Act 1974?

10.3.2 Did the Claimant believe that it tended to show that the health or safety of any individual had been, was being or was likely to be endangered under Section 43B (1)(d) ERA in that the Respondent was failing to provide a safety working environment for its workers?

11. Detriment (s.47B ERA 1996)

11.1 Did the following occur as alleged by the Claimant:

11.1.1 Being contacted and harassed whilst signed off sick by Jon Witte via email and WhatsApp;

11.1.1.1 Email 15.03.24 pg 77

11.1.1.2 Email 19.03.24 pg 78

11.1.1.3 Email 22.03.24 Pg 236

11.1.1.4 Email 26.03.24 Pg 237

11.1.1.5 Email 28.03.24 pg 90

11.1.1.6 Message 29.03.24 Pg 222

11.1.2 Having her role selected for redundancy by Jon Witte in March 2024;

11.1.3 Being required to undertake work related matters whilst signed off sick by Jon Witte; the claimant refers to work matters as the redundancy and grievance meetings namely the email of 28.03.24 at page 90 with letter at page 93/94 and email of 02.04.24 at page 97

11.1.4 Being required to and / or pressured to attend redundancy meetings whilst trying to recover from work related stress by Jon Witte;

11.1.5 Having her grievance of 25th March 2024 ignored and not looked into;

11.1.6 Being sent work related text messages with requests to meet up whilst signed off sick by Jon Witte (see 11.1.1 for those relied on);

11.1.7 Holding the meeting in the Claimant's absence which resulted in the Claimant's role being made redundant on 3rd April 2024.

(Claimant will say that these took place from 14 March 2024 until her dismissal done by Respondent's Jon Witte)

11.2 If so, did these matters, or any of them, amount to detriments?

11.3 If so, were the detriments (or any of them) done "on the ground" that the Claimant had made one or more protected disclosures?

12. Automatic unfair dismissal contrary to section 103A ERA 1996

12.1 If the Claimant is found to have raised the protected disclosures above (and if such amount to qualifying / protected disclosures), was the principal reason for the Claimant's dismissal because of the protected disclosures?

13. Acas Code of Practice

13.1 Did the Claimant raise a grievance on 25 March 2024?

13.2 If so, did the first Respondent fail to deal with the Grievance contrary to the Acas Code of Practice on disciplinary and grievance procedures?

13.3 Namely, the failure under:

13.3.1 Paragraph 33 (failure to arrange a meeting)

13.3.2 Paragraph 40 (appropriate action)

13.3.3 Paragraphs 41 – 43 (provide an appeal)

The law

14. The relevant law on protected disclosures is contained within the Employment Rights Act. The law as relevant to this case is set out in s43 ERA 1996 which states as follows:

s43A Meaning of “protected disclosure”.

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

s43B Disclosures qualifying for protection.

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

(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, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(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).

s43C Disclosure to employer or other responsible person.

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

(a) to his employer, or

(b)

15. The right not to suffer a detriment is found in s47B as follows:

s47B 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.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D)

(2) This section does not apply where—

(a) the worker is an employee, and

(b) the detriment in question amounts to dismissal (within the meaning of Part X).

(3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, "worker", "worker's contract", "employment" and "employer" have the extended meaning given by section 43K.

16. Under s48(3) Employment Rights Act 1996 complaints must be brought within the time limits set out in that Act:

s48 Complaints to Employment Tribunals .

(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 that 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.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the “date of the act” means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on; and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(4A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).

17. In respect of the automatic unfair dismissal claim, the right not to be dismissed is found in s103A Employment Rights Act 1996 as follows:

s103A Protected disclosure.

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.

18. There was no dispute about time limits for the automatic unfair dismissal claim so the relevant section of the Employment Rights Act 1996 is not repeated here as any such claim would be in time.
19. S.207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 states as follows:

- “(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
- (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
 - (b) the employer has failed to comply with that Code in relation to that matter, and
 - (a) that failure was unreasonable.”
20. The claimant’s solicitor provided written submissions which referred to the cases of *Chesterton Global Ltd v Nurmohamed* [2017] EWCA Civ 979 and *Okwu v Rise Community Action Ltd* [2019] UKEAT/0082/19. I raised with the parties that I would consider the key cases in this area including the above cases but also:

Williams v Brown UKEAT/0044/19
Cavendish Munro Professional Risks Management Ltd v Geduld
UKEAT/0195/09
Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436
Simpson v Cantor Fitzgerald Europe [2020] EWCA Civ 1601
Millbank Financial Services Ltd v Crawford UKEAT/0290/13
Parsons v Airplus International Limited 0111/17
Ibrahim v HCA International Ltd [2019] EWCA Civ 2007
Dobbie v Felton t/a Feltons Solicitors UKEAT/0130/20
Cox v Adecco UKEAT/0339/19

