



EMPLOYMENT TRIBUNALS

Claimant: Dr Benson Abounu

Respondent: Elysium Healthcare Ltd

Heard at: Watford Employment Tribunal

On: 12, 13, 14, 15, 16, 19, 20 January 2026 (in chambers)
and 21 January 2026 (via CVP)

Before: Employment Judge Tuck KC
Mr Boustred
Ms Telfer

Appearances

For the claimant: Mr A Otchie, counsel

For the respondent: Mr P Livingston, counsel.

Judgment

1. The Claimant's claims for detriments for having made protected disclosures and for unlawful deductions from wages fail and are dismissed.

REASONS

1. Reasons for the judgment were given orally at the conclusion of the hearing. A conditional request for written reasons was made, and subsequently the claimant confirmed that he does seek written reasons.
2. By an ET1 presented on 3 July 2023 following a period of early conciliation between 9 May 2003 and 20 June 2023 the Claimant presented complaints of detriments for making protected disclosures and for unlawful deductions from wages.
3. There have been four preliminary hearings in this matter, the issues were largely determined at the third preliminary hearing before Judge Alliott in June 2024. This identified eight matters relied upon as amounting to protected disclosures, and six matters were set out as alleged detriments. In relation to the claim for unlawful deductions from wages the Claimant expressed claims for contractual notice pay and a failure to pay “on call” hours. At a further preliminary hearing on 17 December 2025 before Judge Quill the Claimant’s application to amend to add a further five alleged protected disclosures was permitted. Whilst these are listed as the 9th to 13th disclosures, chronologically they are first having occurred between October and December 2021.
4. At the outset of this Hearing the Respondent applied for a restricted reporting order to prevent the identification of two patients in particular who have been referred to in the case by their initials. The Claimant did not object. In this judgment they are referred to as Y and X.

Issues

5. On behalf of the Claimant in his opening note the alleged disclosures were summarised as follows (by reference to the June 2024 list of issues, as expanded in December 2025):

No.	Issue	Disclosure	Date	Recipient(s)	
1.	14.2.1 [75]	WhatsApp message on lack of adequate resources for patient’s treatment [136]	29 Oct 2021	Mr. Cheung	
2.	14.2.2 [75]	WhatsApp message on lack of adequate resources for patient’s treatment [137]	11 Nov 2021	Mr. Cheung	
3.	14.2.3 [75]	Text message on lack of adequate resources for	27 Jul 2022	Priya Acharya	

		patient's treatment [191]		(Ward Manager)	
4.	14.2.4 [75]	Verbal communication on lack of adequate resources for patient's treatment	Jul/Aug 2022	Director of the Hospital (Mr. Cheung)	
5.	14.2.5 [75]	Email communication on lack of adequate resources for patient's treatment [276]	24 Oct 2022	Dr. Carolina Schneider (Medical Director)	
6.	14.2.6 [75]	Text / What's App message on lack of adequate resources for patient's treatment [274][277]	24 Oct 2022	Mr. Cheung and Dr. Schneider	
7.	14.2.7 [75]	Verbal communication, escalation of concerns regarding patient safety	18 Nov 2022	Mr. Swire	
8.	14.2.8 [75]	E-mail communication on lack of adequate resources, and patient safety [356]	17 Feb 2023	Mr. Cheung, Dr. Schneider and Sophie Whitman (Head of Clinical services)	
9.	14.2.9.1 [716]	Oral discussion on allegation of sexual assault	Oct 2021	Dr. Carolina Schneider	
10.	14.2.9.2 [716]	Oral discussion on allegation of sexual assault	Nov 2021	Dr. Carolina Schneider	
11.	14.2.9.3 [716]	Oral discussion on allegation of sexual assault	Nov 2021	Director of the Hospital (Mr. Cheung) and Social Worker	
12.	14.2.9.4 [716]	What's App message on allegation of sexual assault	8 Dec 2021	Dr. Carolina Schneider	
13.	14.2.9.5 [716]	Oral discussion at meeting (the Claimant attended by video) on	9 Dec 2021	Ward manager,	

		allegation of sexual assault made by Patient CR [789]		psychologist, one or two social workers, members of the hospital safeguarding team	
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6. In relation to each of the alleged disclosures the tribunal must determine whether:
- The claimant disclosed information?
 - Did he believe that the disclosure of information was made in the public interest?
 - Was that belief reasonably held?
 - Did he believe that the disclosure tended to show that:
 - A person had failed, was failing or was likely to fail to comply with any legal obligations, namely the Mental Health Act 2005 and/or Regulation 22 of the Health and Social Care Act 2008; and/or
 - The health and safety of any individual had been, was being or was likely to be endangered; and/or
 - 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.
 - Was that belief reasonably held?
7. It was not disputed that the alleged disclosures were made to persons who had legally responsible for the matters raised.
8. Was the claimant subjected to detriments? These were summarised in the Claimant's note as follows:

No.	Issue	Detriment	Date	
1.	14.5.1 [76]	Being undermined, bullied, intimidated and ignored (by Mr Cheung)	Oct 2022	
2.	14.5.2 [77]	Monitoring his work	Oct 2022	

3.	14.5.3 [77]	Attempting to replace him prior to the end of his contract	Nov 2022	
4.	14.5.4 [77]	Not making him a permanent member of staff	Nov 2022	
5.	14.5.5 [77]	Advertising his position whilst he was in post [572]	Nov 2022	
6.	14.5.6 [77]	Terminating his contract	Feb 2023	

9. The first detriment relied upon was in fact defined specifically in June 2024 as consisting of two examples, namely Mr Cheung not replying to an email from the Claimant on 24 October 2022, and Mr Cheung ignoring the Claimant's request on 24 October 2022 to go on a family therapy course.
10. In relation to the claim for unlawful deductions from wages the Respondent raised on the opening day of the hearing its contention that as there was no contract between the Claimant and Respondent, there could not be any failure to pay sums contractually due. On behalf of the Claimant it was confirmed that no application to amend was being pursued to frame the failure to pay full notice or 'on call' sums under any other cause of action.
11. It was agreed between the parties that liability issues would be considered in the first instance.

Hearing

12. We heard evidence from the Claimant, and on behalf of the Respondent from Dr Carolina Schneider, Medical Director of Rhodes Wood Hospital; Mr Vincent Cheung, Hospital Director, Dr John Kamara and Dr Olusola Olowookere (frequently referred to as Dr Sola), who were initially Locum Consultant Psychiatrists, and are now both permanently employed by the Respondent in this capacity, and finally from Mr Dean Swire, Regional Director.
13. The initial bundle provided to us consisted of 868 pages. In the course of the hearing additional documents were provided to us such that by the end of the hearing the bundle ran to some 1220 pages. The tribunal read such documents as we were referred to. Not all the factual matters referred to in the course of evidence are addressed expressly herein, but we have carefully considered the totality of the evidence before us and made findings of fact on a balance of probabilities.

