EMPLOYMENT TRIBUNALS

Claimant: Dr Caroline Colaco

Respondent: R1 Chorlton Family Practice ("CFP")
The trading name of the following individual respondents
R2 Dr Karim Fawzi Adab
R3 Dr Helena Mulkeen
R4 Professor Carolyn Anne Chew-Graham
R5 Dr Louise Miriam Freedman
R6 Dr Veselin Kirilov Cahvdarov
R7 Dr Duncan Rutherford Hill
R8 Dr Volker Walter Martin Siebert
R9 Dr Megan Elizabeth Atherton

Heard at: Manchester (by hybrid remote and in person)

On: 29 and 30 September, 1-6 and 9 October 2025 and 10 November 2025 (in chambers).

Before: Employment Judge McDonald
Mr A Egerton
Ms B Hillon

REPRESENTATION:

Claimant: Mr B Williams (Counsel)

Respondent: Miss A Smith (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The complaints of unfair dismissal ("ordinary" unfair dismissal and "automatic" unfair dismissal under s.103A of the Employment Rights Act 1996) are dismissed on withdrawal.

2. The complaints of being subjected to detriments for making protected disclosures at 8(f)(h)(j) and (l) of the List of Issues are dismissed on withdrawal.

3. The claimant's other complaints of being subjected to detriments for making protected disclosures are not well-founded and are dismissed.

REASONS

Introduction

1. This was the final hearing of the claimant's claim against the respondents. The first respondent is a GP practice in Manchester. The second to ninth respondents were the partners in the practice at the relevant time. For convenience we refer to the practice as "CFP". The claimant worked as a locum GP at CFP.

2. The hearing took place before a full Tribunal panel at Manchester Employment Tribunal. We converted the hearing from an in person to a hybrid hearing to enable 2 of the respondents' witnesses to give evidence remotely by CVP video link.

3. It was agreed that the hearing would deal with liability only.

4. The claimant was represented by Mr Williams of counsel. The respondents were represented by Miss Smith of counsel.

The Issues in the case

5. There was an agreed List of Issues. That List of Issues (amended as described below) is attached as an Annex to this Judgment.

6. In her claim form the claimant had ticked the box to say she was bringing a complaint of unfair dismissal. However, at the case management preliminary hearing on 19 July 2024 before Employment Judge Aspinall the claimant confirmed she was not asserting that she was an employee. She confirmed that she was not bringing a complaint of unfair dismissal (whether "ordinary" unfair dismissal under s.98 Employment Rights Act 1996 or "automatic" unfair dismissal under s.103A of that Act). For the avoidance of doubt, we have dismissed those complaints on withdrawal in our judgment.

7. That meant the sole complaint in issue was that the claimant had been subjected to detriments for making public interest disclosures.

8. The respondents conceded that the claimant had made protected disclosures on 9 October 2023 and on 2 November 2023.

9. The claim as presented included 14 alleged detriments. They included the termination of the claimant's locum position on 17 November 2023, referred to as her "dismissal" (Issue 8(k)). In this judgment we have adopted the term "dismissal" to refer to that termination. That is purely for convenience and should not be read as a finding that it amounted to a "dismissal", e.g. for the purposes of s.95 of the Employment Rights Act 1996 or as a finding that the claimant was an employee for the purposes of that act.

10. The claimant's application to add 2 further detriments by amendment was refused by Employment Judge Ainscough at a preliminary hearing on 6 August 2025.

11. In initial discussions on Day 1 Mr Williams confirmed that the claimant withdrew the detriment complaints at 8(f)(h)(j) and (l) were withdrawn. We have struck through those detriments in the annexed List of Issues and dismissed them in our judgment.

12. Between Days 6 and 7 of the hearing the respondents confirmed that for the purposes of this claim alone they no longer contested that the claimant had sufficient status to bring her claim (Issue 1). We have struck through that issue in the annexed List of Issues.

13. The respondents at the preliminary hearing on 19 July 2024 (p.99) raised a jurisdictional issue, which is that the second EC certificates obtained by the claimant in relation to each respondent were deficient because there can only be one valid EC certificate. In her submissions Miss Smith confirmed that the issue went to time limits only. A second ACAS certificate cannot extend the time for bringing a claim. The time limit issue did not arise for determination because we have dismissed all the claimant's complaints which were not already withdrawn.

The Hearing

14. On Day 1 we dealt with preliminary matters with the parties then read the witness statements and key documents in the case.

15. We heard the claimant's oral evidence on day 2 and the morning of Day 3.

16. We heard the respondents' witnesses' evidence from the afternoon of Day 3 until the end of Day 6.

17. We heard the parties' submissions on the morning of Day 7 (6 October 2025).

18. We reserved our decision and deliberated on the afternoon of Day 7 (9 October 2025) and on Day 8 (10 November 2025).

19. Because the claimant's claim fails in its entirety, no remedy hearing is required. A remedy hearing set for 13 April 2026 was postponed because of the delay in finalising this judgment. The Employment Judge apologises to the parties for that delay.

Preliminary Matters

<u>Mr Egerton's disclosure of previous role with GMC</u>

20. At the start of Day 1 Mr Egerton disclosed he had worked as Assistant Director in the General Medical Council's Registration and Legal functions from 2006-2021. He confirmed he did not undertake casework and had no knowledge of any case or referral relating to the matters in this case. Neither party objected to his continuing to hear the case.

<u>Permission for observer to join remotely</u>

21. At the start of the hearing the Tribunal received a request for permission to observe remotely. None of the parties objected to the observer joining remotely. The Tribunal directed that the hearing would be transmitted by online video to enable observers who complied with stated conditions to watch or listen to the proceedings. In making that decision the Tribunal took into account the matters set out in

Regulation 4 of the Remote Observation and Recording (Courts and Tribunals) Regulations 2022 and considered the Practice Guidance on Open Justice and Remote Observation of Hearings issued by the Lord Chief Justice and the Senior President of Tribunals (June 2022).

Relevant Law

Whistleblowing Detriment

Whistleblowing

22. Protected disclosures are governed by Part IVA of the Employment Rights Act 1996 ("the ERA") of which the relevant sections are as follows:-

> **"s43A: 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(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,"**

23. The respondents conceded that the claimant had made protected disclosures.

24. If a protected disclosure has been made, the right not to be subjected to a detriment appears in Section 47B(1) ERA which reads as follows:

> **"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."**

25. By the end of the hearing the respondents had conceded the claimant was a worker and that CFP was her "employer" for the purposes of s.47B(1) applying the extended definition of "worker" in s.43K.

26. The question of what will amount to a detriment was considered in the discrimination context by the House of Lords in **Shamoon v The Royal Ulster Constabulary [2003] ICR 337**: the test is whether a reasonable employee would or might take the view that he had been disadvantaged in circumstances in which he had to work. An unjustified sense of grievance cannot amount to a detriment.

27. The right to go to a Tribunal appears in Section 48 and is subject to Section 48(2), which says this:

> **"On such a complaint it is for the employer to show the ground on which any act or deliberate failure to act was done".**

28. In **Fecitt and ors v NHS Manchester (Public Concern at Work intervening) 2012 ICR 372, CA** confirmed that in deciding whether a detriment was on the grounds of whistleblowing the test is whether the protected disclosure materially (in the sense of more than trivially) influences the respondent's treatment of the claimant.

29. In **International Petroleum Ltd and ors v Osipov and ors UKEAT /0058/17/DA** the EAT (Simler P) summarised the causation test as follows:

> **"...I agree that the proper approach to inference drawing and the burden of proof in a s.47B ERA 1996 case can be summarised as follows:**
>
> **(a) the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.**
>
> **(b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them: see London Borough of Harrow v. Knight [[2003] IRLR 140]at paragraph 20.**
>
> **(c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found."**

30. The EAT in **International Petroleum Ltd & Ors v Osipov & Ors [2017] UKEAT 0058** summarised the proper approach to inference drawing and the burden of proof in a s.47B ERA 1996 case:

> "a) the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.
>
> (b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them: see London Borough of Harrow v. Knight at paragraph 20.
>
> (c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found. "

31. In **Ibekwe v Sussex Partnership NHS Foundation Trust EAT 0072/14** the EAT confirmed that if an employment tribunal can find no evidence to indicate the ground on which a respondent subjected a claimant to a detriment, it does not follow that the claim succeeds by default. The EAT adopted the same approach as that taken by the Court of Appeal in **Kuzel v Roche Products Ltd 2008 ICR 799, CA** (an automatic unfair dismissal case). The Court of Appeal in **Kuzel** held that, having rejected the reason for dismissal advanced by the employer, the Tribunal is not then bound to accept the reason advanced by the employee: it can conclude that the true reason for dismissal was one that was not advanced by either party. In **Ibekwe**, the EAT concluded that there were no grounds for interfering with the Tribunal's unequivocal finding that there was no evidence that an unexplained managerial failure to deal with an employee's grievance was on the ground that the grievance contained a protected disclosure.

Evidence

32. There was an agreed bundle consisting of 946 pages. There was a cast list and a chronology. The chronology was not agreed.

33. Each of the witnesses had provided a written witness statement.

34. The claimant gave oral evidence in support of her case. She was cross-examined by Miss Smith and answered questions from the Tribunal. The claimant's husband, Dr Roval Calaco swore as to the truth of his witness statement. He was not cross-examined and the Tribunal had no questions for him.

35. For the respondent, we heard from the following witnesses:

- On the afternoon of day 3 and the morning of Day 4, Dr Karim Adab, the second respondent and one of CFP's 2 managing partners ("Dr Adab").

- On the afternoon of Day 4, Professor Carolyn Chew-Graham, the fourth respondent (who gave evidence remotely) ("Professor Chew-Graham").

- On Day 5, Dr Helena Mulkeen, the third respondent ("Dr Mulkeen"); Dr Veselin Chavdarov, the sixth respondent ("Dr Chavdarov"); Dr Louise Freedman, the fifth respondent ("Dr Freedman") and Dr Megan Atherton, the ninth respondent ("Dr Atherton").

- On Day 6, Dr Martin Siebert, the eighth respondent ("Dr Siebert"); Dr Duncan Hill, the seventh respondent (who gave evidence remotely) ("Dr Hill"); Finola Johnson, Finance Manager ("Mrs Johnson") and Jannyne Savage, Deputy Practice Manager ("Miss Savage").

Findings of Fact

36. In this section we set out our findings of fact based on the evidence we read and heard.

37. The protected disclosures took place on 9 October and 10 November 2023. They related to concerns the claimant had about the practice of Dr Siebert. The claimant's case is that the way she was subjected to a number of detriments because she made those disclosures. Those detriments included her "dismissal" from her long term locum engagement on 17 November 2023.

38. We heard evidence about the protected disclosures and the investigation into them carried out by the respondents. It is not our role as a Tribunal to decide on the validity of the concerns raised by the claimant about Dr Siebert's practice. As we have said, the respondents accept that the both the claimant's disclosures were protected disclosures for the purposes of the relevant legislation.

39. We set out our findings of fact about each alleged detriment at the appropriate point in the chronology of events below.

<u>Credibility of witnesses and reliability of their evidence</u>

40. Before we set out our findings of fact we set out our general findings on the credibility of witnesses and the reliability of their evidence.

41. We find that there were aspects of the way the claimant presented her case which damaged her credibility as a witness and cast doubt on the reliability of her

evidence. First, she had in places in her witness statement included what were presented as direct quotes of things said by others, e.g. what was said by Dr Adab at the meeting on 9 October 2023 at paragraph 64 of her witness statement. However, in oral evidence she confirmed that these were not necessarily verbatim quotes but that (Dr Adab in this case) had said "words to that effect". Second, she made but then withdrew an allegation of fabrication of a document against Mrs Johnson. Third, we accept Miss Smith's submission that the claimant was dogmatic in refusing to accept the possibility that entirely reasonable alternative explanations might exist for the events in the case. One example of this was the withdrawn detriment allegation at 8.(h) against Professor Chew-Graham. We set out our findings about that incident at paras 143 below. Taken together, we found those matters did undermine the claimant's credibility as a witness and the reliability of her evidence. Where there was a conflict between that evidence and those of the respondent's witnesses, we have in general preferred their version of events.

42. Of the respondent's primary witnesses, we find Dr Adab to be a credible witness. He made mistakes (for example in more than once in correspondence referring to the conversation with the claimant on 14 September 2023 as having taken place on 29 August) but was willing to accept in cross examination evidence that he had made them. We find he was an honest witness doing his best to recollect matters from a very pressured time. We found his evidence in general more reliable than that of the claimant. We found both Mrs Johnson and Miss Savage to be credible witnesses who gave straightforward and honest evidence. They were willing to accept where they could not remember or were unsure about matters.

Background facts – CFP

43. The first respondent is a very large GP practice in Manchester. At the time of the events in this case the second to ninth respondents were the partners in the practice. CFP had around 23,000 patients on its list. It had around 82 permanent staff. 31 of those were medical staff and the remainder support staff.

44. CFP operated from Chorlton Health Centre. However, in October 2021 it had merged with a nearby GP practice, Corkland Road. The intention at the time of the merger was that they would be run as separate and distinct practices. That changed when the GP partner at Corkland Road retired in February 2023. A decision was made to consolidate staff and services across both sites. We deal in more detail with the impact of the merger. In practical terms, one of the impacts was that from around February 2023 CFP operated across the 2 sites. All GP services with the exclusion of the on-call GP moved to Chorlton Health Centre. At the time of the events in this case the nurses and urgent care team operated from Corkland Road as a branch site.

Winter Pressure Funding

45. Winter pressure funding ("WPF") is financial support provided to GP practices by the NHS to help them manage increased demand over the winter months, when seasonal illnesses are more prevalent. WPF can be used to increase GP capacity or for other purposes. For example, in January to March 2021, CFP had offered extra winter sessions to the claimant and other locums funded by its WPF (p.254).