Findings of fact

21. The claimant was employed by the respondent from 25th July 2022 to her dismissal on 3rd April 2024. Her role title under her contract was Head of Growth and her job offer referred to her as Head of Sales.
22. It is not in dispute that for the first twelve months, her time was spent in UK sales. I accept the respondent’s evidence that she had no experience in health care and that she needed to gain that experience and that her role was intended to grow and she was hired for her international experience.
23. The recruiter per her forward on the basis of her contacts in the South East Asia region and that she was already working on a global scale. It is however not in dispute that by August 2023 she was set to explore opportunities for international growth. She was offered a guaranteed commission of £ 750pcm for August, September and October 2023. The respondent’s unchallenged evidence was that this was higher than her average monthly commission in the last 12 months.
24. It is clear by this point that the claimant was pushing for an increased package. MW was her Managing Director at the time. There is no evidence that this was ever agreed or that at any point prior to August 2023 she had been paid incorrectly. On her own witness evidence, there was a disparity in her pay in October 2023 although not evidenced with any bank statements.

She raised issues with her December, January and February pay in her grievance but did not reference October. It is clear however she wanted an increased package including basic salary.

25. The claimant had a good relationship with Ms Flynn both in and out of work. They messaged each other on slack (internal massaging system) regularly used by the respondent's staff. The claimant did talk to Ms Flynn about her financial issues and her wanting a higher package. On 5 August 2023 the claimant told Ms Flynn she would be getting confirmation on commission/salary increase by email from MW.
26. There was a discussion that next day between the claimant and Ms Flynn and the claimant confirmed that going forward she would put everything in writing.
27. On around this time in August the claimant sent a message to MW on slack which she relies on as a protected disclosure. The message was in the bundle but is relied on as a protected disclosure 10.1.1(a) and (b).
28. On 7th August 2023 MW wrote a letter to the claimant which confirmed that she would be on guaranteed commission for a period of three months to allow time to fully investigate international opportunities. An additional payment of £750 pcm would be paid in August, September and October 2023. At the end of the period a review would be held to determine whether progress had been made and by the 31 August she would have received written confirmation of her new base salary.
29. It is clear that around this time the claimant was trying to increase her salary. There is no contemporaneous evidence to support her claim that she raised that she was "emotionally exhausted by the will you won't you attitude" relied on as a verbal protected disclosure (see 10.1.1(c) in the list of issues) but given the contemporaneous messages with Ms Flynn and calls with MW at the time she probably expressed frustrations along those lines that she was fed up or frustrated with the will you or won't you attitude without reference to her being emotionally exhausted as Ms Flynn's evidence was that she had not disclosed such matters to her despite their friendship.
30. Despite indicating she would put things in writing at that stage, there is no other evidence to support that a pay rise was ever agreed. The claimant was experiencing financial pressures as evidenced by Ms Flynn's offer of a loan friend to friend and she was unhappy with her remuneration package. She did not get the promised details of a new package. However, the commission point was extended further for another four months beyond the original commitment and her contractual entitlement.
31. Around the end of December 2023 MW left the business over concerns about his gross negligence which the claimant was aware of. The claimant was also aware as early as 2023 that the business was under financial pressure. There was some evidence from late 2023 that MW intended to make the claimant redundant at that stage but Mr Witte gave evidence that

he decided not to do this when he took over to explore with the claimant her skills and whether she could be retained.

32. The claimant says she made two further protected disclosures in this period about the lies and stress directly affecting her anxiety and her treatment was affecting her health. This was said to be verbal conversations but there are no contemporaneous records to express this. The claimant did not take time off for medical issues and she relies on this as verbal disclosures and in WhatsApp messages with Ms Flynn but these do not support that and expressed positivity. It is not in dispute that Ms Flynn sent the claimant flowers and a chin up card. Ms Flynn confirmed in her witness evidence that the claimant's financial circumstances were causing her stress in the run up to Christmas. Ms Flynn denied that claimant indicated during any period before she went off sick that she was struggling from anxiety or her mental health and her witness evidence was that others with such conditions within the business had been supported. Ms Flynn and the claimant were on friendly terms and I find Ms Flynn's evidence credible.
33. The claimant was in a sales role and it was not challenged that the international opportunities had not generated sales or commission. The claimant went to a meeting in early March with JW's other business to explore another role here. On 11th March 2024 the claimant was told that there was no possibility of that option.
34. An informal catch up was scheduled for 13th March 2024 at a cafe called the shambles. The respondent asserted that it was at this meeting that the claimant was told that she was at risk of redundancy and the claimant denied that this conversation took place. The claimant says that Mr Witte asked about her father but that she then received a text message during the meeting asking her to attend hospital and the meeting was cut short. I make findings below about what happened in this meeting based on the evidence of the two witnesses and the contemporaneous documents which are set out below.
35. After the meeting Mr Witte messaged Ms Flynn to say "that went as well as expected" "On top of her old man, she's got a health scare going down having an unknown urgent referral from her GP Pop up". "she cannot process now and asked to pick up next week as sis-in-law over from the Philippines this weekend. I'll run off the formal letter and email it her with Monday as the date". The claimant disputed this version of the conversation as she did not have a sister in law in the Philippines. The claimant relied on this inaccuracy to say that the conversation could not have taken place.
36. On 14th March 2024 Mr Witte relayed to Ms Flynn that he had had a message from the claimant that said "I am not feeling good and need some time to recover I don't think I got any sleep last night, I have a very bad migraine, head ache. If I get a bit of sleep hoping to shake it off." Mr Witte replied to say "not surprising – take your time." It is denied and there is no evidence to support that the claimant made protected disclosure 10.1.3. The claimant cannot recall the precise words and the messages at this time