Facts

14. The Claimant was engaged via Interact Medical Ltd (the agency) to work at Elysium Healthcare Limited, at Rhodes Wood Hospital (“RWH”) as an agency worker. The agreement between the agency and Elysium is dated 24 August 2021. The Claimant’s agreement with the agency is dated 3 September 2021 and provides from him to start work as a Locum Consultant Psychiatrist from 4 October 2021, initially for 6 months and ongoing thereafter “covering ongoing vacancy” subject to 4 weeks’ notice from the client. Although the Framework agreement between the agency and Respondent had a provision for 2 hours’ notice, in relation to the Claimant, Elysium expressly sought a four week notice period to allow for continuity of care to patients.
15. RWH comprises of three wards: Shepherd, Cheshunt and Rainbow. They each accommodate young people between the ages of 8 and 18 who have a primary diagnoses of an eating disorder; those with more complex presentations are accommodated on Rainbow. The Claimant initially worked on Cheshunt ward, and from around June 2022 on Rainbow. The Care Quality Commission registers Rhodes Wood Hospital (“RWH”) to carry out regulated services / activities including assessment or medical treatment for persons detained under the Mental Health Act 1983. RWH had been rated as ‘inadequate’ when the Claimant started working there. Following an inspection in May 2022, a report published in September 2022 rated it as “good”.
16. The tribunal has regard to the fact that this setting was a hospital dealing with very ill young people, some of whom were detained under the Mental Health Act. The Claimant was line managed by Dr Schneider from a clinical perspective, and by Mr Cheung for other matters. In the period with which we are concerned the Respondent had been trying to recruit Consultant Psychiatrists on permanent contracts, was unable to do so and was using Locums. It was agreed between the parties that a permanent consultant would be paid a salary in the region of £170,000 whereas a locum would result in a cost to the hospital of around £340,000. Dr Schneider was clear with all locums – including the Claimant, Dr Kamara and Dr Sola – that she really wanted to recruit permanent staff - both from the perspective of cost, and to be able to provide continuity of care. As well as having vacancies for consultant psychiatrists, in 2021 and 2022 one permanent staff member, Dr Wiseman, was shielding and so had ceased undertaking his role as the “Responsible clinician” (RC) for a RWH ward.
17. On a daily basis those responsible for the care of patients in RWH would raise issues and concerns, not only during Multi Disciplinary Team (MDT) meetings,

but more widely. This would involve sharing information about patients, and invariably in this setting it would relate to the health and safety of individuals.

18. The Respondent has numerous policies, including a “Freedom to Speak Up – Raising Concerns (Whistleblowing)” policy. Posters are displayed, reminding staff of where they can raise concerns, and the tribunal are entirely satisfied that this and other policies were easily accessible on the intranet. The Claimant is an experienced doctor and has been a consultant since 2012. He has over 20 years of continuous clinical practice in psychiatry across the NHS and independent sector in the UK.

Patient Y

19. Chronologically the first three alleged disclosures are said to have been made orally in October and November 2021, the first two to Dr Schneider and the third to Dr Cheung. These are listed in the list of issues as disclosures 9, 10 and 11, having been added to the list of issues in December 2025. The background to these alleged disclosures involves Patient Y making an allegation that she had been sexually assaulted by a member of staff. We have carefully reviewed all the documents before us relating to this matter to seek to understand the chronology of what was alleged and what was disclosed by Y at various points in time.
20. Patient Y’s mother, in June 2022, wrote that Y had “made an allegation that she had been sexually assaulted by a member of staff in July, October and November 2021”. The Claimant did not of course commence working at RWH until 4 October 2021 – he told us that he was informed of the July allegation during ward rounds in October 2021, and that he ensured it was documented in a MDT (multi disciplinary team) meeting in October 2021. Dr Sola, who had started at RWH in August 2021, said that it was known on the ward when he started that there was “an allegation” – but not precisely what was said to have happened and certainly the young person was refusing to say who it was about.
21. Extracts from Y’s care notes of 2 September 2021 recorded that they said that they hated being touched on the legs and referred to having been touched in hospital. On 22 September Y was said to have implied they had been “touched inappropriately” but refused to disclose any further details, including as to whether the staff member had been male or female. On 5 October 2021 the notes further record that Y “consistently declined to give relevant information despite several attempts”.

22. On 29 October 2021 the case manager from the referring hospital trust emailed Dr Cheung noting that an allegation by the young person was mentioned in “her latest CPA document” – her Care Programme Approach document – but that there was no detail about the investigation, LADO referral or discussion about any other actions taken. The Claimant told us that this was a reference to the documents kept after his MDT meetings in which he raised the fact of an allegation having been made.
23. The Claimant’s case is that on an unknown date in October 2021 he made an oral protected disclosure to Dr Schneider on Cheshunt ward about this matter. He does not set out what information he gave to her, save that was about patient Y and an allegation of sexual assault; he said that she “feigned ignorance” and asked for time to look into the matter. Dr Schneider said she could not recall this exchange. Dr Sola told us that it was known that Y alleged inappropriate behaviour, but that she had consistently refused to provide any details about who was alleged to have done what.
24. On 17 November 2021 the relevant Designated Safeguarding Lead (“DSL”) for the Respondent, a social worker - Beverley McWilliams met the patient; the patient would only answer questions yes or no, and did not say who the staff member who had touched them inappropriately was.
25. The Claimant says that he made a further disclosure of information about patient Y, orally to Mr Cheung in November 2021 when he left an MDT meeting and went to Mr Cheung’s office. He did not give any particulars as to what was said.
26. Meanwhile a series of emails and messages between Mr Cheung, Mr Swire and Dr Schneider between 15 and 19 November 2021 show that they were eager to explore whether the Claimant might take a permanent contract – at £105 per hour and a one in four on call. Mr Cheung reported back that the claimant told him he was committed to the agency contract for six months - and added in his oral evidence to us that the claimant told him he was friends with the employment agent – and Dr Schneider asked Mr Cheung to check as the Claimant had indicated to her he might be interested in a permanent contract. We are satisfied that the reason these discussions were not progressed to move the claimant to a permanent contract at this time was because of his reluctance to move onto the lower paid contract.
27. Returning to the narrative concerning Patient Y, On 7 December 2021 the claimant emailed Ms McWilliams saying that he understood that the allegation of

sexual assault had been “closed” but he wanted to know if social care and the police were involved. On the same day Ms McWilliams replied saying that the record had not been closed, as there was to be a further meeting with the young person to see if they could provide additional information.

28. The DSL and ward manager spoke to the young person again on 7 December 2021, and the young person did provide the name of the staff member who they said had touched them inappropriately. The staff member accused was suspended that day, the police were informed as was the LADO (local authority designated officer).
29. We understand that the police did not take the matter forward, and that an internal investigation within the Respondent took place, the conclusion being that the allegation could not be substantiated.
30. On 8 December 2021 the Claimant exchanged whatsapp messages with Dr Schneider, in which he said “to be honest I am very concerned by what’s happening here”. She replied asking “what happens?” to which he replied “This sexual abuse case is worrying. Child reported this first in July. It is not documented anywhere. Again reported that it happened in November by the same staff. I can’t get social worker to tell me anything or come to meetings about this until Vince intervened. Patient plans on the ward are not followed. It is worrying for me.” This text is relied upon as a protected disclosure (PID 12). Dr Schneider replied asking “Can I join this meeting to understand a little more”. The reference to the “social worker” is to Ms McWilliams. While the Claimant in this exchange states that the “child reported this first in July”, we have not seen any evidence to confirm this.
31. Dr Sola told us in evidence that at the MDT meeting about this young person on 8 December 2021 the Claimant had a very heated exchange with the DSL such that they could not be in the same room together the following day.
32. A safeguarding meeting took place at 1pm on 9 December 2021. The Claimant attended via video and relies on an oral discussion during that meeting as a further disclosure made to “the ward manager, psychologist, one or two social workers and members of the hospital safeguarding team.” It is apparent that the “heated exchange” Dr Sola referred to, took place in this meeting given the emails which followed (meaning that he was mistaken as to the date in the evidence he gave us). The claimant emailed at 13.27hrs stating that he intended to resign, giving one month’s notice (he did not cite any reasons for this). At 14.12hrs he emailed the DSL, Ms McWilliams saying that he found her “attitude