46. The amount of WPF a practice receives varies year on year and is difficult to predict. We accept Dr Adab's evidence that CFP was usually informed about the amount granted in October or November each year but would have an informal

indication of how much was likely to be awarded before then. WPF can be influenced by national priorities, e.g. on 18 September 2023 Dr Mulkeen forwarded Dr Adab an article in the Health Services Journal ("HSJ") reporting that the Government had written to the NHS to say that additional winter funding of £200m it had announced would be used to cover the cost of strike action and would not be available "to support new initiatives".

47. We find uncertainty about WPF was a significant issue for CFP as for other practices, making it difficult to plan with certainty when heading into Autumn/Winter. Until the WPF position was confirmed CFP could not know for certain what funds it might have available to cover any additional staffing costs over the winter. It had to make plans as best it could based on informal indications.

48. There was a dispute between the parties about when CFP (and specifically Dr Adab) became aware of the WPF to be received for 2023-24 and its implications for the claimant's future. We deal with that at paras 177-180 below.

Management of CFP

49. Dr Adab and Dr Mulkeen were the joint managing partners at the time of the events in the case. The other partners took part in partners' meetings and decision making to varying degrees. As managing partners, Dr Adab and Dr Mulkeen took significantly more responsibility than others for running the business of the practice. Dr Adab's particular focus was on the financial aspects of the business.

50. The partners were supported by management employees. Mrs Johnson was Finance Manager. Siobain O'Neill ("Ms O'Neill") was CFP's "Business Manager" (what would in other practices be referred to as the "Practice Manager"). However, she was on garden leave from late August 2023 until her departure a few months later. A CQC Inspection in January 2024 recorded that there was still no permanent practice manager in place so that the duties of other staff had been increased to cover practice management (p.737). Miss Savage was Deputy Practice Manager from June 2022.

51. The CQC in its March 2024 report characterised CFP's governance structures systems as "unstable" whilst awaiting the employment of a new practice manager (p.742) and described CFP as having been through a "period of turmoil when there had been a merger with another practice [i.e. Corkland Road], senior practice staff had left or resigned and an internal investigation had been carried out" (p.745).

52. We find that description consistent with the picture which emerged from the evidence we saw and heard. That picture was of a limited governance and management structure facing the significant challenges of running a very large GP practice. The impression we formed was that the practice had grown quickly through a series of mergers without the management infrastructure and systems keeping pace. In 2023 there were specific factors which made things particularly challenging, namely the fallout from the Corkland Road merger and the absence of a permanent Practice Manager when Ms O'Neill was placed on garden leave. We find that (as CQC also reported) the practice manager's duties at the time of the events this case is about were shared between Mrs Johnson (as Acting Practice Manager) and the partners. In reality, we find, the burden of running the practice fell primarily on Dr Adab and Dr Mulkeen. We find that was a demanding burden, particularly on Dr Adab because he was the lead in relation to financial matters. At that time he was

also Deputy Chief Medical Officer at Manchester Local Care Organisation ("the LCO") which ate into the time he had available to deal with CFP matters.

53. We find that during the period with which we are concerned, decision-making about partnership matters (including recruitment and use of locums) was regularly done by email. That was usually by Dr Adab circulating emails of proposed actions for approval or comment from the other partners' colleagues. He would then take the steps necessary to implement those decisions himself or give instructions to Ms O'Neill or Mrs Johnson to do so. That decision-making by e-mail was partly consequence of the need to make decisions between the monthly meetings, in response to matters arising (e.g. one of the salaried GPs asking to reduce their sessions). It was partly a reflection of the nature of a GP practice, which made it difficult to get all the partners together because of the variation in their working patterns.

54. There were monthly partners' meetings which took place in closed session at the end of the monthly practice meetings. No formal minutes were taken of that closed session but action points agreed would form the basis of subsequent email discussion. A practical consequence of this was that there were limited and/or fragmented records of what partnership decisions had been made, when and why. To take an obvious example there was no minute or other record documenting when, why and by who the decision to end the claimant's engagement as a locum was made.

55. In his submissions, Mr Williams relied on this lack of transparency as casting doubt on the respondents' versions of events. We will return to that issue in dealing with specific disputed incidents below. However, our overall finding is that the respondents' practice of not diligently recording their decisions in a structured way reflected their focus being on making the decisions and implementing them rather on what might be called the associated paperwork. One obvious example is Dr Adab having to write to Dr Megan Alderton ("Dr Alderton") on 11 October 2023 (the day before she was due to start working for CFP as a salaried GP) to apologise that he had not yet provided her employment documentation and that her contract of employment had yet to be finalised (p.374).

<u>The claimant's engagement by CFP as a locum</u>

56. The claimant was initially engaged by CFP in July 2020 to provide locum maternity cover for Dr Atherton for 9 months from October 2020. It was not disputed that she worked most Fridays from then until her dismissal. From November 2020 to July 2021 she also worked half days most Thursdays. She covered sessions on other days of the week on an ad hoc basis when CFP needed extra capacity. At the time she worked for CFP the claimant was also working as a regular locum GP for 2 other practices in Manchester and on ad hoc basis for a third. She continued to do so during her period of engagement with CFP.

57. It was not disputed that the claimant worked for CFP for a period of around 3 years. We find the length of the engagement implies more stability than the reality. It is clear from the evidence that there were a number of points where the claimant's engagement might have come to an end were it not for additional funding or CFP having fresh requirements for additional capacity. We find the claimant was aware that that was the position, e.g. in April 2021 she had emailed Mrs Johnson and Dr Adab to ask how long CFP would need her for because another practice was looking for locum cover for maternity leave starting in July 2021. Similarly, in December

2021 the claimant had emailed Mrs Johnson to check whether (as Ms O'Neil had apparently indicated) CFP may be able to keep her on after January 2022. We find those kinds of discussions simply reflected the nature of work as a locum. The length of time working at a particular practice as a locum provided no guarantee that it would continue. Dr Freedman in her evidence gave us an example of a locum position she had filled for many years which was terminated by one week's notice.

58. The claimant continued to work Fridays regularly up to the point when her engagement was terminated in November 2023. She had no written contract and would discuss the terms of her engagement with Dr Adab when it came to increasing her daily rate. She was primarily based at Chorlton Health Centre but had on occasion been required to work at Corkland Road.

59. We find that the claimant was well regarded as a GP. The length of her engagement with CFP meant that she was involved in matters such as supervising trainees which might not have been the case had she been a short-term locum. We find it entirely understandable that the claimant viewed herself as part of the fabric of CFP so that the termination of her engagement at short notice came as a genuine shock. As we discuss in the next section however, we find that the partners' view of matters was different.

CFP's use of locums and recruitment of salaried GPs

60. CFP used locums to cover shortfall in GP capacity. Mr Williams in his closing submissions for the claimant did not dispute that CFP had an intention to make less use of locums and to staff with salaried GPs. We find that was the case from well before the date the protected disclosures relied on by the claimant were made.

61. We find that the use of locums was viewed by CFP as necessary but not desirable. Engaging locums to cover GP sessions on a day rate was more expensive than employing salaried GPs to cover those sessions. In an email on 17 August 2022 (p.283) Dr Adab told his fellow partners they need to address locum costs "immediately". That was because locum costs in the previous year had been 4-5 times what they normally were because of the need to cover sickness absence and maternity leave at Corkland Road. That had used all of CFP's WPF and the indication was that they would only have a third or so of that funding available in winter 2022. In December 2022 a part time salaried role was offered to Dr Pickworth with effect from February 2023.

62. The need to cover Corkland Road GP capacity continued into 2023 and was exacerbated when the sole partner there resigned in February 2023. As at March 2023, 2 of the Corkland Road salaried GPs were off sick, 1 was on maternity leave and 1 was looking for a partnership which CFP could not at that point offer. It was not clear to CFP whether those salaried GPs would remain with the practice in the future or would choose to leave and, if they did return, when they would do so.

63. There was a need to cover the "missing" GP capacity but uncertainty whether that need was short-term or long-term. The central issue was whether CFP should recruit salaried GPs to supply the missing GP capacity in the long-term or cover with locums in the short-term until it was clear what was going to happen. The consensus was to recruit more salaried GPs on a part-time basis. Because they needed to allow a minimum of 3 months for recruitment, Dr Adab and Dr Mulkeen proposed that in the meantime they ask the claimant or Dr McCurley (another locum) to do a couple of regular sessions a week to make up the shortfall caused by the retirement of the Corkland Road partner.

64. When it came specifically to the claimant's Friday session, we find it had been a long-held aim of the respondents to convert them to salaried GP sessions. In the same 17 August 2022 email referred to above Dr Adab noted that in the previous practice meeting:

> "We had a discussion about what to do with [the claimant's] sessions, as we need to convert these into salaried sessions in the near future. However, we will get some winter pressure funding from Sept - March so we suggest to keep her on as long as we can have her time reimbursed."

65. We find that was still the aim in May 2023. On 26 May Dr Adab and Dr Mulkeen reported back to the other partners by email about salaried GP interviews they had just completed. They confirmed the intention had been to recruit for up to 10 sessions to cover the departure of the Corkland Road GPs and "with a view to covering [the claimant's] long term locum sessions" (p.310). They proposed offering sessions to 3 candidates, one of whom was to be offered a full day on Friday. The other partners agreed with that proposal but none of the candidates accepted the roles offered.

66. As a result, Dr Adab and Dr Mulkeen had to re-start the recruitment process. That resulted in the appointment of Dr Gent and Dr Sutton as salaried GPs following interviews on 26 July and 7 August 2023. Dr Gent started on Monday 4 September 2023 covering 6 sessions (Monday to Wednesday). Dr Sutton started on Wednesday 6 September 2023 covering 4 sessions (Wednesday to Thursday). Both were experienced GPs.

67. In anticipation of Dr Gent and Dr Sutton starting, CFP ended the regular engagements of 2 of its long term locums, Dr McCurley and Dr Stone. Dr Stone's last regular shift was 16 August 2023 and Dr McCurley's on 24 August 2023. Although there was no direct evidence about how much notice they were given to end those engagements it can only have been 1-2 weeks at most given when the interviews took place.

68. Dr Alderton had also been interviewed on 26 July 2023. She was still completing her GP training. She interviewed well but was not appointed at that point. However, the respondents were concerned that there was not enough cover on Thursdays. At the end of the week of 7 August 2023 Dr George, a salaried GP, asked to drop 2 sessions imminently. On Friday of that week (11 August), Dr Adab emailed Dr Alderton to ask whether she was still interested in salaried work on Thursdays and Fridays. She confirmed she was.

69. Dr Adab emailed the other partners on 15 August to propose that they offer Dr Alderton 4 sessions a week covering Thursdays and Fridays. He explained that she did not finish her training until October 2023 but said that "would suit us fine". He accepted that offering her 4 sessions would initially mean an increase of 2 salaried sessions over the net savings from those GPs who had left in 2023. However, Dr Adab said, "I would advocate that we lose [the claimant's] Friday once Dr Alderton got settled in, which would recoup that cost." The 3 partners who responded approved the proposal.

70. Dr Adab spoke to Dr Alderton by phone on 16 August (pp.917). She accepted a salaried post working 4 sessions Thursdays and Fridays. Mrs Johnson wrote to Dr Alderton on 17 August to express delight at her acceptance of the role and to confirm they would forward the relevant paperwork to her. She wrote to her again on 30 August confirming they would have the paperwork sent to her "soon" (page

326). In fact, that paperwork was not sent until 11 October 2023, the day before she started (p.374). We find that was an example of the last minute and unstructured approach to records and paperwork at the time resulting from the pressures (particularly on Dr Adab) in managing the business of CFP.

71. In his written submissions (para 18), Mr Wiliams said that Dr Alderton's starting date was somewhat unclear and that the claimant considered that "it was likely brought forward due to the lack of any contemporaneous correspondence".

72. We do not find the evidence supports that submission. We accept that there is no confirmation of Dr Alderton's start date in her email interactions with Dr Adab and Mrs Johnson in August in the Bundle. The first confirmation of the start date of 12 October in the Bundle is in Mrs Johnson's email to all staff on the morning of Tuesday 10 October (p.372).

73. However, Dr Adab's email on 15 August 2023 makes it clear that it had always been the intention that Dr Alderton's employment started in October when her training ended. Dr Adab confirmed in oral evidence that he knew by the time of his conversation with the claimant on 14 September that Dr Alderton was going to start on 12 October It was not put to him that Dr Alderton's starting date was brought forward.

74. The first protected disclosure relied on by the claimant was made at the meeting starting at 4.30 p.m. on 9 October 2023. Mrs Johnson's confirmation of the 12 October start date is sent at 10:08 the following morning. For the start date to have been brought forward would require Dr Alderton to have been contacted overnight on the 9 October or first thing on 10 October and agreed to start a few days later. We find the timeline makes the claimant's suggestion inherently implausible. Given the absence of any evidence supporting the claimant's submission we find the Dr Alderton's start date was not moved forward and had always been intended to be Thursday 12 October 2023.

<u>The claimant and Dr Adab's phone conversation on 14 September 2023</u>

75. The claimant had been made aware of the salaried GP opportunities. However, at the time they were advertised her family situation meant she preferred to be engaged as a long-term locum. Her unchallenged evidence was that by September 2023 those circumstances had changed and she was actively looking for partnership. She decided to ask Dr Adab whether there was a partnership opportunity at CFP.

76. On the morning of Thursday 14 September 2023, the claimant What's App'd Dr Adab to see if they could have a brief in person chat. After further WhatsApp exchanges it was eventually agreed that the claimant would instead call Dr Adab that afternoon (p.344-345). The call took place around 4:35 and lasted 10-12 minutes.