do not support the narrative that the claimant informed the respondent that it was to do with the treatment she received from the respondent expressly but clearly the fit note referred to work related stress.

37. On 14th March 2024 the claimant emailed Mr Witte to inform him that she had seen her doctor and was strongly advised to take some time off to recover and attend medical appointments and provided a fit note. No explanation as to why she had seen that doctor was provided. The fit note signed the claimant off with work related stress from 13th March 2024 to 13th April 2024. The claimant relies on this fit note and email as a protected disclosure (10.1.3)
38. The claimant also messaged Ms Flynn to relay what she had told Mr Witte and that she was not in a good place and that it was quite overwhelming. Ms Flynn replied to say that she was lost for words and invited her to Whatsapp her at any time to talk. This supports Ms Flynn's evidence that before she went off sick, Ms Flynn had no knowledge of the claimant's mental health issues.
39. On the same day Ms Flynn messaged the respondent's external HR adviser's referring to Mr Witte's conversation on the 13th March 2024 and asking for guidance as to whether they can proceed with the redundancy consultation given her being signed off sick with work related stress. The advice was also in the bundle that they could continue with the process but if she was too ill to attend a meeting, that virtual meetings and proceeding by correspondence could be offered if necessary. It raised the option of an occupational health assessment or simply pushing on.
40. Mr Witte emailed the claimant on 15th March 2024 advising that if she wanted to meet on Monday at some stage to talk things through to let him know. The claimant relies on this email as being contacted and harassed whilst off sick as one of her detriments (11.1.1.1). If as the claimant asserts nothing was discussed on 13th March 2024 related to work this message makes less sense. The claimant asserted it was inappropriate to suggest another motive as the claimant's partner was away. This was not raised at the time and I do not accept that suggestion.
41. On 19th March 2024 Mr Witte emailed the claimant to see if she wanted to meet up. This email is relied on as one of the detriments of being contacted and harassed whilst off sick. The claimant replied later that day saying she had only just seen the email and she needed to try and rest and recuperate and diligently take her medication and that she needed some time to get better.
42. On 20th March 2024 the claimant was emailed with a letter dated the same day setting out the conversation on the 13th March 2024 and that her employment would potentially terminate as her role was no longer viable. The respondent set out that it wanted to consult with her and that it is possible that her employment would terminate. The claimant denied in evidence having received this letter. The claimant under questioning about this matter stated that she did not see the letter of the 20th March 2024 at

the time but did do sometime later. The claimant's evidence was that she had no recollection of it at the time and was on some heavy medication. She accepted she must have received it at some point after it was received but could not be precise. I find that she would have seen this letter before she raised her grievance given the 5 day passage of time and the references to not having heard from her. I find it inconceivable that she would log onto her laptop to compose a three page grievance letter and a DSAR and send these using the same email address and not note the email with a letter attached. I therefore find that the claimant saw this letter and it was this letter that prompted the grievance to be raised at that point on a host of matters including matters outside this claim.