uncooperative” and complaining that she had “raised a safeguarding concern against mother to social services without her knowledge”, and that “as [the patient’s] consultant I was unaware of this matter”. His email goes on to say “another serious risk issue (allegation of sexual molestation by a staff against the same child) – first raised by the child in June / July of this year was not investigated or raised as a safeguarding concern...” . Ms McWilliam sent an email the following day to her manager saying that she was “offended by [the claimant’s] personal and professional attack on my character... I found his conduct to be bullying in nature and authoritarian”.

33. Mr Cheung having received the Claimant’s email and presumably also an account from the DSL, organised a teams meeting for the three of them on 9 December 2021 at 16.30hrs which he said was to “address their dynamics” and to try and “smooth things over”. At 21.31hrs Mr Cheung declined to accept the Claimant’s resignation. The claimant replied that it was a “pleasure working” with Mr Cheung and Dr Schneider.
34. The claimant’s case is that he made a further disclosure (PID 12) during this meeting on 9 December 2021. His case was that he “threatened to resign unless the matter was reported to the police”, and that “it was only when I said I would resign and go to the police that the matter was dealt with”. In his witness statement the Claimant said that “the absence of both senior leaders [ie. VC and SC] combined with the dismissive and hostile conduct towards my escalation, contributed to my belief that the issue was not being taken seriously and that safeguarding processes were being obstructed....”
We have no hesitation in rejecting this factual assertion. The same day that the name of the staff member against whom the allegation was raised was disclosed – 7th December -the matter was reported to the LADO and Police and the staff member was suspended. This all took place two days before the Claimant sought to tender his resignation.
35. Claimant’s case is that there was a cycle of him making disclosures and suffering detriments. However, after these exchanges in December 2021 the Claimant had his contract renewed, he was encouraged by both VC and CS to apply for a permanent post, and the only detriment alleged to have resulted thereafter was the termination decision in February 2023. We return to this below.

36. The Respondent always had a budget for three family therapists (“FT”) at RWH, one assigned to each ward. From in the latter part of 2021, the FT assigned to Cheshunt ward was off sick for a period of time. In June 2022 the Claimant moved to Rainbow ward, where they had been without a FT for some considerable time. The Respondent had been trying to recruit to the vacant post, but there was in fact a national shortage of such therapists. All the witnesses before us confirmed that ideally a FT will be available to work with young people with anorexia and their families. The Respondents’ witnesses said that it was not essential to have a FT, such that the lack thereof made the setting unsafe. Dr Kamara gave evidence about how not every young person required such a therapist, but agreed that ideally there would be one in place. (An email from the Claimant to Mr Swire in November 2022 in fact seems to echo this approach when the Claimant was asking whether the therapists from the other wards could be utilised so as to see the most acute cases from any of the three wards.) The Respondent drew attention to the fact that when the CQC inspected RWH in May 2022, they were rated as “good” despite only have two of the required three FT’s in place. Dr Schneider also confirmed that the NHS commissioners continued to send patients to RWH knowing of this vacancy, and Mr Cheung took us to correspondence in which he provided updates to the NHS commissioning managers about what steps they were taking to try and deal with the vacancy (including recruiting more junior staff). The claimant cited the NICE guidelines, but did not point to any specific provision which states that it is essential to have a FT for young people with anorexia.
37. We accept the evidence of the Respondent that while this is an important post, it was not unsafe to provide care without one. The Claimant has not shown to the tribunal any basis on which we could find that it was a legal or regulatory requirement to have one.
38. The list of issues cites as “PID1” a text the Claimant sent on 29 October 2021. At this time the claimant had been in post for three weeks, and was working on Cheshunt ward where the FT was off sick. At the MDT a decision was made not to accept a patient. Mr Cheung texted the Claimant “morning need more meat to bone about why we declining please”. The claimant replied “1. She won’t fit into the programme as she is weight restored. 2. Main reason underlining the eating disorder will require a systemic psychotherapy approach to unravel. We don’t have a family therapist now. 3. As she is informal we wont be able to remove the tube and insert back every time she needs to be fed. Bearing in mind she has been on the tube for four months. If she is to keep the tube in this will affect the

dynamics on the unit as she will be the only one. 4. Patient is not consenting to admission and lacks competence. We will need a legal framework to admit her. Additional reason a (sic) I could add the fifth most important reason lol". Two messages are then deleted and Mr Cheung replied "I can't tell host case manager that lol". The Claimant said that he could not recall what was in messages he deleted.

39. The tribunal are not satisfied that this was a disclosure of information. The claimant was answering the question Mr Cheung asked. One of his answers stated the factually correct position that at that moment in time there was no FT on Cheshunt ward due to sickness absence. We consider that this exchange was a normal one within a clinical setting – albeit we noted and shared Dr Schneider's surprise that such communications were taking place via Whatsapp rather than on a more formal or secure platform.
40. On 11 November 2021 Mr Cheung sent the claimant a screen shot of an email he had received from a CAMHS business manager which said that the claimant was "smashing it". The claimant's reply was "Hahahahahaa we are working for you Vince! Blood investigations up to scratch, ED [Eating disorder] risk assessments done weekly, meetings with parents ongoing weekly outside of the ICR [ward round] as we don't have a family therapist with patients has started as well." The Claimant relies on this message as his second PID. Mr Cheung replied "we need to talk figures later". Mr Cheung in evidence told us that his reply was a joke indicating that if the claimant was seeking a raise in pay they would talk later.
41. The context in which the claimant is saying there was no FT, is that he was informing his manager of the additional care he was providing by meeting with parents outside of weekly ward rounds. While this was the provision of information it did not show that the health and safety of any patients was being endangered; in fact the opposite is true as the Claimant, as the RC (responsible clinician), is indicating what steps he has put in place to ensure safe provision of care.

Weighing Policy

42. On 30 November 2021 the Claimant raised, in an email the "policy on weighing" raising his concern that it was inappropriate not to permit patients to have a shower the night before weighing in, and asking for the policy to be revisited requiring the young persons to have their hair dried or be permitted to wear a shower cap. The concern was that young people would seek to inflate their weight by retaining water in their hair. We note that the claimant highlights his

concern in a full communication, proposes a solution, and that thereafter the policy was then changed. There is a text with Mr Swire confirming this.