77. Before that telephone call took place Dr Adab messaged Dr Mulkeen to let her know that the claimant had asked to speak to him. He wrote "hopefully going to dump us before we have to dump her" (p.914).

78. We find the conversation between the claimant and Dr Adab was a cordial one. In their evidence, Dr Adab and the claimant agreed that the claimant had asked whether there was a possibility of her obtaining a partnership at CFP and that Dr Adab told her that there were no partnership opportunities. They also

agreed that Dr Adab had given no indication to the claimant that CFP had already decided to terminate the claimant's long term locum engagement once Dr Alderton had "settled in".

79. There was, however, a dispute about whether the claimant had asked Dr Adab how long her locum engagement would last. Dr Adab's evidence was that she had done so and that his response was that that would depend on the need for locum GP support and how the WPF funding was to be allocated. The claimant denied she had asked about her locum position and denied that there was any reference to WPF.

80. We prefer Dr Adab's version events. Although Mr Williams submitted that the claimant's evidence was clear in her evidence, we have already explained above why, in general, we found Dr Adab to be a more credible witness. The fact that he made genuine errors (such as getting the date of the conversation wrong in his email of 3 November 2023 (p.511)) does not undermine his credibility. That is particularly when he was willing to accept in evidence where he had made such mistakes. Dr Adab's version of events was also corroborated by Dr Mulkeen (para 34 of her witness statement), who we found to be a credible witness and whose evidence we found reliable.

81. We were not convinced by Mr Williams's submissions about why we should prefer the claimant's evidence (para 19 of his written submissions). He submitted that Dr Adab's failure to use this "perfect opportunity" to tell the claimant that she would no longer be required in November damaged his credibility. We accept Dr Adab's evidence that he did not at that point want to lose the services of a locum who had proved reliable in the past and who might be needed for the future if Dr Alderton (who was an unproven newly qualified GP) did not work out. In those circumstances, while not necessarily commendable, his reluctance to tell the claimant what CFP intended was understandable. We also find that he was apprehensive about telling the claimant that her engagement was to be ended, something that would not usually be done in person (albeit over the phone) nor usually done by one of the partners rather than the practice manager.

82. Mr Williams also submitted that it was unclear why the claimant would know about the 2 salaried GPs starting (on days she did not work) so that she would be minded to enquire about her continued engagement. However, it is clear from the Bundle that the claimant was in close contact via WhatsApp with the other long-term CFP locums, especially Dr McCurley (see, e.g. p.292 and p.639). We find it inconceivable that she would not (at the very least) know that Dr McCurley's long term locum engagement had been ended in August, raising concerns about her own position.

83. We do not accept Mr Williams's final submission that the failure to keep a record of the conversation casts doubt on Dr Adab's version of it. The claimant did not prepare a written record until 11 April 2024 (p.758), nearly 7 months later and in response to the respondents' ET3 in this claim. It includes direct quotes or "words to that effect" despite that passage of time and despite being prepared for the purposes (or at least in the context of) litigation. We find it less reliable than the email sent by Dr Adab less than 2 months later (p.511) confirming that he told the claimant that CFP's need for locum support was kept under review based on there being a continued need and available funding (p.511).

84. The claimant contacted her husband after the call with Dr Adab to say "it's a no". We accept her message does not refer to any discussion about locum engagement but do not find that that undermines Dr Adab's version of events. It

was clear to us that from the claimant's point of view the primary purpose of the conversation was to check out the possibility of her obtaining a partnership at CFP so it is not surprising that it does not refer to what Dr Adab said about continuing locum engagement. That is particularly so when we find that he said nothing very concrete either way about the continuation of the claimant's long-term locum engagement.

Events from the 14 September conversation until the claimant's submission of an SEA on 3 October 2023

85. On 18 September 2023, Dr Mulkeen sent a WhatsApp to Dr Adab sharing the HSJ article about winter funding being used to cover industrial action. She commented that this was "bad news for Colaco".

86. On Friday 29 September the claimant was processing a blood test result and was very concerned that Dr Siebert had not referred the patient concerned. The claimant completed a Significant Event Analysis ("the 29 September SEA") form in relation to the matter.

87. An SEA form is a reflective learning tool. It is a report of an event with the aim of the practice learning from it, rather than a means of raising concerns about a named practitioner. The form defines a significant event as "a type of event which when analysed and if the opportunity were taken to share the history and outcomes of this, other primary medical care providers would benefit from knowledge of this." The form is anonymised, identifying neither the person who raised it nor the practitioner(s) involved in the event giving rise to the SEA. SEAs were discussed in at the Monthly Practice meetings. Actions arising were identified and a date set for review at a future Monthly Practice meeting.

88. The claimant's evidence was that she had previously raised an SEA about unsafe prescribing by Dr Siebert in or around June 2023. Based on her own account in the Bundle (p.895) we find that that that SEA related to multiple GPs (including the claimant) being involved in a prescribing error rather than being solely about Dr Siebert.

89. The claimant emailed the 29 September SEA to Dr Adab and Mrs Johnson on 3 October 2023 (p.356). In her email the claimant asked Dr Adab for an in person chat on Thursday 5 October if he was free. She explained that she had "significant concerns about [Dr Siebert's] clinical practice".

90. The claimant had taken a number of steps before she sent that email. Her husband's unchallenged evidence was that she discussed the issue with him. He is a consultant clinical oncologist. He agreed that before raising her concerns the claimant should first look to see if what the claimant regarded as "deficient practice" was part of a wider pattern. If it was, he agreed she would need to bring it to the attention of Dr Adab and Dr Mulkeen as CFP's managing partners. The claimant then carried out a review of Dr Siebert's consultation notes for 4 weeks up to and including the 29 September 2023. Having established what she saw as a wider pattern, she discussed some of the scenarios she had come across with her husband. He agreed she should ask to meet Dr Adab and Dr Mulkeen. There was no suggestion that the claimant had shown her husband patient notes or otherwise disclosed identifiable patient information to him. We find the claimant took her responsibilities to raise genuine concerns seriously but was also understandably concerned about the implications of raising concerns about a partner in the practice for which she worked as a locum.

91. The claimant spoke to her indemnity insurers on 30 September and on their advice contacted the GMC confidential helpline to take advice. The indemnifiers had also advised her to raise the issue with the GP partners in CFP or the Local Medical Committee ("LMC"). The claimant also took advice from her GP appraiser, Dr Connolly, before sending her 3 October email.

92. The claimant's husband's unchallenged evidence was that he encouraged the claimant to ask whether CFP might consider referring the matter to the GMC because of concerns about how Dr Siebert might react if he found out the claimant had referred him. On 2 October 2023 the claimant also took a screenshot of her clinic bookings on EMIS (the respondents' electronic management system) for 24 November 2023 (p.352). In her witness statement she said that she did so because she "had a suspicion respondents may remove [the shifts] without informing me" (para 42). Asked by Miss Smith in cross-examination about the apparent lack of trust in the respondents which that demonstrated even prior to making the protected disclosures, the claimant said she had never been in such a dispute before. She was concerned she might be treated differently because of the experiences of colleagues and friends. She suggested Dr McCurley and Dr George had experienced negative consequences due to disagreements with the CFP partners. Neither appeared as a witness so we had no evidence to support that.

Events from the claimant's email of 3 October and the meeting on the 9 October 2023

93. Dr Adab responded to the claimant's email on 3 October almost immediately. He explained that he was not in on Thursday or Friday (5 and 6 October) and that he would have a look and get back to her. The claimant responded that evening suggesting she could pop in on Monday 9 October over lunchtime if that would suit. Dr Adab responded later that evening saying "thank you, I will get back to you".

94. The claimant's evidence (para 44) was that due to what she considered to be Dr Adab's "curt tone", she felt that raising concerns about Dr Siebert would not go down well with the respondents. Mr Williams submitted (para 20 of his written submissions) that it was surprising that Dr Adab had not read the SEA immediately given the reference to "serious concerns" about a GP partner's practice. We accept Dr Adab's evidence that he was under time pressure both because of his CFP duties and his LCO role when he received the email and that as SEAs were usually discussed at Monthly Practice Meeting he did not read it at that point. It was not until the claimant's email on 9 October that she herself characterised the matter as "urgent". We find any "curtness" in Dr Adab's tone during that exchange was a reflection of how busy he was rather than an indication of anything more sinister or of his avoiding the issue.

Events on the 9 October 2023

95. At 7.11 a.m. on the morning of Monday 9 October the claimant emailed both Dr Adab and Dr Mulkeen (copying in Mrs Johnson) to say it was "imperative" that she speak to one (or preferably both) of them in person that day about an urgent GMC referral in relation to serious concerns about Dr Siebert's clinical practice. She asked Mrs Johnson to also be present and said she could come in anytime from 11 a.m. that day.

96. Dr Mulkeen responded at 8:17 a.m. to confirm that they were all available to meet at 4.30 p.m. that day.

97. At 9.14 a.m. that day the claimant responded to Dr Mulkeen to confirm she would see them meeting at 4.30 p.m. She attached an updated copy of the 29 September 2023 SEA. We did not have the non-updated version in the Bundle but the claimant explained she had updated "to now include possible probity concerns". The updated version included Dr Siebert's initials in the description of the event and in the "key issues" and "areas of concern" sections referred to wider concerns about Dr Siebert's clinical practice and possible probity issues relating to possible incorrect information entered in the patient's notes (p.360-362). In the "Suggestion to prevent recurrence" section the claimant had entered "investigation into Dr Siebert's wider clinical practice".

98. The meeting between the claimant and Drs Adab and Mulkeen took place at 4.30 p.m. as arranged. Mrs Johnson attended to take notes.

99. It was not disputed that the claimant talked through the SEA and the other instances she had found in Dr Siebert's consultation which gave her cause for concern. It was also not disputed that Dr Adab and Dr Mulkeen asked the claimant for them rather than her to tell the other partners. There was a discussion about whether there should be a referral to the GMC and, if so, who should make that referral. The claimant preferred CFP to make the referral because of uncertainty about how Dr Siebert might react.

100. The central dispute about the meeting was whether Dr Mulkeen had told the claimant (in answer to her question) that there had been no previous complaints against Dr Siebert.

101. There were 2 written records of the meeting.

102. The claimant's version was set out in the email she sent to Drs Adab and Mulkeen and Mrs Johnson at 11.25 p.m. on the day of the meeting (pp.363-368). We will refer to that as "the Claimant's Record of Concerns". She summarised in that email the cases which caused her concern from Dr Siebert's consultation notes. We find that the claimant and her husband discussed what happened at the meeting. The claimant's husband's unchallenged evidence in his witness statement was that he did not believe there had been no previous complaints against Dr Siebert. He told the claimant that they were lying and would try and cover it up (or words to that effect). He therefore told her to type up the pertinent points from the meeting and email them to the respondents that evening. His evidence was that he was suspicious the respondents would try and to alter the minutes to suite their narrative or distort the facts while attempting to cover up the concerns raised (paras 19-20). He appears to have formed that view despite the respondents as yet not having responded to the concerns raised by the claimant at the meeting.

103. Mrs Johnson's version was, we find, a typed note of the meeting based on the handwritten notes she took during the meeting (pp. 369-370). The claimant initially challenged those notes and submitted they were in some sense fabricated, but then withdrew that challenge. The claimant accepted they were genuine, but said they were inaccurate, in particular when it came to the failure to record what had been said about previous complaints about Dr Siebert. Mr Williams suggested that she was right to doubt them given that Dr Adab had told Professor Chew-Graham in an email on 12 October that the notes were verbatim (p.410) when they were clearly not, and that Dr Adab could not remember whether he had checked the handwritten or typed version of the notes and when. We find that was simply a misunderstanding about what "verbatim " meant.

104. Mrs Johnson's notes did not refer to the claimant asking about previous concerns nor Dr Mulkeen's answer. Her notes are not as full as the claimant's. The claimant's note records her asking whether any patients had come to significant harm as a result of Dr Siebert's practice and Dr Mulkeen stating that CFP had had no complaints about Dr Siebert and that no patient had come to harm to her knowledge.

105. Dr Mulkeen's evidence was that she did not say that CFP had had no complaints. In evidence she said she would never say that about any GP because every GP is subject to some complaints. We find that she did respond to a question about patients coming to serious harm by saying that she was not aware of any. We found her a credible witness and find she did not say that there had been no complaints against Dr Siebert.

106. We find that after the meeting Dr Adab rang Dr Siebert to let him know that concerns had been raised about his clinical practice. Dr Siebert's recollection of that call was not good. However, we accept Dr Adab's evidence he did not tell Dr Siebert who had raised the complaint. His evidence on that point (which we found reliable) is corroborated by his email of 31 October 2023 to the other partners (p.493). We also accept his evidence that he told Dr Siebert on that day because Dr Siebert was due to be away on holiday for 2 weeks and, in Dr Adab's judgment, it was preferable that he be made aware of the complaint before he left.

Events from 10-17 October 2023

107. On 10 October Dr Mulkeen acknowledged the claimant's email of the previous night. She said that they took her concerns seriously and would be discussing with the other partners that day. Following that, they would take appropriate action to investigate the matters raised and get back in touch (p.371).

108. On the same day it was agreed that Drs Atherton, Hill, Chavdarov and Professor Chew-Graham would review the clinical notes of the cases in the claimant's Record of Concerns applying the Royal College of GP's ("RCGP") template for assessing consultations. Dr Freedman would then collate them into a report. Dr Adab sent Drs Atherton, Chavdarov and Hill the claimant's Record of Concern that same day (p.434).

109. On the following evening, Dr Adab forwarded the claimant's Record of Concerns to Professor Chew-Graham. Earlier that day he had spoken to her to let her know about the complaint, the 9 October meeting and the proposal to carry out an internal investigation. Professor Chew-Graham agreed with that suggestion and had also raised concerns about the claimant's probity. Her view was that as a locum, the claimant had no right to look at patient's notes she was not consulting.