43. Indeed in the grounds of claim she presented with her ET1, she accepted that she received this letter and at that stage disputed its contents although this was not raised as part of the process at the time. She relies on the receipt of that letter and being told she was at risk of redundancy as adding to her anxiety and from the chronology this comes before the grievance.
44. On 22nd March 2024 Mr Witte again emailed the claimant saying he had not heard from her (this can only be the letter of the 20th March 2024 as he had last heard from her on the 19th March 2024) but that they really do need to move things along and decide what the future looks like and inviting her to a meeting at a place of her choice to discuss further. The claimant relies on this email as one of the detriments of being contacted and harassed whilst signed off sick by Mr Witte (11.1.1.3). The claimant replied on 25th March 2024 to say that the meeting should be postponed until the grievance and DSAR issues were resolved.
45. The claimant raised a grievance on 25th March 2024 which referred to the 13th March 2024 meeting as "I would like to also highlight that you put another meeting into my diary around mid-day on that date with no agenda or topic of discussion which once again made me feel anxious." The claimant also relies on this grievance as a protected disclosure (10.1.1 (d)) as it outlines on the third page the words relied on in the list of issues. The claimant also made a DSAR on this day.
46. The respondent acknowledged this the same day and asked her to engage in the process of the redundancy consultation.
47. By email dated 28th March 2024 the respondent again emailed the claimant asking her to review the letter attached and confirm receipt. There were two letters sent to the claimant that day, one concerned her grievance and a second letter referring to needing to address the issue and her failing to acknowledge the need to meet to consult with her. The claimant relies on this email as one of her detriments of being contacted and harassed whilst off sick. The claimant was sent a Whatsapp the next day on 29th March 2024 to check that she got the email sent the day before as the last couple had not been acknowledged. The claimant relies on this message as a detriment of being contact and harassed whilst signed off sick. This was sent on a bank holiday.

48. In her evidence the claimant said that she did not receive this letter but corrected that to say she had not noted that there was a meeting invite for 3rd April 2024 at the end of the letter. I find that she did receive this letter since she relies on it as part of her detriments claim and as can be seen below she directly replied to that email. The letter referenced a letter dated 20th March 2024 she stated that she did not receive but the claimant did not question this when she did reply. Again it is clear that she had received that letter.
49. The claimant replied to the email of 28th March 2024 by email 2nd April 2024.
50. The meeting for 3rd April 2024 proceeded in the claimant's absence and a letter confirming her dismissal was issued on 3rd April 2024 which referenced her being informed that her role was being considered for redundancy on 20th March 2024 not the 13th March 2024 and I find this was a reference to the written correspondence and notification. The claimant relied on this to evidence that she was not put at risk at the meeting on the 13th March 2024 but since the letter of 20th March 2024 referred to sets all this out it would not be normal to repeat it all again.
51. The 3rd April 2024 was also the date of the proposed grievance meeting. The claimant declined to attend by email dated 2nd April 2024 stating that she would be back in touch with a date once her current fit note. No grievance meeting ever took place. The respondent did not offer a second date and the claimant did not as stated follow up with a date although as set out below she did appeal and attend an appeal hearing.
52. The claimant appealed against her dismissal by email dated 10th April 2024. By this time she had instructed a solicitor as she outlined in the appeal. An appeal hearing took place on 23rd April 2024. The claimant provided a written statement which she read out in the hearing. The timeline was provided to the claimant in that meeting and she agreed with it including In her written statement the only protected disclosures she linked her dismissal to was that of a failure to comply with a legal obligation "namely the implied term within my contract that my pay would increase."
53. There was a prepared script and typed notes of the meeting but they were not sent to the claimant to be agreed nor were they signed. The respondent said that in that meeting it set out a timeline to include its version of the meeting on the 13th March 2024 and the letter of the 20th March 2024 and that the claimant agreed with the timeline. The claimant does not accept that she said that but given she had not by that time challenged the accuracy of the letters to date there is nothing to indicate that she would have challenged that timeline and nothing to support it was not shown to her albeit best HR practice would have been to send the notes to be approved or ask the claimant to sign them.
54. Turning back now to the meeting of the 13th March 2024 over which there is a direct factual dispute between the parties. The respondent provided information to suggest that the claimant was logged into Slack or had access to this during the relevant period. This evidence was contested and

without expert evidence as to what the logs show I did not find this of assistance to answer the factual disputes. I have reached my own conclusions on what the claimant saw and did not see at the relevant time.