43. The claimant does not rely on this as a whistleblowing disclosure, but we do note that the formality and fullness with which this was raised and set out is in contrast to the very informal verbal and text exchanges relied upon as protected disclosures. We note that the Claimant was able to access the policy – in contrast to the whistleblowing policy which he contended he was unaware of and unable to access. We also note that the Claimant challenging policy was received positively and rather than facing detrimental treatment, it resulted in the policy being changed.
44. The third PID relied upon is a text exchange with the ward manager of Rainbow ward, Priya, on 27 July 2022 about a patient who an MDT had decided would not be admitted. The claimant wrote “She has ASC and the father dynamics is complex. (sic) We need a family therapist”. [ASC – Autism Spectrum Condition]. Priya replied “quick assessment then, unable to meet sensory needs. I have pre assessment form up”. The claimant said “Okay I agree”. Mr Livingston submitted that this was not a disclosure of information, but an expression of opinion shared by others. We agree. There is no risk of health and safety being endangered as the patient is not to be admitted. Furthermore there is no evidence that Priya shared this exchange with Mr Cheung, Dr Schneider or anybody who is contended to have subjected the claimant to any detriments.

Patient X

45. The fourth alleged PID concerns an important exchange. In the list of issues this is described as follows: “Sometime in July / August 2022 the Claimant made specific disclosure to the director of the hospital (Mr Cheung) regarding the facility’s lack of capability of equipment to meet Patient X’s care and that, the respondent MUST give notice of same to the provider collaborative since the situation presents a significant health and safety risk to the patient. This alleged disclosure was made in a telephone call.”
46. Patient X was incredibly unwell and deteriorating. On 27 July 2022 they were sent to Barnet Hospital to have a naso -jejunal (“NJ”) tube inserted into the small intestine. That procedure could never have been performed at RWH, it was performed under general anesthetic by a paediatric surgeon. The procedure was unsuccessful and Barnet hospital wanted to discharge X back to RWH. The Claimant did not consider that X could safely be cared for at RWH as they had been losing weight under the regime before the admission into Barnet (hence the need for the NJ tube). The claimant set out his position in a draft email, which Mr

Cheung then sent to Barnet in his own name; we interpreted this as Mr Cheung being supportive of the Claimant. The surgeon at Barnet considered that the possibility of the procedure failing had been discussed and it had been agreed that X would return to RWH in those circumstances. The Barnet surgeon emailed stating that the claimant “leaving [them] here and leveraging possible outcomes does not appear appropriate or professional”. Mr Cheung asked the claimant to speak to the surgeon. A series of emails between Mr Cheung, Dr Schneider and Mr Swire sets out Mr Cheung saying “Benson has a very strong view of not taking [X] back and wants us to serve notice” (i.e. refuse to take X back at RWH), and Mr Swire asking “So is this Benson catastrophising? And will they definitely do the treatment tomorrow...”. Mr Cheung’s reply is “conflict of medical opinions, he says [they] will die, they say [X is] medically stable” and that “apparently its Benson going back on his word about accepting [X] back making me look like a fool”.

47. Mr Cheung telephoned the claimant at about 7pm to tell him that having spoke to Barnet, X would come back to RWH overnight. It is in the course of this phone call that the Claimant says he made a protected disclosure. Both the claimant and Mr Cheung agree that this was a heated call, during which claimant threatened to resign if Mr Cheung did not serve notice that the Respondent would not accept X back into their care. They also agree that the issue of responsibility if the patient died was raised, and that Mr Cheung said words to the effect of “we have evidence to say that Barnet said she was clinically stable”. The Claimant’s interpretation of this was that Mr Cheung said that if X died it would be “on the hospital not RWH”. The Claimant says that “he lost it” on this phone call. Mr Cheung told us that he was trying to ascertain what had changed so radically in X’s condition that they could no longer be kept safe at RWH, and why the agreement made at the MDT should not be followed; Mr Cheung said he was “shocked how I was spoken to by a consultant and his threat to resign”.
48. In fact patient X went back to RWH overnight. In a Teams message sent on 29 July 2022 Dr Schneider told the Claimant that the tube had been inserted successfully; the Claimant replied saying “soooo pleased. Thanks Carolina for the support., You are amazing!!!”. We also note that on 29 July 2022 Dr Schneider texted that she was “working in getting an agreement to get you on contract”.
49. Having reviewed the exchange of messages between VC, CS and DS the view of the tribunal is that at least towards Barnet hospital, the claimant was being supported by them. We think it more likely than not that the MDT meeting about X had provided for them to return to RWH if the tube insertion was unsuccessful

– which is why Mr Cheung feared he was being made to “look like a fool” – given that he had sent the email initially drafted by the Claimant saying they could not have X back at RWH, in his own name.

50. The way in which the alleged PID is put in the list of issues is that the claimant was stating that there was a “lack of equipment” to meet X’s care needs. We had evidence that the Claimant had complaints about the lack of ECG machines and a lancet (to take blood tests). However, these were not matters discussed in the phone call on 27th July 2022 with Mr Cheung, and were not items needed specifically to meet X’s needs. Furthermore, Dr Schneider told us that when she was told about the lack of an ECG machine (a fault was caused by the insertion of incorrect paper), she collected a spare from a facility five minutes drive away.
51. The view of the tribunal is that this episode demonstrates a disagreement between professionals as to where X should be placed overnight after the first attempted insertion of an NJ tube failed. The claimant was not raising issues about “adequate resources” – it was about clinical risk.
52. Mr Cheung was frank that the claimant’s manner of conducting himself at this time – and we bear in mind that the claimant described himself as having “lost it” – and of threatening to resign if he did not get his own way, did colour their ongoing relationship.
53. There were also some minor exchanges at this time about the need for timely reports to be completed, an addendum needing to be written for a mental health tribunal, and an occasion when the claimant wanted Mr Cheung to sign his time sheet and felt that he was dealt with in a rude manner. The cooling of the relationship between the Claimant and Mr Cheung led to the claimant sending texts to ask if they “were cool”, and Dr Kamara arranging for the three of them to go for a drink together in early August to “clear the air”.
54. On 30 July 2022, the Claimant’s Locum contract was extended for a further six month period from 4 October 2022.

October 2022

55. On 7 October 2022 the Claimant had a meeting with Professor Quazi Haque, the Executive Medical Director of the Respondent. Prof Haque had told Dr Schneider that he was happy to meet “with anyone who wants to discuss moving onto an Elysium contractual arrangement with all the employee benefits”. Dr Kamara

said in evidence that the Claimant told him that he was going to ask Professor Haque for a salary of £300,000. The Claimant denied saying this, but in his evidence to us explained that the “offer” Dr Schnieder had made to him in November 2021 of £105 per hour (includes 1 in 4 on call rota), would result, he thought, in a payment in excess of £300,000 p.a. because he thought he would be paid at that rate for all on call hours. No other witness before us considered this to be the case.