110. She reiterated that view in the subsequent emails exchange with Dr Adab on 12 October (pp.384-387). She went on to say, however, that the claimant had probably identified real problems with Dr Siebert's practice or at least his note-keeping/communication She also referred to the fact that given the number of previous complaints about Dr Siebert his communication style left a lot to be desired and that "he doesn't learn". In addition to an internal investigation, she said they would need to put a performance management agreement in place with Dr Siebert and she agreed with the claimant that he should not be supervising trainees. She accepted that if the claimant wished to refer Dr Siebert to the GMC she was entitled to do so. She also said she thought "[the claimant] may try to bring [CFP] into disrepute as she could accuse of not acting on [their] concerns before".

111. Professor Chew-Graham reviewed the claimant's Record of Concern. She added her comments in red to that document at pp.403-409. She agreed with the majority of the points made by the claimant but reiterated that as a locum she should not have reviewed Dr Siebert's other consultations because she did not have the patients' consent to look at other consultations. Instead, she should have brought the matter to the partners. In relation to the claimant's email recording that Dr Mulkeen stated that CFP had had no complaints about Dr Siebert, Professor Chew-Graham commented that "it was unwise to state this – we receive regular complaints about [Dr Siebert] – tho' usually about communication rather than clinical practice (p.408)."

112. Later in that email exchange on 12 October, Professor Chew-Graham suggested that if the claimant had not interrogated the whole of Dr Siebert's notes for September they should do that to get an idea of the proportion of consultations which were not documented well. Dr Adab agreed that was a good idea to provide some context. He said maybe they could agree on how to pick a random sample. As Mr Williams pointed out, that was a somewhat curious thing to say given the partners had already agreed on 10 October that they would investigate by reviewing the cases of concern included in the Claimant's Record of Concerns. We find it reflects CFP and Dr Adab trying to work out the best approach "on the hoof" having not had to carry out a similar internal investigation before.

113. By 16 October 2023 Dr Adab had collated the reports of the reviewing partners other than Dr Hill so they could be discussed at the partners meeting on the evening of 17 October 2023. Dr Hill added his at 12:21 p.m. on 17 October (p.446).

114. At 17:51 (before the partners meeting that evening) Dr Adab also circulated for discussion a draft of an email to the claimant which had been checked by an employment layer recommended to him. That draft email confirmed that a copy of Mrs Johnson's minutes of the 9 October meeting would be provided for review by the claimant and attached a copy of the Freedom to Speak Up Policy prepared on 12 October 2023. The draft set out the steps CFP was taking, namely:

- "Dr Atherton, Dr Chavdarov, Professor Chew-Graham and Dr Hill will investigate the ten cases you have identified as being of concern
- They will provide their clinical opinion which we will collate into a single report
- That report will provide the basis for our further actions. These actions will need to be agreed by the Partnership. "(p.465).

<u>17 October 2023 - The Laptop incident (detriment 8(a))</u>

115. The 17 October 2023 was also the date of the first detriment complained of by the claimant. That was characterised as "her laptop being taken and not returned to her". We do not accept the claimant's characterisation of the laptop as being "hers". We find that only partners had laptops permanently assigned to them. Based on Mrs Johnson's evidence and the claimant's evidence at para 90 of her statement, we find there were 3 "spare" or "pool" laptops that could be issued to salaried GPs or locums on an "as needed" basis.

116. When Dr Adab confirmed in November 2020 that the claimant could have a laptop that involved Dr Atherton returning hers "for now" (p.256). We find that by 13 April 2021 the claimant did not have a laptop because when having to self-isolate

due to COVID she emailed Dr Adab to say she could work from home if CFP could provide her with a laptop (p.262). The claimant's own evidence (para 89) was that she asked for a laptop again on 10 February 2023 because she needed to write a detailed referral for a patient. By definition that must mean that by then she again did not have a laptop.

117. We accept that the claimant did have the laptop for a continuous period of months from February 2023 and that it was returned to her in September 2023 after having memory added. However, that did not make it "hers". We find it could be recalled if needed by another salaried or locum GP to enable them to do work for CFP but there had been no need to do so until Tuesday 17 October 2023.

118. We find that on the morning of that day Dr Sutton, one of the newly appointed salaried GPs, notified Mrs Johnson that she was unwell and would not be able to come to work on the next day but would be able to work from home if a laptop could be provided. Mrs Johnson messaged the claimant to ask if they could have her laptop for Dr Sutton. It was not a CFP working day for the claimant, who was next due in on Friday 20 October. The claimant explained she was working that day but the GP was welcome to collect it from her that evening. She confirmed she was happy for Mrs Johnson to pass on her number to Dr Sutton. Dr Sutton was too unwell to pick up the laptop herself but made arrangements for her husband to do so. The claimant suggested there was something odd about that but it seems to us a pragmatic solution to the problem of how to get the laptop to Dr Sutton.

119. At 11.15 Mrs Johnson emailed Dr Adab and Dr Mulkeen to confirm that the claimant was fine for Dr Sutton to have her laptop and that Dr Sutton's husband would pick it up that evening. Dr Adab responded to thank her saying "what a nice husband" (p.445).

120. We find that Mrs Johnson did speak to Dr Adab and/or Dr Mulkeen about the situation. We found Mrs Johnson to be a credible witness doing her best to give honest evidence. We accept her evidence that she did not (and was not instructed to) reclaim the laptop from the claimant because she had raised concerns about Dr Siebert or as a means of stopping the claimant from carrying out any further "investigation". We accept her evidence that the claimant did not ask for the laptop back and that, had she done so, she would have returned it to the claimant unless someone else needed it.

<u>Events from 17-20 October 2023</u>

121. Dr Mulkeen emailed the claimant after the partners meeting on 17 October to thank her for her patience and confirm they would respond formally by the end of that week. On 18 October the claimant thanked her for the update.

122. The final version of the email response discussed at the partners meeting was sent to the claimant on the evening of Friday 20 October 2023. It differed from the draft in saying that Mrs Johnson's notes would be sent by separate email (but omitting "for review") and in not including the 3 bullet points setting out the steps being taken to investigate. It also included a request that in future, any concerns were raised in accordance with the Freedom to Speak Up policy, a copy of which was supplied. Dr Adab was not clear why those amendments had been made. On balance, we find they must have arisen from discussion at the partners meeting.

<u>20 October 2020 – the claimant became aware that she was no longer to be a GP trainee supervisor (detriment 8(b))</u>

123. Each clinic scheduled at CFP would include supervision slots, to allow trainee GPs to speak to more experienced practitioners about patients they were seeing in the clinic that day. It was not disputed that the claimant had supervised trainees regularly during the period when she worked for CFP. In March 2023 the claimant had emailed Dr Adab because she had noticed that she was no longer supervising. He had confirmed that the reason for that was that CFP thought they were going to get a less than full-time trainee when they created the rota. In his response, Dr Adab confirmed they would be inheriting a Corkland Road trainee so there would certainly be opportunities to supervise and he would ask Mrs Johnson to make sure the claimant was included (p.290).

124. It was not disputed that the claimant had trainee supervision slots on 13 October 2023. She did not on 20 October 2023, was on leave on 27 October and did not have any on 3, 10 and 17 November 2023.

125. Each clinic day was divided into 10 minute slots on the respondents EMIS system. Those slots could be designated as supervision slots, patient appointments (with patient identifying numbers) or breaks. It was possible to obtain a slot history for each slot, taking the form of a pop-up box which could then be screenshot. That would show, for example on what date the slot type was changed from a supervision to a telephone consult with a patient. Mr Williams submitted that the respondents' failure to disclose the slot history for each Friday slot after the first protected disclosure meant it was not transparent and had not discharge the evidential burden placed upon it.

126. However, we found the evidence of Dr Mulkeen and Miss Savage about supervisions sessions reliable and convincing. By October 2023, Miss Savage was in charge of allocating supervision slots. We accept her evidence that there was a hierarchy when it came to the allocation of supervision slots. She would initially allocate the supervision slot to the GP trainer (i.e. the assigned supervisor of the trainee). If they were not available, she would allocate the supervision to a partner, then to a salaried GP. Supervision by a locum was the final option.

127. We find that CFP's partners have no direct involvement in allocating supervisions. The exception would be occasions when there was a decision that a certain partner should not carry out supervisions. That decision was taken in relation to Dr Siebert after the claimant's first protected disclosure. Miss Savage confirmed she was told not to allocate him supervisions. Miss Savage's evidence was that she was never told not to allocate supervisions to the claimant. We found her a credible witness who gave evidence in a straightforward manner. We accept her evidence on this point.

128. We also accept Miss Savage's evidence that all GPs on the EMIS system are automatically assigned supervision slots which are then removed based on actual need. That is done weeks in advance. We accept Miss Savage's evidence that the supervision sessions for 20 October 2023 were added to EMIS on 30 August 2023. The supervisions slots not required were changed to telephone appointments on 11 September 2023. Those in November were added to EMIS in September and slot type also changed in September, e.g. p.626 shows the slot type for the afternoon 17 November 2023 being made on 22 September 2023.

129. Dr Mulkeen in her witness statement set out an analysis of the position when it came to supervisions on Fridays from 20 October 2023 onwards. Mr Williams challenged the reliability of that analysis. Dr Mulkeen confirmed that she had not

checked the slot history of every slot. She also accepted that she was not aware that the claimant did not carry out supervisions in the morning, so the slot history for those slots would not be relevant. Even accepting that, we find Dr Mulkeen's evidence reliable to the extent that it shows that on 20 October 2023 only Dr Freedman had supervision slots, suggesting there was only one trainee in that day. On 10 and 17 November 2023 Dr Chavdarov had supervision slots.

130. We find that during this period the respondents had fewer trainees requiring supervision on Fridays and that as a locum, the claimant was in those circumstances less likely to be allocated supervision slots. We find those slots were allocated at the latest by the end of September 2023, before the claimant made her protected disclosures.

20 October – claimant becoming aware that no further sessions were booked for her (detriment 8(c)) and that work on the 24 November 2023 which was booked had been cancelled without informing her (detriment 8(d))

131. The respondent accepted that no sessions were booked for the claimant or entered on EMIS after 24 November 2023 and that the session on 24 November was removed without giving her advance notice. Dr Adab's evidence (which we accept) was that he took that decision because it was preferable not to offer sessions on EMIS only to then remove them because they were not going to happen. There was no evidence that the claimant raised the issue until her email of 3 November 2023.

20 October - the Claimant's regular consulting room was changed without informing her (detriment 8(g))

132. CFP The practice had 9 consulting rooms at Chorlton Health Centre which were shared by its GPs and nurses. Room pressures meant some juggling of room allocation.

133. We find that allocation of rooms was something done by Mrs Johnson and Miss Savage, rather than the partners. We accept Mrs Johnson's evidence that they would usually do the room list on a Thursday (Mrs Johnson did not work on Friday) usually a week in advance. Some GPs would have the same room but room moves were common.

134. On the first Friday after her first protected disclosure (13 October) the claimant was allocated Room 8 There is no dispute that on 20 October the claimant was allocated Room 12 (which also seems to have been known as Room 13). We find that when she previously worked Fridays she usually worked from Room 8. She confirmed in oral evidence that when she had worked days other than Fridays she had been allocated different rooms.

135. We accept Dr Mulkeen's evidence that room changes were pretty common. A tangible indication of that is that the GP nameplates for the doors were backed with Velcro so they could be relocated to different room doors. A number of the GPs worked part-weeks so room allocation had to reflect that. The claimant and Dr Mulkeen were allocated Room 8, for example, because Dr Mulkeen did not work Fridays whereas the claimant did. There was no evidence that a GP would be told in advance which room they had been allocated for a particular day.

136. We find that Dr Alderton was allocated Room 12 on her first week (12 -13 October 2023). We accept Mrs Johnson's and Dr Mulkeen's evidence that it was

then decided that it made more sense for Dr Alderton to be allocated Room 8 with Dr Mulkeen. We find that was partly because it made sense for her as a newly qualified GP to have easy access to more senior colleagues. On balance, we find that the more important element was that her work pattern (Thursday-Friday) dovetailed with Dr Mulkeen's (Monday-Wednesday). We also accept Dr Mulkeen's evidence that it was entirely normal for a locum to make way so a permanent member of staff could have a regular base.

137. We do accept Mr Williams's submission that there was a lack of clarity about who had made that decision. Mrs Johnson could not remember but thought it was Dr Adab. On balance we find it was. On the evidence we heard, he was most involved in making day to day decisions at CFP and liaising with Mrs Johnson.

138. We find the consulting rooms all had the same facilities. However, Room 12 was in some way less convenient than Room 8 because it was up the stairs and reached through sets of doors. That meant using it could involve some walking up and down the stairs if patients were in the waiting room downstairs and had to be fetched.

139. In para 155 of her witness statement the claimant gave unchallenged evidence that being upstairs meant she would lose 2-3 minutes of a 10-minute patient slot if she had to fetch the patient from the downstairs waiting room. That would obviously only apply to face-to-face patients. She said that meant she would end up running late which she said was extremely stressful.

140. The claimant messaged Dr George on the morning of the 20 October with a laughing emoji saying "I've been relegated to Room 13" (p.478). In her reply Dr George said "hope you don't have too much upstairs downstairs nonsense".

Events from 21 to 27 October 2023

141. The claimant emailed Dr Adab on Sunday 22 October asking who the Speak Up Guardian and the Organisation Manager identified in the Freedom to Speak up Policy were. She also asked who the "suitably independent" person was who would be undertaking the investigation into her concerns about Dr Siebert's practice and probity, how long the investigation was expected to take and how she would be kept up to date (p.481).