55. I find that there was a discussion on the 13th March 2024 about the claimant's future within the business. I prefer Mr Witte's evidence to the claimant's evidence on this point. I find that the claimant was told that Mr Witte felt that there may be no role for her going forward. He may not have used the express words as "being at risk of redundancy" but it is clear that there was a discussion along these lines on this day. The claimant did not dispute this when she received the letter dated 20th March 2024. The claimant was distracted in the meeting and asked to pick up the discussion another day. This did not happen because she went off sick. On the claimant's evidence there was nothing said during that meeting that would have given her a sleepless night – she had some family issues and on her evidence even less reason for her to be signed off sick the next day with work related stress and not just stress. On her evidence nothing material was discussed that day. I do not find that credible given the time line and the contemporaneous documents.
56. Further, it was by that stage abundantly clear to the claimant that the business was in financial difficulty, she was a sales person who had generated no sales and she knew that the business was exploring other options for her. She is an intelligent claimant and I find that she knew that her position was vulnerable. It was the news given to her on 13th March 2024 that was the event that led to her being signed off with work related stress. She makes reference to the meeting of 13th March 2024 in her grievance which is at odds with her evidence that nothing happened at the meeting as it is odd she would pick this date other than to get her own narrative of what was said or not said on that date documented. Her grievance came considerably later than the meeting and it is said having a meeting scheduled without an agenda gave her anxiety. The only explanation for that is that she knew that this conversation would be of the nature it was as it was apparent from what she knew by that time her position was vulnerable.
57. By the time she wrote that grievance, the letter of 20th March 2024 had both been sent and I find on the facts read by the claimant so she knew that it was relied on and that her employment was ending. I find that she read this at the latest on the 22nd March 2024 and she did not dispute its contents. I take into account her evidence she was unwell at the time albeit she has not disclosed her GP records to support what was discussed with her doctor that led her to be signed off that day. Given she was legally represented throughout and given the significance of factual dispute on his day this would have been relevant evidence. Whilst I do not draw an inference from this failure, disclosure could have shown whether the visit to the doctor was the third such visit as later suggested and what was said to the doctor to sign her off with work related stress. If it was the things in her grievance and not the conversation on the 13th March 2024 as I have found, I would have expected this to have been disclosed. I find that her grievance was raised when she knew her role was being removed.

58. The claimant commenced ACAS early conciliation on 26th June 2024 and this ended on 1st August 2024. The claimant issued her claim before the employment tribunal on 6th September 2024.

Conclusions

59. Given the findings of fact above I now move onto consider my conclusions against the list of issues. Turning first to the issues of the protected disclosures, it is necessary to first determine whether as a matter of fact the claimant made the disclosures (in the ordinary sense of the word) before moving on to consider whether that disclosure amounted to a protected disclosure within the meaning of s43B.
60. Turning to the disclosures at 10.1.1 first

The Claimant raising with the first Respondent's Chief Operating Officer, Claire Flynn, and MW, that she was not being paid correctly commencing in the first week of August 2023 both verbally and via the Respondent's internal slack chat system;

- a. **"I will receive an email today confirming that my August pay will contain a rise of £750.00"; [pg 229]**
- b. **"The email will also confirm that by 31st of August, I will have written confirmation of my base salary increment....."**
[pg 229]
- c. **"I am emotionally exhausted by the will you won't you attitude"
– To Clair Flynn and MW (August 2023) verbal**
- d. **"I believe that my good nature and duty of care have been taken advantage of and have been detrimental to my well-being and capacity to be happy within the workplace" written in her grievance of 25.03.24**

The Claimant's position is that the above was repeated a number of times verbally and via internal communications and WhatsApp messages from August 2023 onwards.

61. I have found that the claimant did say (a) and (b) and that it was more likely than not that she expressed some frustrations to the extent of (c) but that this was more likely to be that she was frustrated by the will they won't the attitude of her pay rise without a reference to emotional exhaustion. I have also found as a fact that the claimant did write (d) into her grievance.
62. Turning now to the disclosures at 10.1.2:

The Claimant saying to Claire Flynn and MW that she was struggling with her mental health commencing from August 2023 to both until March 2024 to Jon Witte and Claire Flynn;

a. To MW and Claire Flynn – “the lies and stress is affecting my anxiety” – August 2023 until December 2023 and then onwards to Jon Witte and Claire Flynn from March 24 until dismissal. Verbally to all and in WhatsApp to Claire Flynn

b. To all (CF, MW and JW) from August 2023 – “I am the sole carer for two children and this treatment of affecting my health”

63. I have not found that the claimant made the disclosure at (a) verbally or via Whatsapp. The claimant did however raise stress via the fit note and in her grievance she made reference to her anxiety. I have not found that the claimant made the comment about it affecting her health to those relied upon. The claimant did discuss her financial issues with Ms Flynn particularly in the run up to Christmas.

64. Turning now to the disclosure relied upon at 10.3.3

The Claimant’s email (page 73) and voice message to Jon Witte with attached fitnote being a protected act on 14 March 2024;

a. voice message to Jon Witte on 14 March 2024 – I am going to the GP today due to the treatment I have received from you which has caused me concerns and has now had a detrimental impact on my mental health and I need to take some time out – or words to this effect. (this was raised due to the alleged broken promises)

65. I have found that the claimant did send the email referred to with the fit note but that the message she left was not as the claimant relied on but that relayed to Ms Flynn by Mr Witte. The list of issues referred to this being a protected act and her ET1 makes the same wrong reference which is assumed to be an error as there is no victimisation claim but one that it was a protected disclosure and she was legally represented at the time.