56. Dr Sola in evidence said that the Claimant told him that he “could not afford to become a permanent member of staff”, adding orally that the Claimant was buying a house and he had introduced the claimant to his mortgage advisor. While there were some text messages between the Claimant and Dr Sola about the importance of money and job satisfaction /their passion for being a doctor, this did not mean that we rejected Dr Sola’s evidence. While the Claimant is undoubtedly a passionate doctor, this did not mean that he was not motivated by money additionally.
57. We do not accept that the meeting with Professor Haque was an “interview” and that there was a job offer waiting for formalities as the Claimant contended. It was a forum in which the Claimant could explore his interest in a permanent post, and which the claimant chose not to take forward. Had it have been an interview we are satisfied there would have been a formal invitation, notes taken, and the claimant would have pressed for the ‘result’. He did not.
58. In October 2022, the Claimant, being concerned about the ongoing lack of a family therapist on Rainbow ward, identified a family therapy course which he sent an email to enquire about attending. We have the email the claimant sent on 24 October to an NHS training provider asking if there was a vacancy for a one day course the following month, even though registration had closed. On the same day the Claimant sent a text to Mr Cheung saying “trying to get on a family therapy course next month. If I can I will take the two patients with EPC”. Mr Cheung replied “how much support”. This is relied upon as PID 6. While Mr Otchie suggested that the question of “how much support” was asking how much the course would cost and how long it would take, Mr Cheung said the question was about the “EPC – exceptional support package -asking how much support the patients were coming with. We accept his evidence on this. Dr Schneider said that this one day course would not include a great deal of content that would not already be known to a consultant psychiatrist, and would not replace the need for a FT on staff.

59. We did not have a copy of the email the claimant sent that day (relied upon as PID 5). We were asked to draw an inference about its non-disclosure. We accepted the evidence of Mr Cheung and Dr Schnieder that they had searched their email systems and could not locate a copy; we noted that other exchanges which were very frank about the claimant (such as joking about needing medication to tell him about the termination of his contract), which did not cast Mr Cheung and Dr Schneider in a positive light, but which had been disclosed. They also did not deny that there may well have been such an email. We do not accept that there has been deliberate material failure to disclose relevant documents by the Respondent – either in relation to this or a positive reference Dr Schneider supplied in relation to the Claimant.
60. The claimant may well have sent an email including information about a family therapy course and his desire to go on it. In his witness statement the claimant says that he “believed that admitting further high risk patients without a FT was unsafe, professionally negligent and in breach of regulatory obligations”. However he does not contend that he said this at the time. The Claimant says that he told Mr Cheung on whatsapp that the course was so as to ensure that “the clinical gap could be safely addressed”. However the text does not say this. No risk to health and safety was identified by the claimant at all.
61. The Claimant says that he suffered two detriments in October 2022 at the hands of Mr Cheung. His case was that his email and message requesting to go on a family therapy course were both ignored. In fact the claimant did not “seek permission”, he informed Mr Cheung that he had applied. Mr Cheung did not ignore him, but replied to a second message sent by the Claimant immediately after the first, concerning “EPCs” for two patients (exceptional care packages), by asking “how much support”. This question was in answer to the reference to EPCs, not connected to the information about having sought a FT course.
62. In cross examination Mr Cheung said that the claimant told him he was going on a course, and he did not object and would have been happy for the claimant to go (in fact the application period for the course had already closed and there is no evidence that a place was available for the Claimant).
63. We are not satisfied that the Claimant has demonstrated the detriments contended for of “being ignored”. As to the “missing email”, we note that there is no chaser email from the Claimant seeking a response. The tribunal did not consider it unusual when receiving two whataspp messages to have a reply only to the last of them, particularly where the claimant’s first message in this case – informing him of a course application, did not specifically require a response.

64. The next detriment claimed identified in the list of issues states “from 18 October 2022 Dr Schneider monitoring the claimant’s work”. However, in his statement and before us the Claimant’s case is that this “monitoring” was limited to Dr Schneider joining him on ward round on 11 October 2022. She and Mr Swire said that this was because she was undertaking a quality improvement project, and she also needed to take on a clinical patient as MD for that site. Dr Schneider having told the Claimant that she was going to all wards in fact in October only visited the Claimants, leaving him feeling that he was singled out. Mr Otchie criticised the lack of any detailed documents about any quality improvement project.
65. Dr Scheider told us in her cross examination that she seeking to support the Claimant, he had asked for support and was “coming to me every day with difficulties”. While being observed on a ward round could potentially be a “detriment”, we cannot see that this ward observation was because of any of the matters relied upon as protected disclosures. The last disclosure the Claimant said he made before this ward round was his heated conversation with Mr Cheung and his threatened resignation in late July 2022. After that the Claimant and Dr Schnieder had very pleasant teams exchanges about patient X’s procedure being successful and Dr Schneider commented about trying to get the Claimant onto a permanent contract.
66. We note that after the ward round Dr Schneider took on the care of patient X, and the claimant thanked her for giving him support. He does not contend that her taking responsibility for X was a detriment to him – not least as the Claimant was satisfied that X’s condition had stabilised by this time.

November 2022

67. The claimant sent a text to Mr Swire on 18 November 2022 which stated “We desperately need a family therapist. We have not had one since April 2021 yet we are supposed to be the most acute ward. A lot of our kids can’t go home because of parental anxiety in having them home. Is it not possible to share the case load amongst the two we have. That is only high needs patients get family therapy in all three wards”. This is relied upon as PID 7 – the last before the decision to terminate his contract was taken. Mr Swire replied “I look at that as well. Are u up to date with their recruitment efforts? And another they are querying from Greece?” The claimant answered that saying “No I am not. Didn’t know that”.

68. We are satisfied that this text does disclosure information about the lack of a family therapist (albeit this was information well known to all), and about the impact which meant that young people could not go on home due to parental anxiety. We have considered carefully whether this was in the public interest given that it was not rendering the service unsafe as we accept that it is not essential to have a family therapist – albeit it is highly desirable. We consider it may well be in the public interest to make the disclosure if young people cannot go home because the medical team supporting them has vacancies. We went on to consider whether it tends to show “that the health or safety of any individual has been, is being, or is likely to be endangered”. We do not consider this test is satisfied. The children are kept in a safe environment in the hospital. The lack of a family therapist on the claimant’s case meant that home visits could not take place; while this may not be optimal, it is not clear how it endangers their health or safety. It was not said that children were going home when insufficient family support or preparation had been in place such that their safety was endangered.
69. Mr Swire did not say that he shared this message with Mr Cheung or Dr Schneider, nor was he asked any questions about this, it is therefore not clear how it could have been causative of their decision in relation to termination.
70. In late November 2022 there were adverts for locums because Dr Schneider had previously had success at other locations recruiting a locum for a short period who would then move to become permanent. The advert was not to “replace the claimant”, and there was no desire to replace one long term locum with another. Not making him permanent was because the claimant did not want the resultant pay cut.

February 2023

71. On 6 February 2023 Dean Swire emailed Mr Cheung and Dr Schnieder saying that Dr Wiseman had agreed to return to site to undertake an RC for either Shepherd or Cheshunt from 6 March 2023 which meant that one of the locum RC’s would need to be serviced notice. Mr Cheung and Dr Schneider were tasked with determining “the who’s and when’s”. Almost immediately Dr Schneider email Mr Cheung saying “I would say Malcolm to Cheshunt, and Kamara Rainbow. And Benson to end contract? - ”. Mr Cheung replied “Yes. I know Kamara will be happy with that.”
72. On 7 February 2023 Mr Chueng exchanged Teams messages with Mr Swire who asked “Benson will be the one to go right?” and Mr Cheung said “Yes” and added “for sure”.