142. On 22 October the claimant emailed a referral about Dr Siebert to the GMC. Her evidence was that resulted from Dr Adab's email of 20 October confirming the matter would be investigated as an internal practice matter. Her evidence was that she was not assured that CFP was taking her concerns seriously. She did not tell the respondents she had made a referral to the GMC.

143. On 23 October Professor Chew-Graham sent the claimant a task on EMIS. She noted the claimant had been seeing a patient and asked her to "updte meds – or could you do a medication review next time yu see her please". (p.482). We accept Professor Chew-Graham's evidence that she would regularly send such tasks to her colleagues when she saw from the system that a GP had seen or consulted with a patient but had not ticked the box to confirm that a medication review had been carried out. We accept her explanation that ticking the box to confirm there has been such a review is important because without it, an assumption would be made that the patient had not undergone a medication review which might lead to the patient being invited in for a specific appointment to conduct one. Ensuring the system accurately recorded that a medication review

had taken place prevented unnecessary appointments and overburdening patients with unnecessary appointments. However, forgetting to tick the box was easily done, leading to uncertainty whether a review had taken place.

144. The claimant responded on Friday 3 November. Her message read “morning Carolyn – yes, no problem I will do meds review next time I see her” (p.505).

145. The claimant had originally included this as a whistleblowing detriment (8(h)), alleging that Professor Chew-Graham’s task suggested the claimant complete a patient's medication review without actually conducting it. The claimant took a screenshot of the task because, according to her witness statement she “could not believe how audacious [Professor Chew-Graham’s] conduct was”. The claimant saw the task as an attempt to entrap her by getting her to tick the box on EMIS to say she had carried out a medication review when she had not seen the patient. It is difficult to understand how the claimant read the task in that way. It clearly asks her to complete the meds “or” to do a medication review next time she saw the patient. The claimant in a WhatsApp to Dr George about this on the 7 November said “I'm so paranoid that they are out to get me now with CCG asking me to do that med review without seeing the pt.(p.522)”.

146. On 26 October 2023 Dr Adab responded to the queries in the claimant’s email of 22 October. He confirmed that they had not identified a Freedom to Speak up Guardian (which was not compulsory in primary care) but that they intended to identify one and that Mrs Johnson was assuming responsibility as Organisation manager while they recruited a new Business Operations Manager. He confirmed they had engaged LMC for advice on a “suitably independent person” and awaited their response, that the internal investigation was underway and that they would endeavour to reach a conclusion within a reasonable timescale (p.488).

147. The claimant responded the following morning to ask whether Dr Siebert had been informed about the questions raised about his practice and probity and, if so, whether he was aware who had raised them. She also asked what actions CFP had taken to mitigate risk to patient safety while the internal investigation was being conducted (p.490).

<u>27 October - The reference request (detriment 8(i))</u>

148. On 29 August 2023 the claimant had asked Dr Adab by WhatsApp whether he was happy for her to name him as a referee for future job applications. He responded “yes, no problem” (p.344).

149. On 19 October, Dr Adab was sent a reference request for the claimant for a role at Manchester University NHS Foundation Trust (pp.470-475). It came in the form of a letter attached to an email. The email included a link to an on-line reference form. The email was from “Beatriz Ribeiro on Trac application 153910739 replycomms-385747011-1f@recruit.trac.jobs”. The subject heading was “Reference for Caroline Colaco”.

150. He was sent a follow up email in the same format on 26 October 2023. It was from “trac.jobs on Trac application 153910739 replycomms-387465219-18@recruit.trac.jobs”. The subject heading was “Reminder: Reference from Caroline Colaco”.

151. It is not disputed that Dr Adab did not respond to either request.

152. This allegation is made against Dr Adab specifically. We do not understand

the claimant's case to be that CFP/the partners as a whole were refusing to provide her with references. Dr Freeman provided one on 26 October (p.485).

153. Dr Adab's explanation for not responding was that initially it was a simple oversight on his part and when he did notice the request and clicked on the link it said the reference had already been completed. There was no evidence that the claimant had chased him or approached him directly about that specific reference despite being alerted by the potential employer that they received no response from him.

154. We have explained already that we found Dr Adab to be a credible witness. We accept his evidence that he had missed reference requests for other colleagues. We also found that by the time when he received this reference request Dr Adab was under significant pressure. In addition to the pressures arising from the absence of a practice manager and the fallout from the Corkland Road merger, by mid-October he was also trying to co-ordinate the investigation into the concerns raised by the claimant about Dr Siebert. He was also trying to sort out the documentation for Dr Alderton's contract, which they had not managed to get to her before 11 October 2023.

155. In those circumstances, we accept that it is wholly plausible that he would initially overlook the reference e-mails. That is particularly so where the emails had different senders, the senders' names were both unfamiliar and unusual in format and where the claimant had not flagged up that the request was on its way (or chased it up when not provided).

Events from 27 October to 2 November 2023

156. On Tuesday 31 October Dr Adab responded to the claimant's email of 27 October to confirm that Dr Siebert had been informed that a concern had been raised anonymously. He explained that on the advice of the LMC they had engaged a local GP as an "external investigator" and that they would pass him a copy of her concerns for review against the RCGP template. He said he hoped the investigations would be concluded at the start of the following week (i.e. the week commencing 6 November).

157. The external GP concerned was Dr Hopwood. He was a GP at another Manchester practice. Dr Adab's unchallenged evidence was that Dr Hopwood was Clinical Director of the Manchester Primary Care Network and the most experienced GP in it. As such, Dr Adab took the view that he was an appropriate external person to undertake a review of the concerns raised.

158. On 31 October, Dr Adab emailed Dr Hopwood the claimant's Record of Concerns, having removed the details identifying the claimant and her summary of what was said at the meeting on 9 October. We find he must have spoken or emailed to Dr Hopwood before doing so because his email began by thanking him for agreeing to help out.

159. Based on the subsequent email exchanges between them on 6 November, we find that Dr Adab sent Dr Hopwood a second email on 31 October which attached the EMIS records of the relevant consultations and the RCGP template, which he asked Dr Hopwood to use in reviewing the concerns raised. That email was not in the Bundle.

160. On Thursday 2 November the claimant emailed the CFP partners (excluding Dr Siebert) and Mrs Johnson raising clinical concerns about 2 further cases (p.494) and asking that they be passed on to the external investigator. This was the second protected disclosure.

Not inviting the claimant to the Christmas Party - (Detriment (8)(n))

161. It was one of Miss Savage's tasks to organize the CFP Christmas Party. On 2 November 2023 she sent out the invite to that year's party which was due to take place on 9 December 2023 (pp.496-503).

162. We found Miss Savage to be a credible witness and her evidence reliable. We accept her evidence that she used an email group called "All CFP Staff" to send out the Christmas Party invitation. She would then add any additional names to the members of that group.

163. When Miss Savage sent out the email for the 2021 Xmas Party (which took place in May 2022 because of Covid) on 2 February 2022 she added the claimant, Dr McCurley and Richa Miranda (another long-term locum) to the recipients in the email group (p.271) along with another name which was redacted. The same happened for the Christmas party in December 2022 (p.284), with the claimant and other names being added to the CFP all staff email group names.

164. The claimant's name was not added to the recipients' list for the invitation on 2 November 2023. The other long-term locums, Dr Stone and Dr McCurley had already left, and their names were not included. The names which were included are in alphabetical order by surname first for Chorlton Family Practice and then for Corkland Road. We find that Miss Savage had emailed the invitation only to those in the all-staff email group. Her evidence was that it was an oversight not to add the claimant nor any of the trainees who were at CFP to the invitation.

165. By the follow-up invitation on 20 November Miss Savage had added the names of trainees (Dr Hasan, Dr Caird and Dr Halim) to the recipient list (p.646). They are the trainees named in the induction timetable at p.320-322.

166. It was not disputed that those invited by Miss Savage included Robin Starr, a permanent employee who had resigned on 4 October. He was due to finish work on 29 November 2023 before the Christmas party was due to take place. Miss Savage's evidence was that their inclusion was also due to an oversight on her part, this time in failing to remove their name from the all-staff email group when they resigned.

167. As we understand Mr Williams's submission at para 52 of his written submissions, this accumulation of oversights cast doubt on Miss Savage's evidence. It seems to us the opposite is the case. The failure to remove Robin Starr and the failure to add the claimant and the trainees to the original recipient list seems to us consistent with Miss Savage clicking on the all-staff group email without remembering that she needed to add (or remove) anyone. We found Miss Savage a credible and straightforward witness and her evidence on this point reliable. We accept that not including the claimant in the recipients on 2 November was due to an oversight on her part. By the 20 November the claimant had left which explains why she was not included on that follow-up recipient list. None of the locums who had left were.

Events from 3 November to the Practice Meeting on 8 November 2023

168. On 3 November the claimant emailed Dr Adab and the other parters (except Dr Siebert) to say that she had noticed no further shifts had been booked for her at CFP. She asked that her usual shifts be added on EMIS (p.504). On balane, wWe find that it was at this point, rather than 20 October, that the claimant realised that this was the case. We find it implausible the claimant would not have raised the issue sooner if she had discovered it on 20 October.

169. On Friday 3 November 2023 Dr Mulkeen acknowledged the additional concerns the claimant had raised and confirmed they would be passed on to the external investigator. She confirmed that those 2 new cases would be presented as SEAs at the next practice meeting along with the September 29 SEA. She confirmed she had anonymised that SEA and would send it to the claimant to approve the changes made (p.507). She did so on the morning of 8 November.

170. The claimant thanked Dr Mulkeen and asked her for a response to her email that morning about her shifts. Dr Adab responded to the claimant that evening (p.511). He said:

> "As we discussed by phone on 29th August [we find that to be a reference to the 14 September conversation], the practice's need for GP locum support is kept under review based on there being a continued need for additional resource and available funding.
>
> We are anticipating confirmation of our winter funding allocation shortly. The use of that funding and the staffing needs of the practice will, as always, be discussed at practice meeting, which is next week. We will be in touch once that meeting has taken place."

171. That same evening Dr Adab shared the email string starting with the claimant's email of 26 October with the other partners (except for Dr Siebert). He included his response to the claimant, explaining that the email had been drafted by the HR Lawyer he had engaged. He confirmed they would discuss further at the practice meeting on 8 November 2023. Professor Chew-Graham responded saying "goodness me - why is she so persistent" (p.512).

172. On 6 November Dr Hopwood emailed Dr Adab with his views on the Record of Concern. He said that was the only info he had received. That prompted Dr Adab to refer to the other email and attachments sent to him on 31 October. He suggested it may have gone into Dr Hopwood' junk folder and offered to re-send it. He said he would also send over the consultations relating to the further 2 concerns raised by the claimant on 2 November.

173. Based on the evidence of Dr Freedman (who we found to be a credible witness giving reliable evidence) we find that there was a further email response from Dr Hopwood to that further material sent to him. We find that is the probable source of the direct quote in the "Abridged External Assessor comments" section of the report compiled by Dr Freedman (p.667). We find there was no "external report" by Dr Hopwood. His role is more accurately characterised in Dr Freedman's report, i.e. an "external assessor". He provided his comments by email and Dr Freedman incorporated them into the report she compiled.

174. By 7 November the claimant was messaging Dr George to say that "CFP getting rid of me with no notice" and that they had "removed shift on 24 November without telling [her]". She went on to say "they want rid of me pronto. The longer I

am there the more I find & I need to be got rid of asap. It's already too late" (pp.522-524).

175. On the morning of 8 November 2023 the claimant requested amends to the anonymised version of the 29 September SEA which Dr Mulkeen had sent her that morning. She asked when the internal investigation be available to her and the "external investigator's report".

The 8 November 2023 Practice Meeting

176. There are 3 aspects of this meeting which are relevant to the issues we are deciding. The first is the discussion about WPF in Part 3 of the meeting (the Partners/Managers meeting). The second is what was said about ending the claimant's engagement in part 4 (the closed, unminuted Partners only part of the meeting). The third is whether Dr Siebert was present during that closed session.

177. The minutes of the meeting record Dr Adab providing an update on WPF (Item 1.2 in Part 3), indicating that CFP would receive approximately 50% WPF compared to that received in previous years.

178. Mr Williams criticised the respondents' case on WPF as confused and inconsistent. He pointed out (correctly we find) that Dr Adab's maths in para 34 of his statement, where he compared the per capita rate of WPF across Manchester in 2022-23 versus 2023-24 was wrong. Mr Williams submitted that the respondents had failed to produce documents requested to show the funding for previous years despite their being requested. We accept Miss Smith's submissions that those points did not undermine the reliability of Dr Adab's core evidence which was that WPF had reduced for CFP in 2023-24 compared to 2022-2023. Dr Adab confirmed in evidence that the final reduction was 25% rather than 50% following an uplift to the funding received. The claimant did not put forward any evidence to cast doubt on there being a reduction.

179. Mr Williams pointed out that the decision on WPF was not confirmed until the letter from Manchester PCT on 13 November 2023 (pp.567-581), 5 days after the meeting. Dr Adab's evidence, which we accept was that on 1 November he had attended a meeting of GPs at which a clear indication had been given that WPF would be significantly reduced, which is what he reported back to the partners meeting.

180. We find (as recorded in the minutes at 1.2) that in addition to the reduction in WPF, CFP's priorities for spending the WPF they did get had changed. The recruitment of salaried GPs meant that they had sufficient GP cover and the need was to use the funding to cover reduced capacity elsewhere. Specifically, there was a need for practice management support and for Advanced Nurse Practitioner cover for Robin Starr's post. There was also a need to backfill a practice nurse post to cover for absence.