66. Turning now to the legal tests with regard to whether any of the above disclosures amounted legally to a protected disclosure within s43B Employment Rights Act 1996. I have taken the following issues together for each of the disclosures relied upon.

Do each of the disclosures above amount to disclosure of information?

If so, did the Claimant have a reasonable belief that those disclosures were in the public interest and tended to show one or more of the matters listed at s43B(1)(a) to (f) Employment Rights Act 1996 (ERA 1996). The Claimant relies on the following:

Did the Claimant believe that it tended to show that the Respondent has failed, is failing or is likely to fail to comply with any legal obligation to which it is subject under Section 43B(1)(b) ERA in failing to pay contractual pay and/or to provide a safe working environment under the Health and Safety at Work Act 1974?

Did the Claimant believe that it tended to show that the health or safety of any individual had been, was being or was likely to be endangered under Section 43B (1)(d) ERA in that the Respondent was failing to provide a safety working environment for its workers?

67. I have considered each of the disclosures relied upon to consider the above issues:

The Claimant raising with the first Respondent's Chief Operating Officer, Claire Flynn, and MW, that she was not being paid correctly commencing in the first week of August 2023 both verbally and via the Respondent's internal slack chat system;

a. "I will receive an email today confirming that my August pay will contain a rise of £750.00"; [pg 229]

68. As per *Williams v Brown UKEAT/0044/19*, in considering the definition of a qualifying disclosure, the EAT noted that:

"It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.

69. I consider that a disclosure must convey facts. A disclosure of information will amount to a "disclosure" whether it is made in writing or verbally. Any form of recorded information would be likely to be accepted as a form of disclosure.

70. A disclosure may concern new information, in the sense that it involves telling a person something of which they were previously unaware, or it can involve drawing a person's attention to a matter of which they are already aware (*section 43L(3), ERA 1996*).

71. As per *Cavendish Munro Professional Risks Management Ltd v Geduld UKEAT/0195/09*, the EAT held that to be protected a disclosure must involve giving information, and not simply voice a concern or raise an allegation. The ordinary meaning of giving "information" is conveying facts.
72. The disclosure was made as a matter of fact and I find that it did convey information.
73. Moving onto consider whether information was in the public interest, this is really where the claimant's case is particularly difficult. The case of *Chesterton Global Ltd (t/a Chestertons) v Nurmohamed [2017] EWCA Civ 979* is relevant and in particular the Court guidance issued.
74. It is necessary to determine whether the worker subjectively believed at the time that the disclosure was in the public interest and whether that belief was objectively reasonable. The Tribunal is not restricted to the reasons that were in the mind of the claimant at the time. Her evidence now may be that that was the case but that should be tested given the documentation and the disclosure at the time. Nothing in this example points at all to any public interest being subjectively believed at the time and the belief was not objectively reasonable.
75. Here the disclosure relates to the breach of the claimant's own contract of employment and relates to the claimant's own personal interest so one should consider whether there may be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case and four factors could be considered useful but not definitive and I have had regard to those four factors as set out below.
76. The claimant was the only one affected and the disclosure related solely to her and her own contract. The number of the group whose interests the disclosure served is very limited as it is only her but this is not definitive. The nature of the interest disclosed was about seeking a pay rise to which there was no legal entitlement. The claimant wanted a pay rise for her personal financial situation. No pay rise was ever agreed. The interest is personal to her and does not meet the public interest test objectively. I do not find that subjectively she believed at the time that it was anything other than about her. Simply stating she will get an email confirming something that was agreed, does not amount to a disclosure in the public interest. The nature of the wrongdoing is not serious and there is nothing to suggest it was deliberate. The nature of the wrongdoer was a small private company so this is not persuasive. In my view this is exactly the

sort of case that Underhill LJ warned tribunals to be cautious of offending the "broad intent" behind the public interest test, which was to prevent whistleblowing laws being prayed in aid over "private workplace disputes", even those involving a number of employees, where none of the other factors pointing towards a public interest element are present.