73. In message exchanged Mr Cheung tells Mr Swire that the other two (Dr Sola and Dr Kamara) were “easy to work with”. As explored in evidence, the inference from this was that the Claimant was not easy to work with. In particular it was not the clinical approach the claimant took to Patient’s X or Y which was borne in mind, but the Claimant’s manner of dealing with the issues. In relation to patient X, the claimant said he “lost it” on the phone with Mr Cheung. Concerning patient Y he had very heated exchanges with Ms McWilliams and had to have a mediated conversation afterwards. It is the manner in which the claimant raised these matters when he did not “get his own way”, and threatening to resign which Mr Cheung thought unprofessional.
74. The claimant emailed Dr Schnieder, cc’ing Mr Cheung and others, on 17 February 2023 stating that the complexity of the patients can be challenging and that “in light of the fact that we don’t have a family therapist, I fear that not having a full time dietician allocated to the ward will further deplete us”. In the list of issues drafted at the June 2024 PH the Claimant’s case was that he said that “as the most acute ward in the hospital, it could not afford not to have a dietician in addition to not having a family therapist, and that this would further escalate the chance of fatality”. The email makes no reference of “chance of fatality”.
75. In fact the email goes on to ask about redistributing resources with other wards, a potential solution. We consider this to be a standard email exchange between senior practitioners in a setting where patients have complex clinical needs. We do not consider that all exchanges in such a setting can be categorised as protected disclosures. This may well be why clinical settings place such emphasis on their “speak up” policies so that staff members can make it clear when matters are being highlighted as needing urgent more senior oversight, beyond workaday exchanges about proper prioritisation of resources.
76. Mr Swire told us that when matters are raised under the Speak Up policy they are initially triaged to ensure they are dealt with under the correct policy, whether that is grievance, complaint, clinical concern, or indeed the “speak up” policy.
77. This alleged PID (no 9, the final one chronologically) postdates all detriments complained of. We have not therefore considered it necessary to make findings of fact about this.
78. We heard evidence about the claimant’s notice period, his need to take some leave, and the on call cover he provided during his notice period. However, ultimately his claims relating to these matters were for unlawful deductions from

wages and he accepted that he had never had a contract with the Respondent. Mr Otchie was in these circumstances unable to establish that the Respondent was an “employer” who was potentially making “a deduction from wages of a worker employed by him”, as required by section 13 of the Employment Rights Act 1996. In these circumstances it was unnecessary to make detailed findings of fact as to what happened during the notice period.

Law

79. Section 13 of the Employment Rights Act 1996 (“ERA”) provides:

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

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

...

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

Protected Disclosure

80. Section 43A ERA provides:

“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 sections 43C to 43H.]”

Section 43B as far as relevant provides:

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

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

81. The Claimant’s case before us was that there was a failure to comply with legal obligations. While in closing submissions Mr Otchie referred to “the Mental Health Act 2005, the Health and Social Care Act 2008 as well as the Human Rights Act” no particular provisions were referenced.

82. The EAT in *Williams v Brown* EAT 0044/19 summarised the five elements which must be satisfied for a claimant to establish that they have made a qualifying disclosure, namely:

- a. there was a disclosure of information by the worker in question
- b. the worker believed that that disclosure was made in the public interest
- c. any such belief was reasonably held
- d. the worker also believed that the disclosure tended to show one or more of the matters listed in S.43B(1)(a) to (f); and
- e. any such belief was reasonably held.

83. A disclosure of “information” must convey facts (*Cavendish Munro Professional Risk Management Ltd v Geduld* [2010] ICR 325), and this means that there must be “sufficient factual content and specificity such as is capable of tending to show one of more of the matters listed” in s43B(1) (*Kilraine v London Borough of Wandsworth* [2016] IRLR 422).

84. In considering the reasonableness of the worker’s belief, the EAT in *Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4, held that this involves applying an objective standard to the personal circumstances of the discloser. A professional with ‘insider’ knowledge will be held to a different standard than laypersons.

85. While in *Eiger Securities LLP v Korshunova* the EAT suggested that the ET needs to identify the source of the legal obligation which the complainant believed was in play when section 43B(1)(b) is relied upon, in the later case of *Twist DX Ltd v Armes* EAT 0030/20, Linden J made clear that this is not required. A claimant

must merely show that a disclosure is made which tends to show one or more of the sex relevant failures listed in s 43B(1)(a)-(f).

Detriment:

86. Section 47B ERA provides:

“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.”

87. What can amount to a “detriment” has a very low threshold, and there is no test of seriousness or severity. It must merely be a disadvantage of some sort, suffered in the employment field.

88. As to the causation test - the protected disclosure must have materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower: *Fecitt v NHS Manchester* [2012] IRLR 64, [2012] ICR 372, CA. In common with victimisation in discrimination law, it is possible for an employer to defend a claim on the basis that the reason for the detrimental treatment was not the doing of the protected act in question, but the unacceptable way in which the claimant did it. This principle has been confirmed by the Court of Appeal in *Kong v Gulf International Bank (UK) Ltd* [2022] EWCA Civ 941.

Submissions

89. Both counsel helpfully collaborated to produce a joint list of 21 relevant authorities to which the tribunal had regard.

90. Mr Livingston for the Respondent produced written submissions which we took time to read, and he then supplemented orally:

- a. In relation to time limits he submitted that if the final detriment is out of time the claim will fail. The claimant has led no evidence as to it not having been reasonably practicable to have brought claims within time, rather he places his case squarely on there having been a series of acts. Mr Livingston submitted that the first five alleged detriments are of a different nature to the final one of termination.

- b. As to whether any information disclosed was in the “public interest” Mr Livingston noted that much of the case law is concerned whether matters are in the public interest or private matters – such as breach of a contract of employment. That is not the distinction here. Mr Livingston submitted that the alleged disclosures here were, in relation to this patient, in the context of his job related to an individual case rather than in the public interest. He asked - subjectively – what did the claimant think he was doing? Was he disclosing information which was in the public interest and tended to show a relevant breach. On the evidence before us, this is not what the claimant was doing. In the context of hospitals and doctors, there is a distinction between raising concerns about a patient in the course of doing a job, and in making a disclosure which is in the public interest.
- c. The key detriment in this matter is that of termination. In urging us to reject the suggestion that this was caused (in any way) by any of the alleged protected disclosures Mr Livingston highlighted that the Respondent extended the Claimant’s contract in February 2022 – after 7 of the alleged disclosures had been made, then again at the end of July 2022, after 9 of the 13 alleged disclosures. There are at least three occasions on which the Respondent was trying to get the Claimant to be a permanent member of staff - Nov 21, July 22 and October 22, and Mr Cheung never asked for the Claimant to be replaced by another locum, which he could have done.

91. Mr Otchie made oral submissions and asked we revisit his opening note.

Unfortunately it was not easy to follow the oral submissions of Mr Otchie as they were not structured either chronologically nor on the basis of the issues. A number of broad propositions were espoused, but relying on single words or phrases devoid of their context from different periods of time. We endeavoured however to understand at its highest the broad case put to us on behalf of the claimant.

- a. He told us “that the Claimant is a genuine whistleblower, and he accepts that he has to prove his case on a balance of probabilities”.
- b. It was submitted that the Claimant’s contract was terminated because his name kept coming up. He had threatened to resign, and was seen to be a “frequent complainer” as Dr Schneider stated in her statement. There was a close connection to the disclosure in relation to Patient Y and his termination, not least because it led to the Claimant threatening to resign, and Mr Cheung confirmed that he took into account resignation threats in choosing which locum would be terminated.