181. When it came to the second issue, there were no contemporaneous written records of what was discussed during the closed partners' meeting, so we were reliant on witness evidence. We accept Mr Williams's submission that there was a lack of clarity in that evidence on the third issue, i.e. whether Dr Siebert was present during that part of the meeting. However, we find that the partners' evidence was credible and consistent on three key points. The first was that CFP could not justify bearing the cost of continuing to engage a long-term GP locum. It had sufficient GP capacity and the priority was to spend the reduced WPF on other gaps in capacity,

specifically the urgent care team. The second was that the decision reached was the end of a process which had begun a long time previously when the partners had agreed (in early 2023 if not before) that the correct approach for CFP to take in covering GP capacity was to recruit salaried GPs rather than continue to use long-term locums. The third was that the respondents were well aware that the claimant had made protected disclosures and that there was a risk that the claimant could well view terminating her engagement as linked to that. We find the conclusion they reached was that risk could not outweigh the need to make the right resourcing decision for CFP by terminating the claimant's long-term locum engagement.

182. On the third issue, we accept Mr Williams's submission that there was a lack of clarity amongst the partners in attendance at the meeting as to who was present or not. Dr Siebert's own recollection was hazy. He could not remember being part of any discussions and thought he had been asked to leave before the closed part of the meeting. We find that consistent with the respondents' approach. We accept Dr Adab's evidence that they had throughout taken legal advice and been careful (if not cautious) about the appropriate steps to take. The emails both before and after the meeting relating to the issue do not involve Dr Siebert. On balance, we find he was asked to leave before there were any discussions about the investigation or relating to the claimant.

<u>The 10 November 2023 meeting</u>

183. On the morning of 10 November the claimant emailed the partners and Mrs Johnson to ask that someone update her that day about what was happening with her shifts. Dr Adab replied within 15 minutes to confirm that he would be around lunchtime and could update her then.

184. We find the meeting took place around 1 p.m. and lasted 5-10 minutes. Miss Savage attended with Dr Adab and Dr George attended with the claimant. We find that Dr Adab was very nervous about the meeting and apprehensive about telling the claimant her engagement was coming to an end. The claimant was also apprehensive. She asked Dr Adab for a moment before they met and called her husband for his advice before going ahead with the meeting.

185. We find Dr Adab told the claimant that having recruited salaried GPs they no longer needed (locum) GP shifts and had decided to spend the WPF on non-GP staff. He confirmed that the claimant's last shift would be Friday 17 November. He said they appreciated the claimant's hard work and that she had been a pleasure to work with. The claimant said that no shifts had been booked for her since she raised concerns about Dr Siebert and that a booked shift on 24 November had been removed without anyone informing her which she described as underhand. We find the claimant also said she felt she should be entitled to 6 weeks' notice because her shifts had always been booked 6 weeks in advance. The claimant asked Dr Adab to put what he had told her in writing.

186. Dr Adab did so in a letter which he emailed to the claimant at around 18:10 that evening (pp.547-548). In summary, it said that:

- CFP's requirement for locum support was kept under review by the partners and was subject to there being an ongoing need for additional resource and there being available funding.

- That they had discussed the claimant's ongoing engagement as a long term Locum in August (we find this refers to the 14 September telecon) and that

Dr Adab had explained that a decision regarding future locum support would be taken on the above basis, and in particular when the practice was aware of its WPF.

- Since that discussion, the practice has added a total of 10 new salaried GP sessions and gained a further 4 with the return of another GP from maternity leave. These included a full day on a Friday and as a result considered themselves fully staffed for GP sessions.

- CFP was still awaiting final confirmation of its WPF, but the indication was that it would be significantly reduced compared to previous years. The use of this funding was discussed by the partners at practice meeting on 8th November. Given that they considered the practice now fully staffed for GP sessions, the partners had decided those funds would be best invested to provide additional capacity in the urgent care team through winter.

- For that reason, the partners had decided that GP locum cover was no longer required other than on an occasional or ad hoc basis. As a result, the claimant's last working day with the practice would be her next allocated sessions on 17 November 2023.

- The claimant had asked why the sessions that had originally been scheduled until the end of November had subsequently been removed from EMIS. Although the sessions were entered in the usual way to the end of the month, the partners were anticipating a decision on winter funding would be taken in early November and they did not want to commit to further sessions that they may not be able to honour. The sessions on 24th November 2023 were therefore removed pending the review of the need for additional resource and the allocation of funding.

187. The letter closed by expressing CFP's gratitude and by confirming that they would notify the claimant should any temporary vacancies arise in future via the usual channels and hope to work with you again in the future.

188. The claimant responded by email later that evening. In her email she said the only realistic explanation for her shifts not being booked was her having raised concerns about Dr Siebert. She said that if CFP had genuine reasons for ending her "employment" there was no genuine reason why they could not have given her a reasonable notice period. She asked that CFP adhere to the Freedom to Speak up Policy and whistleblowing legislation. She closed by saying she felt it was only fair to be given a period 6 weeks' notice as a minimum (p.560)

<u>Events after the 10 November</u>

189. Alongside her communications with the respondents the claimant was in contact with a number of regulatory bodies, including the GMC and NHS England. On 8 November the claimant had spoken to Lee Brady of the GMC Enquiries Team about her referral. He had emailed her on 2 November asking her to send further information by 9 November. He made clear that could include identifiable patient data.

190. The claimant confirmed in cross examination evidence that she had access to unredacted patient data because she had taken screenshots and then emailed them to herself. That meant she had access to them on her desktop at home and via her phone. The claimant's unchallenged evidence was that during their call Mr

Brady confirmed she could provide unredacted patient data. She did so on 12 November 2023. She did not tell the respondents she had done so. Her explanation was that she believed they were covering up the concerns she raised. She also sent unredacted patient data to NHS England.

191. On 13 November Dr Freedman emailed the claimant to confirm that she would be compiling the internal report into the concerns she had raised. She expected to be in touch when that was done which she expected to be by the end of the following week.

192. We find the claimant also carried on investigating Dr Siebert's patient records. On 17 November she messaged Dr McCurley that she had "Found a few more cases for the regulator" with a laughing emoji (p.639).

Detriment 8(m) On 21 November 2023 the Claimant's NHS affiliation with the First Respondent was removed without informing her;

193. Miss Savage confirmed that when an individual left CFP she was responsible for ensuring that their NHS e-mail affiliation with the practice was removed. We find that on the morning of 20 November she raised a ticket asking for the claimant's affiliation with CFP to be removed, with her status changed to "Leaver". That generated an email notification that same morning to the claimant alerting her that her account had been marked as a "leaver" (p.649). She then took steps to change her affiliation to "GP Locum".

194. We accept Miss Savage's evidence that no-one instructed her to remove the claimant's affiliation.

195. It was put to her by Mr Williams that she had not removed Dr McCurley's affiliation as soon as she left CFP. An email at p.922 showed Dr McCurley still being affiliated to CFP on 20 October 2023 despite having left at the end of August 2023. He suggested that showed that the claimant's affiliation had been removed with unusual speed. Miss Savage's evidence was that that was an oversight on her part.

196. The claimant's unchallenged evidence was that affiliation to a practice was important because it gave access to that practice's Microsoft365 software licence, without which it was not possible to complete referral forms for patients on the EMIS system. A second consequence is that a locum will lose their secure NHS email account after 30 days of their affiliation being removed unless they join another NHS organisation or become a "GP Locum". The claimant had became a "GP Locum" for the purposes of her NHS email by 23 November 2023 (p.659).

Other post dismissal events including the data protection letter.

197. On 23 November Dr Mulkeen sent the claimant the 29 September SEA with the claimant's requested amendments. She apologised that she had not added in those amends before the SEA was considered at the 8 November meeting and confirmed she would be happy to re-submit it with the edits at the next practice meeting in December. The following day the claimant thanked her for adding the edits for discussion in December (p.660).

198. On 6 December Dr Freedman sent the claimant the report based on the concerns raised ("the Report")(pp.662-668). It was a 7-page document headed "Audit of Cases -Report". In the first part it set out 13 cases reviewed. For each it set out "Concerns" in 1 or 2 sentences, followed by "Did the patient come to harm"

and “Agreed actions”. Although it is not easy to tell because the change of format, it appears to us the cases audited did not go beyond those raised by the claimant. In the second part it set out the “Results of the RCGP Consultation Audit Template”, using a Red/Amber/Green traffic light system. There were 5 paragraphs of “Abridged External assessor comments” from Dr Hopwood (who was not identified in the report). The final section set out “Conclusions and a Summary of Actions required.

199. In summary, the conclusions were that there were several areas of concern which required prompt action. Documentation and note keeping were identified as a significant weakness to address. Refresher training would be given and Dr Siebert would be offered support with that and with potential burnout and improved work/life balance (something raised by Dr Hopwood). The view of the auditing GPs and the external auditor was that the concerns raised did not currently reach the threshold for GMC referral but that should be considered should Dr Siebert not engage in the process and actions required.

200. Those actions were:

- suspension of GP Trainee supervision (already in place from 9 October)
- a formal meeting with Dr Siebert to discuss concerns, outline plan and schedule review meetings (due to take place in the week of 18 December 2023)
- offering support in terms of personal circumstances/stresses, discussion regarding potential burnout, signpost to practitioner health scheme if required
- Dr Siebert to flag with his external Appraiser for full review of all concerns at next appraisal
- Ongoing monitoring of the quality of consultations (process to be confirmed and monitor(s) appointed)
- Learning in 7 areas to be met before 3 month follow-up
- 1, 3 and 6 month review of the actions with nominated GP Partner (s)

201. The claimant was not satisfied with the Report. She did not respond to CFP about it beyond acknowledging receipt. She forwarded the report to Mr Brady at GMC and to the person at NHS England dealing with her referral. Her view was that there had been no adequate investigation in any true sense of the word into Dr Siebert’s performance and probity. She went through the cases setting out her views. She questioned why the “external investigator’s” report had not been shared with her. We find there was no separate report prepared by Dr Hopwood beyond his email assessment of the cases he was sent. We find Dr Freedman correctly characterised the role he had as an “external assessor” rather than an “investigator”. “External investigator” was the term used by Dr Adab in his emails with the claimant (e.g. 31 October) and that appears to us to have given rise to an (understandable) expectation on the claimant’s part that his role was more proactive than it actually was.

202. The claimant concluded by asking the GMC and NHS England not to rely on the other GP partners at CFP to adequately investigate, monitor or restrict Dr Siebert because of their "obvious conflict of interest".

Detriment 8(o) On 6 January 2024 the Claimant received unsigned legal correspondence via email and recorded post requiring her to inform the First Respondent which outside organisations the Claimant shared information with. The Claimant was also asked to sign an undertaking to say she would not do this again. If the Claimant did not comply with their demands the Claimant was told that the matter would be referred to the Information Commissioner's Office.

203. We find that in early December 2023 Dr Siebert was notified by NHS England that the claimant had raised concerns with them and that an investigation would be undertaken. (For completeness, Dr Siebert's unchallenged evidence was that on 20 December 2024, NHS England sent him a letter to confirm that the Professional Standards Group had reviewed his case and had decided to close the case with no further action. His evidence was that they commented that Dr Siebert's record keeping was above standard for the average GP working in similar circumstances and that he was managing elevated PSA test results and referrals for suspected prostate cancer correctly).

204. On or around 18 December 2023 the respondents became aware that the claimant's referral to NHS England contained screenshots of unredacted and un-anonymised screenshots from CFP's system. We find they were included in the evidence bundle sent to Dr Siebert by NHS England. The claimant did not dispute that she had taken unredacted screenshots and sent them to NHS England (and GMC).

205. We accept Dr Adab's evidence that the respondents were genuinely concerned about what they viewed as a data breach. We accept his unchallenged evidence that they were particularly alive to the issue because they had in 2019 uncovered a historic data breach which led to the preparation of a report and action plan for the Information Commissioner's Office ("ICO").

206. We find that the respondents took legal advice, resulting in the formal letter sent to the claimant on 16 January 2024 (p.686-688).

207. The letter opened by saying the respondents were of an incident where unredacted personal data and other confidential information controlled by CFP had been sent by the claimant to an external organisation or organisations. It said CFP considered this to constitute a "Personal Data Breach" as defined by Article 4(12) of the UK GDPR.

208. It went on to say that the purpose of the letter was to put the claimant on notice of CFP's position in respect of the incident and to notify her of CFP's immediate requirements of the claimant. It explained that it was an offence under s.170 of the Data Protection Act 2018 to knowingly disclose or retain personal data without the consent of the data controller. It then said:

> "CFP is not saying that you have committed any criminal offences (and indeed you may have valid reasons for the sending of this data) but wants to alert you as part of this notification to the possibility that you might have inadvertently put yourself in breach of s.170 by having obtained personal data without the consent of CFP (as data controller)."

209. The claimant was given 7 days to complete a "statement of confirmatory undertaking" explaining why she took the data, who she shared it with and why. The undertaking required her to confirm that she had deleted the data and would not deal with it without CFP's consent.

210. Under the heading "Failure to comply with CFP's requirements" the letter said that a failure to reply in 7 days could result in legal action, including injunctive relief. It also warned the claimant that CFP was considering whether a report should be made to the ICO.

211. The claimant did not provide the undertakings. Instead, she responded on 24 January to seek further information before responding. Her first question was how CFP became aware of the incident. From other documents in the Bundle it appears the claimant had formed the view that the respondents had somehow accessed her email account to check whether she had sent information to external bodies. The truth was far simpler-NHS England had sent copies of the screenshots she provided to Dr Siebert.

212. The respondents took no further action in relation to this issue.

Discussion and Conclusions

213. We now apply the relevant law to the findings of fact we have made. We have used the issues identified in the List of Issues as the framework for setting out our discussion conclusions.