77. I note that as per the case of *Dobbie*, a disclosure may be "self-serving" but also in the public interest, as the motive of a person making a disclosure is not the issue. Rather, the question is whether, whatever the motive for making the disclosure, the claimant believed it was made in the public interest and whether that belief was reasonable as per *Cox v Adecco UKEAT/0339/19*. Therefore, a disclosure solely about a worker's own treatment does not necessarily stop them reasonably believing that the disclosure was made in the public interest.
78. However, the claimant cannot establish in this case that the disclosure tended to show a breach of a legal obligation as whilst there was a desire to increase her pay, there had been no breach of any legal obligation and no breach of contractual pay. She cannot therefore have had any belief that it tended to show that and that belief even if she had it would not be a reasonable belief for her to hold.
79. There was an attempt to show in her witness statement she had not been paid the correct commission but that is not the case before the Tribunal as the protected disclosure relates solely to the pay rise she sought. This is a different legal case which the claimant sought to advance in her witness statement but is not the matter that is in the claim she presented. If she reasonably believed that she had been paid incorrectly she would have raised this in writing before her grievance of March 2024 since it related to December 2023, January and February 2024 on her case.
 - b. **"The email will also confirm that by 31st of August, I will have written confirmation of my base salary increment....."** [pg 229]
80. Again, the issue relates to her personal pay and for all the reasons set out above when considering disclosure (a) I find that that this is information but that it is not in the public interest for all the same reasons which I do not repeat here.
81. I consider whether as per *Simpson v Cantor Fitzgerald Europe [2020] EWCA Civ 1601*). The two disclosures if taken together amount cumulatively amount to a qualifying disclosure, even though each individual communication is not a qualifying disclosure on its own but I do not find that even taken them together they get anywhere near meeting the

legal definition of being in the public interest or that the claimant reasonably believed there to be any breach of a legal obligation concerning contractual pay.

82. Moving on now to consider disclosures (c) and (d) of 10.1.1.

c. “I am emotionally exhausted by the will you won’t you attitude” – To Clair Flynn and MW (August 2023) verbal

83. I have not found as a matter of fact that there was such a disclosure but I would not consider that this disclosure conveyed facts as it fits more neatly with an allegation. As there was no reference to health made, this was again not in the public interest as it related solely to her pay for all the reasons found for (a) and (b) and she could not reasonably have believed that the statement tended to show a breach of the legal obligation on an objective basis. I also do not accept that she subjectively believed that at the time.

d “I believe that my good nature and duty of care have been taken advantage of and have been detrimental to my well-being and capacity to be happy within the workplace” written in her grievance of 25.03.24

84. The claimant did use this wording in her grievance. However, it makes an allegation and does not convey any information. On this occasion she does make reference to her well-being and capacity to be happy within the workplace. Again, the wording used and the allegations made are personal and not in the public interest. At no point in the grievance does she raise any matter which expresses concerns for her colleagues or that the respondent was failing to provide a safe working environment for its workers more generally.

85. It makes no reference to health and safety at all but the capacity to be happy in the workplace. These are not the same thing. You can be unhappy at work but the working environment can be safe without health and safety breaches. There is no reference to colleagues or any health and safety issues. Whilst a claimant does not need to use the legal language of s47B or the exact legal obligation referred to there must be something said that clearly makes the link.

86. I do not find that the statement was in the public interest even if it disclosed information. Further, that the claimant did not subjectively believe at the time of the statement to be in the public interest and I do not find that any such belief would have been objectively reasonable.

87. Turning now to the disclosures relied upon at 10.1.2 as follows:

The Claimant saying to Claire Flynn and MW that she was struggling with her mental health commencing from August 2023 to both until March 2024 to Jon Witte and Claire Flynn;

a. To MW and Claire Flynn – “the lies and stress is affecting my anxiety” – August 2023 until December 2023 and then onwards to Jon Witte and Claire Flynn from March 24 until dismissal. Verbally to all and in WhatsApp to Claire Flynn

b. To all (CF, MW and JW) from August 2023 – “I am the sole carer for two children and this treatment of affecting my health”

88. I have found as a matter of fact that the claimant did not make those disclosures but that she did raise in March 2024 that she was off work with stress and the contents of her grievance. For the reasons referred to for (c) and (d) of 10.1.1 I do not find that the grievance conveyed information about her health rather allegations and whilst the fit note did convey information this was not in the public interest. It was about her personally and it is not credible that the fit note alone could be a protected disclosure in the public interest, it is a statement made by a doctor about the claimant personally and her fitness for work. I have dealt with this in more detail below.

The Claimant’s email (page 73) and voice message to Jon Witte with attached fitnote being a protected act on 14 March 2024;

a. voice message to Jon Witte on 14 March 2024 – I am going to the GP today due to the treatment I have received from you which has caused me concerns and has now had a detrimental impact on my mental health and I need to take some time out – or words to this effect. (this was raised due to the alleged broken promises)

89. I have not found as a matter of fact that the claimant left the message relied upon but have found that an alternative message was left which Mr Witte relayed to Ms Flynn and it is not in dispute that the claimant emailed her fit note with the message relayed there. I have taken these matters together to consider whether any of it conveyed information in the public interest either individually or taken collectively.

90. Taking into account the information found as a fact provided on the 14th March 2024 the claimant relayed information. This was simply about her personal health, it was about her lack of sleep and headache and that the doctor had advised her to take some time off. Again there is nothing in

that information which is in the public interest rather than personal to her, there is no reference to a failure to provide a safe working environment, that the health and safety of an individual was being endangered or any breaches of legislation. It was a simple routine health update and there is nothing in this routine update that comes anywhere close to satisfying the public interest disclosure test.