- c. The Respondent is a large employer with turnover of over a billion pounds; it is profit driven. When the claimant raised issues he was ignored and subject to detriment.
- d. As to the unlawful deduction from wages it is now said there was no contract, but this should have been in the ET3. The claimant should have been paid four weeks notice and for his on call, and that the Claimant's integrity was shown by his having travelled to Warrington during his notice period to provide a second opinion on a patient. In answer to the judge's question as to what submission is made about there being no contract between the Claimant and Respondent, Mr Otchie said he wondered if there was an answer under the Agency Regulations. Mr Otchie had however confirmed (both orally, as well as in writing before proceedings began on 19 January 2026 as the EJ had asked that if there was to be an application to amend, it be put in writing over the weekend) that he was not making any application to amend the claim to rely on those (or any other provision). He said that the money was owed by someone.

Conclusions on the issues

Unlawful deductions from wages

- 92. The acceptance that there was no contract between the Respondent and Claimant – either actual or implied – inevitably meant that this claim, which is based on paying a sum which is less than one properly payable, must fail. We accordingly dismiss the claim.

Public Interest Disclosures

- 93. When considering each of the matters relied upon as protected disclosures it is clear that the Claimant did not use the "Speak Up" / whistleblowing policy. Disclosures can, and frequently are made outside of a formal policy. This tribunal was however entirely satisfied that as an experienced clinician the Claimant should have been aware of the existence of this policy, not least because posters about it were prominently displayed in the workplace.
- 94. Moreover, when the Claimant wanted to raise issues about the policy on weighing patients and the curtailment of patients ability to shower, he quoted from the relevant policy document, set out his objections and suggested changes. We considered this matter, raised just two months into his engagement with the Respondent, to be of some significance because the claimant was able to locate the policy, and then set out his criticism of the policy clearly and thoroughly, and rather than facing any detrimental treatment, the policy was

revised. This was in stark contrast to at least eleven of the thirteen matters relied upon as protected disclosures which were raised orally or in informal text / WhatsApp messages and did not set out fully the reasons for the claimant raising the matter. This is not to suggest for one moment that disclosures cannot be made orally – of course they can – but to highlight that when the claimant, subjectively, considered a policy needed to be altered for the benefit of patients, he chose to do so formally in writing. This does cause us to question whether informal verbal and text communications were genuinely communicating his reasonable belief that he was giving information which was in the public interest and tended to show endangerment of health and safety. Rather, for the most part, the communications seemed to be standard interactions between clinical colleagues who worked with some very vulnerable patients.

95. Chronologically the first disclosures on which the Claimant relies are those which were added to the scope of this case in December 2025, relating to Patient Y. This was very clearly a serious issue. We do not consider that all of the claimant's communications on this topic have however been accurate as to the important details. Most particularly in his email of 9 December 2021 (after he had tendered his resignation – and notably not an email he relies upon as being a protected disclosure) suggesting that allegations were made in July 2021 and were not investigated. As set out in the facts, we have found no evidence to suggest that allegations were made **in** July, as opposed to being made later **about** an alleged incident in July. The Claimant's broad claim in relation to this matter is that it was only when he threatened to resign that the allegations made by Y were reported to the police and to the LADO. We reject this. As soon as Y disclosed the name of the person she accused – which was on 7 December 2021 – the Respondent reported the matter to the police and LADO, and suspended the staff member.
96. We do accept that the manner in which the claimant conducted himself, and in particular his interactions with his social worker colleague, were considered by the Respondent as examples of how the Claimant could be difficult to work with.
97. Against this background, turning to the matters relied upon as PID's:
 - a. PID 9 – oral disclosure to Dr Schneider in October 2021 when she was alleged to have “feigned ignorance”. The claimant was unable to tell us even the gist of what he says amounted to the information shared. Dr Schneider had no recollection of it. The conclusion of the tribunal is that if the Claimant had shared information and set out a belief that there was a risk to the health and safety of Y, or indeed any other patients, it would

have been something Dr Schneider would have remembered. We are not satisfied that this has been made out on its facts.

- b. PID 10 – orally to Dr Schnieder in November 2021- the claimant told us he raised this a second time because “he was very concerned that “the staff member was still working at RWH”. We do not accept that the Claimant said this, or anything akin to it in November 2021 because the contemporaneous records state clearly that the identity of the staff member was not known until 7 December 2021. Whilst the Claimant suggested there was some “open secret” about the accused, Dr Sola said this was not the case. It would have been a very serious matter indeed if the identity of the accused was known, and we see no basis on which this would have been hidden or ‘brushed under the carpet’ by the Respondent given their actions when they were told a name. We therefore reject this matter factually.
- c. PID 11 is alleged to be a verbal disclosure to Mr Cheung when the Claimant said that he stepped out of an MDT in November 2021 and knocked on Dr Cheung’s office door and said that “mother has continued to raise issues of a sexual assault”. Mr Cheung already knew of the fact of an allegation as he had received the letter from Gordon Davenport on 29 October 2021. The Claimant had no other information to “tend to show” risks to health and safety. He simply repeated the allegation which by this time was well known. This was not a protected disclosure.
- d. PID 12 is the Claimant’s WhatsApp to Dr Schneider on 8 December 2021, set out fully above. The Respondent accepts this is a disclosure of “information”, but contends that the information disclosed was about the response to disclosures rather than any potential risk to the child, and that in any event even if the Claimant had a genuine, reasonable belief that it was poor safeguarding practice, he did not reasonably believe it amounted to breach of a legal obligation. We agree, because had the Claimant reasonably believed that to be the case we do not consider he would simply have sent a WhatsApp; rather he would have raised the matter more formally, and/or externally directly to the police or to the LADO.
- e. PID 13 is alleged to have taken place at the safeguarding meeting of 9 December 2021. The best evidence as to what the Claimant’s concern was on that date is his email sent just over an hour later when he expressed dissatisfaction that the DSL had “raised a safeguarding concern against mother to social services without her knowledge”, and that “as her consultant I was unaware of this matter”. This appears primarily to be anger about him not being kept informed. His email does go on to raise “another serious risk issue (allegation of sexual molestation

by a staff against the same child) – first raised by the child in June / July of this year was not investigated or raised as a safeguarding concern...”. As set out above, this information was inaccurate and as the RC and a consultant, the Claimant ought to have taken more care about ascertaining clear factual evidence. We do not consider that the claimant on this occasion disclosed information which in his reasonable belief was in the public interest and tended to show a risk to health and safety.

98. We have not found that any of the matters related to patient Y amounted to protected disclosures. In any event, at 21.31hrs on 9 December 2021, VC declined the claimant’s resignation. We consider this to be compelling evidence that any concerns the C raised about this case did not lead to him suffering any detriment.
99. PID1 is said to be the whatsapp to Mr Cheung on 29 October 2021 about a FT. As set out in the findings of fact, this was not the disclosure of information about the lack of a family therapist, but one of a number of reasons to “flesh out” reasoning for declining an admission request. We also agree with the submission of Mr Livingston that given there was to be no admission, there could be no risk of harm to a patient because of the lack of a therapist. This was not a case of the Claimant’s concerns being disregarded and an admission being pushed through against his will, but his advice being heeded.
100. PID2 is a further WhatsApp to Mr Cheung on 11 November 2021 and was the Claimant seeking praise for the steps he had taken to ensure patients were not suffering from the lack of a family therapist. This is not the disclosure of information which satisfies any element of the test in section 43B ERA.
101. PID 3 is a message to the ward manager and given that no case was put to any witness that this was passed on by her, and she is not alleged to have subjected the claimant to any detriment, even if it was a protected disclosure, it could not have been causative of any detriment. In any event, like PID1 it is simply two professionals sharing reasons for a non-admission, one of which includes there not being a FT in post at the relevant time. This is not a disclosure within s43B ERA.
102. As made clear in the findings of fact PID 4, relying on the phone call from Mr Cheung to the claimant on 27 July 2022, was a significant moment marking the start of a deterioration in the professional relationship between the two. This however, in the assessment of this tribunal, is entirely because of the manner in which the Claimant conducted himself rather than the content of his

communications. He shouted at a senior colleague, described himself as having “lost it”, and threatened to resign unless he essentially “got his own way”. The “information” which the Claimant relies on having given in this call which he says amounted to a disclosure was about the “lack of equipment”. We reject that contention as a matter of fact. Whether patient X could safely return to RWH after the initial failure of an NJ tube insert was not a question of equipment. We have no doubt that the Claimant was seeking to fiercely advocate for the best interests of his patient, and he told us that his intervention with Barnet hospital led to another paediatric surgeon taking over X’s case and successfully inserting the tube two days later. We do not however consider he was making a protected disclosure in this call, as he did not share any information which tended to show endangerment of health and safety, still less any legal obligation.

103. PIDs 5 and 6 both relate to communications on 24 October 2022 about the Claimant intending to go on a FT course. As set out in the facts, we have no copy of any email of that date, nor of any ‘chasing’ emails afterwards if the Claimant thought he was being ignored. He did, in a text to Mr Cheung, share information that he had tried to get on a FT course. He did not, in this text, set out – as he did in his statement – any belief as to why he needed to do the course to ensure appropriate treatment for future patients or to ameliorate negligent practice. We do not accept he disclosed information tending to show a relevant breach.
104. PID 7, the text and then verbal comments to Mr Swire about the lack of a FT is different to the two previous matters relied upon, because the claimant did disclose information that the impact of having no FT meant that children had not been able to go on home visits because of parental anxiety. This was certainly the disclosure of information. We were satisfied that this was a matter in the public interest – if children cannot go on home visits because their care package is not as complete as it should be. However, we thought carefully about whether it showed that health and safety was being endangered and were not satisfied that it did. The children were kept safe. Their care may not have been as optimal as it could have been, but any potential risks to their safety were avoided.
105. PID 8 came after all of the detriments relied upon, so even if raising the question of a dietician did amount to a protective disclosure, it could not possibly have been causative of any detriment. We do note that like the email about the policy about weighing patients, this communication is much more formal being set out in a full email, and seeks to suggest solutions to a staffing problem – with the claimant asking for another dietician to be available as part of the MDT decision making and sharing resources between the three wards.

106. Given that we have not found any of the Claimant's communications to have amounted to protected disclosures, his claim before the tribunal must fail. However, we have gone on to consider whether, if we are wrong about the correct characterisation of his communications, any of them were causative of detriments.
107. We are satisfied that each of the matters relied upon are capable of amounting to detriments. We remind ourselves that the causation test is that the disclosure need only be more than a trivial cause of the treatment. If this low bar is crossed, the burden will essentially shift to the respondent to show why the detrimental treatment was done, otherwise inferences can be drawn against them.
108. The first detriments in October 2022 of "being ignored" in requests to go on a FT course fail because the claimant was not "ignored", and in fact did not have a place on such a course so as to require "permission" for time or funding. He simply expressed an interest in a course, the closing date for applications for which had already closed and was not available to him. We also accept Mr Chueng and Dr Schneider's evidence that they would have been quite happy for the Claimant to go on such a course.
109. The ward round on 11 October 2022 was not an attempt to "monitor" the Claimant's work, but was Dr Schneider seeking to be supportive at the same time as meeting her own work objectives in relation to the improvement plan she was working on, and to take on a clinical caseload at RWH. It seems that the claimant only considered this to be a detrimental act when he thought other wards were not being visited. In fact they were, but not until after his engagement had ended. The Claimant's reaction at the time of the ward round was to thank Dr Schneider which led us to the conclusion that he did not view this as a detriment at the time.
110. The third and fifth detriments alleged are "attempting to replace him before the end of his contract" and "advertising his position - but this is a mischaracterisation. The advert for other locums was part of a well known plan to seek to recruit permanent staff, if necessary by having someone do a short period of locum work before formally applying. There was never any attempt to replace the Claimant with another long term locum.
111. The fourth detriment is said to be not making the Claimant permanent. This was put as not completing a process after an interview with Professor

Haque. However, the meeting on 7 October 2022 was not an “interview” – if it had of been, we have no doubt the claimant would have followed up. We are satisfied that as a matter of fact, the reason the claimant did not pursue a permanent role at the Respondent was because of the lower remuneration it commanded.

112. The core allegation in this case was the termination of the Claimant’s contract. The Respondent accepts this was a detriment. We are satisfied that Dr Wiseman’s return meant that one of the three locum consultants would be terminated.

113. We do consider that the reasons put forward by the Respondent have been as clearly articulated as they might have been. While there was no obligation to go through a formal process with a locum in the way one would with an employee, there was a lack of clarity as to factors taken into account by Mr Cheung and Dr Schneider. The suggestion that he was the only one of the three locums not willing to move to a permanent contract for example was unconvincing when Dr Kamara did not become permanent until September 2025 while Dr Sola’s statement does not give a date but he did tell us that it was delayed because of financial obligations he faced during which he wanted to command the higher locum rate of pay. Mr Cheung and Dr Schneider also discussed whether the Claimant was the most expensive of the three, but they knew that Dr Karama’s rate was the same as the claimant’s such that this was an unconvincing reason.

114. Mr Otchie submits that Mr Cheung’s consideration of the Claimant’s threatened resignations – after raising concerns about patients Y and X was sufficient to show that those matters were at least more than a trivial influence on the decision to select the claimant over the other two locum’s. We considered this submission very carefully. However, ultimately, as Mr Cheung’s message to Mr Swire implied when he said that “the other two” were “easy to work with”, his and Dr Schneider’s perceptions about how easy or difficult it was to work with the claimant as compared to his two locum colleagues was a key factor. Mr Cheung found the claimant difficult to work with after their heated call in July 2022. This was not such that he would have terminated the Claimant’s contract – it was renewed the very next day – but it was such that faced with a one in three choice, he decided that it was the Claimant who should go. This was not because of the claimant’s raising issues about Y, X or the question of a FT. It was because Mr Cheung considered that the Claimant had been rude to him, was rude to other staff, and there were complaints from patients and parents as well as ‘chasers’ about reports and care documents. We do not find that the claimant has satisfied the burden of showing that his termination was materially

influenced by any of the factual matters he relies upon as constituting protected disclosures.

115. The claimant's claims are therefore dismissed.

Approved

REBECCA TUCK KC

Dated 25 March 2026

Sent to the Parties
27 March 2026

For the Tribunal