<u>The alleged inadequacies in the investigation and lack of transparency</u>

214. It is not our role to decide whether the respondents' investigation into the concerns raised by the claimant was adequate or complied with their Freedom to Speak up Policy, e.g. in terms of the independence of the external investigator appointed. Any flaws in the investigation are however relevant to the extent that they potentially support the claimant's case that the respondents reacted badly to her blowing the whistle (para 23 of Mr Williams's written submissions). The claimant also pointed to a lack of transparency and certain comments made by Professor Chew-Graham as supporting that case.

215. When it comes to the investigation, we do find that the respondents were very much acting "on the hoof" in working out the best process to deal with the claimant's concerns. It was not a situation they had faced before. Dr Adab was trying to manage the process alongside the pressures of managing the practice during a period of turmoil.

216. We do accept that the respondents could, at the very least, have been clearer with the claimant about the process being followed. To take one example, Dr Adab's references to an "external investigator" clearly created in the claimant's mind an expectation of a much more widespread investigation carried out by a proactive external third-party. Instead, Dr Hopwood's role was to provide an external assessment of the concerns the claimant had raised. Dr Freedman's reference to him as an "external assessor" was more accurate. Better communication about the process being followed may have avoided the claimant becoming suspicious that there was a report by an external third party which was being withheld from her.

217. Having heard and read the evidence, we are satisfied that any inadequacies in the investigation arose from the generally unstructured approach to processes

and record keeping which was evident elsewhere (e.g. in relation to minuting decisions and providing contractual documentation). We find it was not indicative of a cover up or attempt to minimise the claimant's concerns. In short, we find the respondents were doing their best.

218. Our findings are similar when it comes to Mr Williams's submission that the lack of transparency equated to a lack of credibility. A failure to adequately document or record matters including decisions can arise from an attempt to cover up nefarious actions or may be a reflection of a practice of poor record keeping and decisions made "on the hoof" in the wake of situations never faced before. We find the latter was the case here.

219. In summary, we do not find that inadequacies in the investigation or lack of transparency gave rise to an inference that the respondents reacted adversely to the claimant making protected disclosures.

220. Neither do we find the "bringing into disrepute" and "why so persistent" comments by Professor Chew-Graham do so. First, it is clear that despite making those comments, Professor Chew-Graham agreed with a number of the claimant's concerns and said so. Second, we find it is fair comment to say the claimant was "persistent". That relates both to the extent of correspondence with Dr Adab evidenced in the string forwarded which gave rise to the comment and in her continuing to carry out her own investigation despite having raised concerns with the respondents and being aware they were investigating. Third, there was nothing to suggest that either comment led Professor Chew-Graham to treat the claimant detrimentally. The only detriment which had been alleged against her personally (the 23 October medication review task) was withdrawn and, we found, could not reasonably be seen as a detriment (much less an attempt to "entrap" the claimant).

<u>Detriment 8(a) - On 17 October 2023 the Claimant's laptop was taken and not returned to her;</u>

221. The respondent accepted that the laptop was taken and not returned to the claimant. However, it denied that amounted to a detriment.

222. For the claimant, Mr Williams submitted that the removal of the laptop amounted to a detriment because the claimant regularly used it to complete work for CFP outside her normal working hours and to manage her workload. As we understand it, it was also a part of the claimant's case that removal of the laptop was a detriment because it removed her ability to address concerns about Dr Siebert's practice.

223. Dealing with that last point first, we prefer Miss Smith's submission that removal of the laptop did not prevent the claimant from continuing to raise concerns. For example, she was able to raise further concerns on Thursday 2 November (p.494).

224. We also prefer the respondent's submissions that removal of the laptop did not meet the definition of a detriment if the "investigation" element is left to one side. The claimant was a locum for CFP and was not working for CFP on the day when CFP's spare laptop was requested back. She herself had in the past been given the laptop to enable her to work from home (in her case when self-isolating). In those circumstances we do not find that a reasonable worker might find the removal of the laptop to be a disadvantage. We note that the claimant herself raised no issue at the time about handing over the laptop. Nor did she suggest she needed it back, e.g. for her next working day for CFP. In those circumstances we

find removing and not returning the laptop did not amount to a detriment so this allegation fails.

225. If we are wrong about that, we would have found that the removal and non-return of the laptop was not materially influenced by the claimant's first protected disclosure (the second had not yet taken place). The claimant in her witness statement submitted it was "very odd" that she would be the one person out of 38 asked to give her laptop to Dr Sutton. That is based on the assertion that 38 members of staff had laptops but we found as a fact that there were only 3 spare laptops. The claimant also submitted that the respondent failed to explain why the claimant's laptop was chosen when she was not at work. It seems to us that from the respondent's point of view that was the point-the claimant was not at work for CFP so should not have needed to be using the CFP laptop so it was spare to be used by someone who did need it to work for CFP.

226. Mr Williams also submitted that it was suspicious that the laptop was removed "a day after drafting the initial email". By that we understand him to refer to the respondents' formal email response to the claimant drafted with the advice of the respondents' lawyers. That was not circulated by Dr Adab until the evening of 17 October, after the laptop incident happened. The suggestion may be that the legal advice and/or draft email were received prior to the laptop incident. We do find that the respondents were treading carefully because they were aware they were potentially dealing with a whistleblowing situation. We do not find that in itself suspicious. There was no evidence that they had dealt with such a situation before (the fact the Freedom to Speak up Policy wasn't created until 12 October suggests the contrary was the case). It was natural for them to take legal advice before deciding on appropriate steps. We do not understand why, having taken legal advice which (judging from the contents of the email) recognised the claimant may be a whistleblower, the first thing Dr Adab and/.or Mrs Johnson would do was to subject her to a potential detriment.

227. The claimant asserted in her witness statement that it was suspicious that the laptop had been removed only a week after she had raised her concerns. As we have said, she suggested it was a way to hamper her in carrying out further investigation. However, the claimant had given no indication that she was intending to carry out any further review of Dr Siebert's cases beyond those included in the claimant's Record of Concerns dated 9 October.

228. Finally, it was suggested that it was suspicious that Mrs Johnson had clearly spoken to Dr Adab and/or Dr Mulkeen on the morning of the incident. Mr Williams submitted there was no reason for Mrs Johnson to have done so. We disagree. It seems to us perfectly understandable that as managing partners Mrs Johnson would have let them know that one of the salaried GPs would not be in the following day. Even if she could work from home, Dr Sutton would not be able to see patients so there would need to be a discussion about that. We do not find it suspicious that none of them could clearly remember the conversation-it was the sort of routine management of the practice that happened day in-day out and not something particularly memorable. We accept Mrs Johnson's evidence that she was not instructed (and did not) target the claimant because she had made a protected disclosure. Even allowing for the fact that the relevant test is whether the protected disclosure had a material influence on the decision to ask the claimant for her laptop (rather than it being the sole or principal reason for doing so) we find that it was not. Even had we accepted that this amounted to a detriment this allegation would have failed.

Detriment 8(b) On 20 October 2023 the Claimant became aware that she was no longer to be a GP trainee supervisor;

229. The respondent denied that there was a decision that the claimant was no longer to be a trainee supervisor, not that this was a detriment.

230. We find this detriment did not happen as alleged. There was never a decision that the claimant was no longer going to be a GP trainee supervisor. Based on our findings of fact, the reality was that because of the reduced demand for supervision the claimant was not allocated supervision slots from 20 October because of her position in the "pecking order" when Miss Savage allocated supervisions. This complaint fails because the alleged detriment was not made out on the facts.

231. For completeness, we accept Miss Smith's submission that not being allocated supervision slots because of her position in the "pecking order" would not amount to a detriment. Even if it were, we are satisfied that it was not in any sense "because of " the protected disclosures. The supervision slots were allocated before the claimant made any protected disclosures and we accepted Miss Savage's evidence that her decisions about how to allocate those slots were not influenced by the claimant's whistleblowing.

Detriment 8(c) On 20 October 2023 the Claimant became aware that no further work was being booked for her (the Claimant says her shifts had always been booked six to eight weeks in advance);

Detriment 8(d) On 20 October 2023 the Claimant became aware that work on 24 November 2023 which was booked had been cancelled without informing her;

232. The respondent accepted that no further work was booked for the claimant after Dr Alderton commenced in role on 12 October 2023. The respondent also accepted that this could amount to a detriment. The only issue is whether that detriment was because the claimant made protected disclosures.

233. The respondent also accepted that the claimant's shift on 24 November 2023 was removed from the calendar when she was dismissed.

234. There was no real dispute that not booking shifts and cancelling a shift that was in the calendar were detriments. We find they were.

235. We have found it more convenient to discuss the reason why they happened as part of our discussion of the dismissal complaint below. For the reasons explained in those paragraphs, these complaints both fail because the detriment was not materially influenced by the claimant's protected disclosures.

Detriment 8(g) On 20 October 2023 the Claimant's regular consulting room was changed without informing her;

236. The respondents accepted that the claimant was assigned room 12, when she had previously worked from room 8.

237. The respondents did not accept this could amount to a detriment.

238. For the claimant, Mr Williams relied in particular on the claimant's evidence at para 155 of her witness statement in which she said that moving her room "caused [her] maximum inconvenience and stress".

239. We accept that the threshold for something to amount to a detriment is relatively low. Based on the claimant's evidence in para 155 and Dr George's reference to "upstairs downstairs nonsense" we do find that being in an upstairs room was a potential source of inconvenience. The actual level of inconvenience would obviously depend on how many of the claimant's appointments were face to face, how many of her patients went to the downstairs waiting room and how many she had to fetch rather than their being sent up. We heard no evidence about what happened in practice on the Fridays when the claimant worked form Room 12. Her exchange with Dr George is jokey rather than angry and there is no evidence that she raised any complaint about the room move at the time

240. It seems to us that in deciding whether a reasonable worker might see the room move (and not being informed about it) as a disadvantage we have to view it in context. We have found that room moves were common and could apply to partners. We have found that the claimant herself had worked in different rooms in the past when not working on Friday and had raised no issues about that. We did not hear any evidence to suggest that others were informed in advance of room moves. The claimant joked about the room move with Dr George and did not raise any issues about it with the respondents at the time. Taking all those matters into account, we find the room move did not amount to a detriment and this allegation fails.

241. In case we are wrong about that we have gone on to consider whether the room move was "because of" the claimant's protected disclosure. At the time the room move took place, the claimant had made the first of the 2 disclosures she relies on. That was on 9 October. The first Friday after that was the 13 October and the claimant's room was not changed from Room 8. Making the first protected disclosure did not trigger an immediate change of room. Mr Williams, however, submitted that the change happened at the same time as the draft emails were being "carefully constructed" on 17-20 October 2023 . We have explained in dealing with the laptop allegation why we do not find his attempts to link the detriments with the drafting of those emails and the taking of legal advice convincing.

242. Mr Williams submitted that the lack of clarity about who made the decision was also suspicious. We have considered whether anything sinister could be inferred from that lack of clarity. We found Mrs Johnson to be a credible witness doing her best to recollect events honestly. We find her lack of clarity about the decision-making a reflection of the day-today nature of the decision. Room changes were pretty common and, we find, not noteworthy. We find the respondents' explanation that the decision was taken to install Dr Alderton in Room 8 because she was newly-qualified and so could seek advice from experienced colleagues convincing. We do not find it undermined by the fact that trainees were routinely given Room 12. Dr Alderton was in a different position. She was the new permanent Thursday and Friday GP. Her hours dovetailed perfectly with Dr Mulkeen. Her salaried sessions were replacing the claimant's locum sessions on a Friday. We find that the change in room was a purely operational decision recognising Dr Alderton's status as the new salaried GP and in no way materially influenced by the claimant's protected disclosure. Had we found the room change to be a detriment, this complaint would have failed because it was not "because of" the protected disclosure.

<u>Detriment 8(i): On 27 October 2023 the Second Respondent did not give the Claimant an employment reference despite agreeing that he would on 29 August 2023</u>

243. The respondent accepted that the failure to provide a reference happened and that it could amount to a detriment. We find it did amount to a detriment.

244. When it comes to why Dr Adab failed to provide the reference, Mr Williams submitted his explanation that it was an oversight was not credible. We did not find his submissions convincing. He relied on the failure to respond, the lack of an apology or explanation to the claimant when the oversight became apparent and the timing of the refusal. On timing, Mr Williams submitted that the refusal happened when Dr Adab was crafting the response to the claimant. We have already explained why we do not find that point convincing. We do accept Mr Williams's submission that the respondents' grounds of response is incorrect at para 30 when it says that Dr Freedman did provide a response to the reference. Her response was in relation to a different reference request. However, Dr Adab's evidence throughout was that he had not provided a response. The error in the pleadings does not undermine his credibility as a witness. Dr Adab did apologise in his witness statement.

245. We find, therefore, that the failure to respond was a genuine oversight and not materially influenced by the claimant's protected disclosures. This complaint fails.

Detriment 8(k) On 17 November 2023 the Claimant was dismissed.

246. The respondent accepted that the termination of the claimant's locum position was a detriment as were removing the shift on 24 November and not booking any future shifts.

247. Mr Williams did not dispute that there was an intention to make less use of locums and to staff with salaried GPs. However, he submitted that the claimant's departure was expedited in such a way that the respondents "abruptly brought the engagement to an end". He submitted that the respondent wholly failed to explain why it was at that point the claimant was dismissed.

248. We prefer Miss Smith's submissions on this point. She pointed out that by 20 October (when the decision was taken not to book future shifts for the claimant and remove her 24 November shift) the respondents had a clear plan to disengage the claimant.

249. We found it had been agreed in August that the respondents would "lose" the claimant's locum sessions once Dr Alderton had settled in (p.323). By October, when detriments 8(c) and 8(d) happened, the clear intention was to terminate the claimant's engagement. That, we find, was why Dr Adab made the decision not to book future slots and to remove the 24 November slot.

250. We find that there were 2 contingencies on which the actual date of termination of engagement depended. The first was that the respondents needed to ensure that Dr Alderton settled in satisfactorily. If she did not, they would still need the claimant to cover Fridays. The second was confirmation of the position on WPF. There was never any suggestion that the respondents were unhappy with the quality of the claimant's work. We find that had sufficient funding been available through WPF so that keeping her did not cost CFP, they would have done so.

251. By 1 November, it was clear that there would not be enough WPF to cover the claimant's locum costs and the necessary costs of covering absences elsewhere (including on the practice management side of things). Mr Williams questioned why, if that was the "final piece of the jigsaw", the respondents did not terminate the

claimant's engagement then. We find that was because there was a partners meeting imminent, and the decision was a partnership decision, rather than one Dr Adab felt able to make himself.

252. We find that, contrary to Mr Williams's submission, the respondents have provided a clear and cogent explanation of why the decision to dismiss the claimant was taken when it was. We are satisfied that the protected disclosures did not materially influence the decision to dismiss, the decisions not to book future slots nor the decision to cancel the 24 November slot and those complaints fail.

Detriment 8(m) On 21 November 2023 the Claimant's NHS affiliation with the First Respondent was removed without informing her;

253. The respondents accepted this happened but not that it could amount to a detriment. Miss Smith submitted that it could not be a detriment for an appropriate process to be followed which results in no loss to the account holder. Removing affiliation did not remove the NHS email so long as the account holder joins a new affiliation.

254. Mr Williams submitted there was a detriment – without affiliation a GP could not use the Microsoft 365 Licence needed to complete patient forms.

255. We prefer Miss Smith's submissions. We accept there could be a minor inconvenience in having to change status to "GP locum". We do not, however, think that a reasonable worker might view the removal of an affiliation with a practice for which they no longer worked as a disadvantage. That is particularly given that there was no evidence that it was difficult change the status to "GP Locum" or to set up a new affiliation with another practice. On that basis we find that there was no detriment and this complaint fails for that reason.

256. Had we been required to decide the issue we would have found that the claimant's protected disclosures were not a material influence on Miss Savage's actions. We found her a credible witness and accept that any delay in removing Dr McCurlley's affiliation was a genuine oversight. Mr. Williams in his submissions suggested that the claimant was "at the forefront of considerations". If that was the case for Miss Savage we find it was only to the extent that she was particularly aware that her last day had been the previous Friday and that her engagement had come to an end (because Miss Savage had attended the meeting on 10 November where that was confirmed).

Detriment 8(n) - On 9 December 2023 the Claimant was not invited to the Christmas staff do when previously she had been invited to all staff social events;

257. We found the claimant was not invited to the Christmas party in 2023. She was included in neither the initial email invitation on 2 November nor the follow up email on 20 November.

258. The respondent accepted that failure could amount to a detriment. We find it was a detriment. A reasonable worker might find not being invited to the Christmas party a disadvantage when they had been invited to previous do's.

259. The key issue was why Miss Savage omitted the claimant from the invitation emails. Mr. Williams in his written submissions said that "the decision was so clearly influenced by the claimants whistle blowing". It was at a time when the claimant was being subjected to other detriments and when one of the respondents' partners

(Professor Chew-Graham) considered the claimant may potentially be going to bring the practice into disrepute. However, we have found that the other detriments Mr Williams refers to (work being removed and not supervising trainees) were not because of the protected disclosures. There was no evidence that Miss Savage was aware of Professor Chew Graham's comment about the claimant seeking to bring the practise into disrepute or that she was instructed by any of the partners not to invite the claimant

260. We explained in our findings of fact why we accepted Miss Savage's explanation that the omission of the claimant from the original invitation list on 2 November was a genuine oversight. We found that the claimant was not included in the 20 November list because she had left by then. We are satisfied that the protected disclosures did not have a material (or indeed any) influence on Miss Savage's actions. The detriment was not because of the protected disclosures, so this complaint fails.

Detriment 8(o) On 6 January 2024 the Claimant received unsigned legal correspondence via email and recorded post requiring her to inform the First Respondent which outside organisations the Claimant shared information with. The Claimant was also asked to sign an undertaking to say she would not do this again. If the Claimant did not comply with their demands the Claimant was told that the matter would be referred to the Information Commissioner's Office.

261. It was not disputed that the letter about a data breach was sent to the claimant on 16 January. The allegation in the list of issues is not correct in asserting that if the claimant did not comply with the requirements set out in it the matter "would" be referred to the ICO. What the letter actually said was that depending on her compliance the respondents "may" make notifications.

262. The respondent denied this amounted to a detriment. Miss Smith submitted that it could not be a detriment to have removed confidential medical data, stored it on a home computer and sent it out unredacted, to be informed of the obligations of a data holder and asked to promise to delete it.

263. Mr Williams submitted that the letter clearly was a detriment. It included a threat of injunctive relief. He submitted the respondent could have made the point in a more simplistic and less formal way without making a threat of legal proceedings.

264. We did not find this issue an easy one. On the one hand, the claimant accepts that she did take screenshots of unredacted personal data and had them stored on her desktop (and possibly also on her phone). She was aware of there being an issue with data protection, because she discussed the issue of sending unredacted data with the GMC and NHS England before doing so. The letter itself asked for an explanation and explicitly acknowledged that the claimant may have valid reasons for sharing the data. The claimant was a professional and might be expected to have some familiarity with formal legal letters through her work for the Medical Practitioners Tribunal Service.

265. On the other hand, we accept that receiving legal letters can be alarming to anyone, especially if the letter refers to the possibility of legal action and refers to criminal offences potentially being relevant.

266. On balance, we do find that a reasonable worker might find being sent the data breach letter to be a disadvantage. Given the relatively low threshold for establishing a detriment, we do find that this amounted to a detriment.

267. For the claimant's complaint about the letter to succeed the detriment must have been materially influenced by her protected disclosures. Mr. Williams submitted that the letter was unnecessary and not required. He submitted that there was no explanation for the delay in sending it and submitted the Tribunal should see it as what it truly was, i.e. "an attempt to scare the claimant into submission".

268. Miss Smith submitted that given that the claimant had clearly shared personal data (some of which was sensitive personal data) the respondents had to act on their obligations as data controllers. She submitted the letter was drafted in a clear but fair manner. She submitted that Dr Adab's decision to seek legal advice and send the letter was not only reasonable in the circumstances but also expected of a data controller. It had nothing to do with the protected disclosures.

269. We prefer Miss Smith's submissions. Given that screenshots of identifiable patient data had been shared outside the practice we find it was both reasonable and necessary for the respondents to have taken action. As data controller of sensitive personal data they had to do so to protect their own position. We find it entirely reasonable for Dr Adab to take legal advice on the appropriate action to take and the wording of an appropriate letter.

270. We also accept Miss Smith's submission that the letter was drafted in a fair way. It acknowledged that the claimant may have valid reasons for disclosure and gave her an opportunity to provide that explanation. On the other hand, there was a need to spell out the potential seriousness of the situation. We do not find the letter went further than necessary in doing so.

271. We do not accept the characterisation of the letter as an attempt to scare the claimant into submission. It is not entirely clear what is meant by that or what the claimant suggests the respondents could hope to achieve by sending the letter at that late stage. The claimant had already made referrals to NHS England, CQC and GMC. The argument of a link to the protected disclosures and an attempt to "scare off" the claimant might carry more weight if the respondents had sent a letter in similar terms at an earlier stage (e.g. when Professor Chew-Graham raised questions about the probity of the claimant examining records for patients other than their own). They did not do so. We find that is because what triggered the letter was not the protected disclosures but the clear evidence of a data breach. We find the detriment was not because of the protected disclosures so this complaints fails.

Summary of conclusions

272. The claimant's claim fails.

Approved by:

Employment Judge Mcdonald

22 May 2026

Judgment sent to the parties on:

22 May 2026

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For the Tribunal:

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Notes

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

ANNEX
List of Issues

IN THE EMPLOYMENT TRIBUNAL **CASE NO: 2401089/2024**

MANCHESTER

BETWEEN:

DR CAROLINE LOUISE COLACO **Claimant**

- and -

CHORLTON FAMILY PRACTICE PARTNERSHIP & OTHERS Respondents

UPDATED LIST OF ISSUES
29 September 2025

A. Jurisdiction

~~1. At all relevant times, was the Claimant a "worker" under Section 230 Employment Rights Act 1996 ("ERA") for the purposes of bringing a claim under s.47B ERA 1996.~~

2. Has the Claimant complied with the rules on mandatory ACAS Early Conciliation in respect of each of the Respondents to the claim.

3. The claim form was presented on 15 February 2024. Which, if any, of the Claimant's complaints are *prima facie* out of time, having regard to section 47(B) ERA.

4. Do any of the Claimant's complaints under section 47B ERA amount to a series of similar acts or failures?

5. In respect of those complaints that are *prima facie* out of time, does the Tribunal nevertheless have jurisdiction to determine them, on the basis that it was not reasonably practicable to present the complaints within time and they were presented within such further period as the tribunal considers reasonable

(pursuant to s.48(3)(b) ERA?)

B. Public interest disclosure

6. It is admitted that the Claimant made the following protected disclosures:

(a) On 9 October 2023 the Claimant made an in-person disclosure to the Second and Third Respondent about the health and safety of the Eighth Respondent's patients, as described in paragraph 17 of the Claimant's Particulars of Claim.

(b) On 2 November 2023 the Claimant made a disclosure by email to all the Respondents (excluding the Eighth Respondent) and Finola Johnson about the health and safety of the Eighth Respondent's patients as described in paragraph 17 of the Claimant's Particulars of Claim.

C. Detriment: s47B ERA

7. Was the Claimant a "worker" for the purposes of bringing a claim under s.47B ERA 1996.

8. Was the Claimant subject to a detriment? The detriments relied on are:

(a) On 17 October 2023 the Claimant's laptop was taken and not returned to her;

- It is accepted that the claimant was asked to give a laptop to a colleague on this date. It is accepted that it was not returned to her.
- It is not accepted that this could amount to a detriment.

(b) On 20 October 2023 the Claimant became aware that she was no longer to be a GP trainee supervisor;

- It is not accepted that the respondent decided that the claimant was not to be a trainee supervisor at any point.
- It is not accepted that this could amount to a detriment

(c) On 20 October 2023 the Claimant became aware that no further work was being booked for her (the Claimant says her shifts had always been booked six to eight weeks in advance);

- It is accepted that no further work was booked for the claimant after Dr Alderton commenced in role on 12 October 2023.
- It is accepted that this could amount to a detriment.

(d) On 20 October 2023 the Claimant became aware that work on 24 November 2023 which was booked had been cancelled without informing her;

- It is accepted that the claimant was not booked for a shift on 24 November 2023.
- It is accepted that this could amount to a detriment.

~~(e) On 20 October 2023 the Claimant became aware that the Respondents were actively avoiding her;~~

~~(f) On 20 October 2023 the tone of the emails to the Claimant changed;~~

~~previously she was on first name terms with all the partners, then she was addressed as 'Dr Colaco';~~

(g) On 20 October 2023 the Claimant's regular consulting room was changed without informing her;

- It is accepted that the claimant was assigned room 12, when she had previously worked from room 8.
- It is not accepted that this could amount to a detriment.

~~(h) On 23 October 2023 the Fourth Respondent sent the Claimant a task suggesting the Claimant complete a patient's medication review without actually conducting it;~~

(i) On 27 October 2023 the Second Respondent did not give the Claimant an employment reference despite agreeing that he would on 29 August 2023;

- It is accepted that the second respondent did not give the claimant an employment reference requested on 19 October 2023 and, of which a reminder was sent on 26 October 2023.
- It is accepted that this could amount to a detriment.

~~(j) On 3 November 2023 the Respondents ignored an email from the Claimant asking about her shifts;~~

(k) On 17 November 2023 the Claimant was dismissed.

- It is accepted that the claimant's locum position was terminated on 17 November 2023.
- It is accepted that this could amount to a detriment.

~~(l) On 10 November 2023 the manner of the Claimant's dismissal; namely, that there was no recognised procedure, that the Second Respondent did not inform the Claimant of an unannounced meeting on 10 November 2023, that the Second Respondent did not respond to the Claimant verbally when she challenged the reasons he gave her for the dismissal and when she stated the real reason for the dismissal was making a protected disclosure, the reasons for the dismissal given in the email dated 10 November 2023, the deliberate failure to follow the First Respondent's Freedom to Speak Up policy and procedure and the failure to follow an appeal in line with the ACAS Code of Practice on Disciplinary and Grievance Procedures;~~

(m) On 21 November 2023 the Claimant's NHS affiliation with the First Respondent was removed without informing her;

- It is accepted that on 20 November 2023 the respondent actioned the removal of the claimant's email account association with the Practice.
- It is not accepted that this could amount to a detriment.

(n) On 9 December 2023 the Claimant was not invited to the Christmas staff do when previously she had been invited to all staff social events;

- It is accepted that the claimant was not in the email chain for the invite, but it is not accepted that she was not invited to the Christmas staff do.
- It is accepted that this could amount to a detriment.

(o) On 6 January 2024 the Claimant received unsigned legal correspondence via email and recorded post requiring her to inform the First Respondent which outside organisations the Claimant shared information with. The Claimant was also asked to sign an undertaking to say she would not do this again. If the Claimant did not comply with their demands the Claimant was told that the matter would be referred to the Information Commissioner's Office.

- It is accepted that the respondent sent a letter about data protection to the claimant dated 16 January 2024. It is accepted that the letter asked the claimant to confirm to whom she had sent the data and to sign an undertaking that she would not do so again. It is not accepted that the claimant was told the matter would be referred to the ICO if she did not sign the undertaking.
- It is not accepted that this could amount to a detriment.

9. If so, did the protected disclosure(s) have a material influence on the detriment complained of?