91. The claimant could not subjectively believe at the time that the disclosure was in the public interest rather than a simple update to her employer about her ability to attend work and therefore any such belief would not be objectively reasonable. It was personal to the claimant and about her. Employees report sick from time to time and to suggest that doing so they make a protected disclosure would be legally wrong. It is merely a factual report of their own situation and explanation for their absence.
92. As such, I have not found that any of the matters relied on by the claimant amount to a protected disclosure to allow her to bring claims for detriments or automatically unfair dismissal. For completeness I have however dealt with the detriments and dismissal claims below briefly given my findings and conclusions.

Detriments (s47B ERA 1996)

93. Turning to the detriments as a matter of fact the respondent did send the messages and emailed relied upon at 11.1 and the claimant's role was selected for redundancy albeit her role was actually identified in December 2023 so much earlier than March 2024. The claimant was required to attend redundancy and grievance meetings as relied upon by the claimant but of course attending a grievance meeting whilst off sick is normal. Her grievance of 25th March 2024 was not ignored and it was looked into. A meeting was held in her absence where she was dismissed.
94. Even if I had found that the claimant had made a protected disclosure I would not have found that any of these matters were done on the ground that the claimant made a protected disclosure. The meetings were on the basis of external HR advice which was disclosed. The adviser would have had to have known of the protected disclosure and then given the advice on the grounds that the claimant had made it rather than as a matter of course. The advice given and the attempts made to contact the claimant were not out of the ordinary.
95. The respondent was clearly concerned that if the claimant had reached two years service a more detailed process would have to be followed and she would have the right to claim ordinary unfair dismissal. The claimant

had a contract which provided for paid sick leave absence of three months and the messages referred to in my findings of fact clearly raise concerns that she may delay her redundancy by this period. The claimant could not bring such a claim against the respondent as she did not have requisite service so the assertion of protected disclosures would be one of the few avenues open to her.

96. All of the decisions to proceed in her absence, call meetings etc were advice from the external HR provider and the claimant would not be able to show that that third party knew of the protected disclosure or provided that standard advice on the grounds that the claimant had made such a protected disclosure. This is not a tainted information case as there was a genuine redundancy situation over which the respondent sought advice as to process.
97. With regards to the redundancy selection this was actually made in 2023 but delayed so I do not accept that this is made out factually.
98. The respondent did start to investigate the claimant's grievance but she did not attend the meeting but advised the respondent that she would provide a date to meet after consulting her doctor. It is not correct to say it was not ignored and not looked into. Whilst I have not set out my conclusions to the ACAS code of practice point below, the claimant did raise a grievance under the code and the respondent did arrange a meeting. The respondent did not take action or provide an appeal but this failure cannot be said to be unreasonable as the claimant advised them she would be back in touch. No ACAS uplift can be awarded where there is no found cause of action to support the uplift but in any event in these circumstances this claim would also have failed as any failure to progress the grievance in these circumstances would not have been unreasonable.
99. I have not considered whether all of these matters amount to a detriment in law as this is not necessary although my preliminary view is that some may do so but others not.
100. The claimant was also subject to more positive action than legally she was entitled to. The respondent showed concern for her when she was signed off and more importantly it maintained the commission guaranteed payments for longer than it agreed to in order to be of benefit for her. These matters are at odds with the suggestion that having made protected disclosures it sought to subject her to detriments.

Automatic unfair dismissal contrary to section 103A ERA 1996

101. Turning now to the dismissal, as stated the claimant cannot take issue with the process for an ordinary unfair dismissal as she does not have sufficient service to do so although the claimant criticises the respondent for the process followed, the Tribunal is not looking at the legal tests for an ordinary unfair dismissal claim and the respondent cannot therefore be judged by those standards.
102. The claimant would need to show that her dismissal was because of the protected disclosures even if they had been found. The claimant was in a sales role that had made no sales, the financial situation of the business was not positive and savings needed to be made. She was not replaced and her role was therefore a genuine redundancy. The claimant would not have been successful in this claim either. Rather than dismiss her in December 2023 the respondent extended this to give her more of an opportunity and it paid her additional payments for commission beyond the original agreement. Again, these are not the actions of an employer seeking to remove her from the business for having made protected disclosures.
103. It therefore follows that both factually and legally the claimant has not established a case against the respondent. The claimant's claim for detriments on the grounds of having made protected disclosures and automatic unfair dismissal because she made protected disclosures fails and is dismissed.

Approved by:

Employment Judge King

Date: 10.02.26

Sent to the parties on:
12 February 2026

For the Tribunal: