EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001558/2025

Final Hearing In Person Held in Dundee on 22-26 June 2026

Employment Judge Campbell

Ms F Buchanan	**Claimant** **In Person**
Citizens Advice & Rights Fife	**Respondent** **Represented by:-** **Mr C McDevitt,** **counsel**

JUDGMENT OF THE TRIBUNAL

The complaints of detriment and unfair dismissal under section 47C and 103A respectively of the Employment Rights Act 1996 are unsuccessful, and dismissed.

WRITTEN REASONS

Introduction

1. This claim came to a hearing which took place over five days in person. The claimant gave evidence on her own behalf, followed by witnesses for the respondent as follows:

    a. Ms Laura McNeilly, External Projects Co-ordinator and the claimant's line manager;

    b. Ms Jacqueline McDonald, Service Delivery Manager,

c. Mr David Redpath, CEO; and

d. Ms Lilian Hamilton, chair of board of trustees.

2. The parties agreed a joint bundle of documents. Where numbers appear in square brackets below, those correspond to pages within that bundle The claimant provided a smaller supplementary bundle.

3. In her claim form the claimant made complaints of detriment and dismissal on the grounds of having made protected disclosures. She later applied to amend her claim to introduce a claim of unfair dismissal under section 94 (i.e. a 'standard' or 'ordinary' unfair dismissal claim) of the Employment Rights Act 1996. On 23 October 2025 she withdrew the application.

4. A list of issues was prepared by the respondent. The claimant proposed an amended version of the list of issues. The respondent took the view that this included new complaints which could only be decided if the claim were formally amended. After a preliminary hearing on 13 May 2026, she was permitted to do so. The respondent submitted amended grounds of resistance on 15 May 2026.

5. The claimant had prepared a list of communications she relied on as protected disclosures. In the course of the hearing she conceded that some of those were not, and that she wished them to be withdrawn from consideration as such. The list was as follows:

a. Emails to Mr Redpath and Ms McDonald dated 20 and 21 November 2023 [362, 361];

b. A letter sent to Mr Redpath on 2 April 2024 [405-408];

c. An email to Mr Redpath on 13 May 2024 [683];

d. An email to Mr Redpath on 11 July 2024 – this was not in the bundle and the claimant did not refer to it in her evidence;

e. Posts she added to a Teams chat dealing with benefits disputes – [withdrawn as alleged disclosures]

f. An email to Mr Redpath and Ms McDonald on 6 January 2025 [505];

g. An email to Ms McDonald on 21 February 2025 [619-623]; and

h. A letter to Mr Redpath on 24 February 2025 [630-632].

6. The claimant prepared a final list of the detriments she allegedly suffered on the grounds of having made protected disclosures. This was submitted on 20 May 2026 and is referred to as her ‘detriment list’.

7. On the second day of the hearing it was agreed that it would deal with liability only, primarily due to anticipated time pressures. Any outstanding issues relating to remedy would be the subject of a future remedy hearing. Case management orders would be issued as necessary in that event.

8. The parties provided oral closing submissions which were noted.

9. References to sections of legislation below pertain to the Employment Rights Act 1996.

Findings of fact

The tribunal made the following findings of fact based on the evidence before it and on the balance of probability. Not every issue raised in evidence is included as the tribunal’s function is to focus on the evidence relating to the legal issues which it has to determine and not every dispute of fact between the parties.

10. The claimant was employed by the respondent between 20 September 2020 and 24 March 2025. She was dismissed on the latter date. The respondent is one of a number of Citizens Advice Bureaux in Scotland, based in Glenrothes. It works within the rules and framework of Citizens Advice Scotland. The claimant worked as a Carers Income Maximisation Worker. As such she advised members of the public in claiming state benefits. Previously in her career she had gained experience and knowledge of data protection law.

11. The claimant’s manager at the time of the events referred to in her claim was Laura McNeilly, External Projects Co-ordinator. She in turn reported to Jacqueline McDonald, Service Delivery Manager. Ms McDonald reported to the Chief Executive, David Redpath. Mr Redpath reported to a board of trustees who were not employees of the respondent.

12. The claimant and fellow advisors would provide advice by telephone. Predominantly that was by using the respondent’s land line system. Each advisor had a dedicated extension number. The system was named ‘8x8’. Advice could also be provided by mobile telephone as circumstances dictated.

13. The claimant and Ms McNeilly had different personalities and working styles. They found it difficult to work together. The claimant was competent and thorough, and preferred to have freedom to manage her own working time whereas Ms McNeilly preferred a more structured approach. The

claimant occasionally fell behind in managing her caseload, principally in terms of preparing notes of client calls and uploading them to each client's file on the respondent's network. The target for doing so was within five days of the appointment. She found Ms McNeilly's attempts to provide guidance patronising and at times bordering on micromanagement.

14. The claimant was absent from work on grounds of stress between May and July 2023. She made a phased return. The working relationship between her and Ms McNeilly had deteriorated to the point where they interacted with each other as little as possible. The claimant preferred this to what she viewed as interference from Ms McNeilly. This remained the nature of their working relationship for the duration of the claimant's employment. In April 2024 Ms McDonald considered their relationship needed to be addressed and they were asked to take part in mediation with another manager, Ms Somerville, acting as mediator. The individuals agreed to respect each other's differences although the claimant considered little of substance changed.

15. On 5 October 2023 Mr Redpath emailed a number of employees including the claimant to inform them that their calls would be recorded and processed by a third-party company named Wyser [366]. This was part of a larger nationwide pilot project involving analysis of client calls to Citizens Advice Bureaux by an AI application, then converting them into written case notes without the need for case workers to draft them. Other teams within the respondent were already participating. The email explained that all calls to or from each advisor's personal extension number on the 8x8 system would be recorded for analysis. It was therefore necessary to say at the beginning of each call that it would be recorded for training and improvement purposes. If the client objected, the advisor could speak to them using their mobile telephone and therefore not be recorded. Calls would start to be recorded automatically from 16 October 2023.

16. The claimant raised queries about the new practice by email dated 11 October 2023. She said that some of the details disclosed by clients were sensitive and asked whether it was possible to disable the recording of individual calls. She also asked who within Wyser would be listening to the calls, and whether the respondent's own management would be playing them back. Finally, she asked whether the respondent's appointed Data Protection Officer (DPO) and legal advisors, a firm of solicitors, were advising on the pilot.

17. Mr Redpath replied on 10 November 2023. Advisors did not have the ability to disable the recording of individual calls. Instead they were to use a different phone such as their mobile telephone or speak to their manager. Those within Wyser involved in the AI pilot would have access to the

recordings, as would the respondent's managers, The external law firm was advising the respondent in relation to the project.

18. The claimant emailed further on 20 November 2023 [362]. She was still not convinced of the legal basis for recording and processing clients' calls by a third party unless the client was more specifically informed. She personally believed that a client's confidentiality would be breached if the direction were followed. She sought further clarification. Mr Redpath replied the same day to say he was not going to enter any further discussion. The claimant sent another email the next day [361] to say she hoped it would be acceptable for her to use her discretion in avoiding recording individual calls and would feel better if she could obtain informed consent. There the exchange ended.

19. Mr Redpath believed that the claimant, as with other advisors, was using the client greeting they had been given, was handling client calls using her land line by default, and was only advising by mobile phone occasionally when clients objected to being recorded. The claimant had in fact stopped using her land line altogether and was advising clients exclusively using her mobile phone.

20. Ms McNeilly held a 'staff support and supervision' meeting with the claimant on 10 January 2024 which was documented [373]. She recorded that some of the claimant's files were not up to date, and that there were appointments in her diary but no note of what had happened with them. Some other action points would be taken forward by agreement. The claimant raised her concern with client call recording. Ms McNeilly would not discuss it as Mr Redpath had told both Ms McDonald and her that he was dealing with the issue.

21. The claimant mentioned to Ms McDonald on 12 February 2024 that she was not using her 8x8 extension so she could avoid her calls being recorded. Ms McDonald wrote to her the next day [380] to invite her to a disciplinary meeting which she would chair. The allegation was framed as the claimant 'refusing to carry out a reasonable instruction or order, namely refusing to use your 8x8 telephone extension for client communication'. The meeting was postponed and the claimant provided a written submission, but it ultimately did not take place as a result of the claimant submitting a grievance on 2 April 2024 [405]. A meeting between the claimant and Mr Redpath took place to explore that and an outcome letter was issued [696]. The grievance was not upheld and the claimant was again told she must use her land line to conduct client calls by default.

22. Whilst the claimant was waiting on the letter she emailed Mr Redpath on 30 May 2024 in which she said that she had found the discussion

productive and that an amendment to the respondent's privacy statement on its website 'ticks all the boxes regarding my concerns'. Mr Redpath also told her that the wording of the client greeting was being amended which would provide further transparency about the use of recorded calls.

23. Despite this apparent progress, the claimant was noted by the end of June 2024 not to have been using the 8x8 system for client calls. Mr Redpath asked the claimant to explain why and she provided a reply on 11 July 2024 [702]. This was to say that she still had concerns about data subject rights which she enunciated. She concluded however by saying that she would be using the system going forward and had made a prompt for herself to use the required greeting with clients.

24. Although the matter again appeared to have been resolved the claimant continued not to use the 8x8 system. She and Mr Redpath traded further emails in October 2028, the essence of which was that the claimant raised further questions about the practice of recording calls being followed, which Mr Redpath answered, and enquired whether Citizens Advice Scotland were aware of her concerns. Mr Redpath said he believed the matter to have been concluded by way of his response to her grievance and that she had not raised further concerns formally despite the opportunity to do so. He reiterated that the AI program had been scaled back by this point and only the calls of two advisors in another team were routinely being recorded. He asked her to explain clearly what further concerns she might have.

25. In September 2024 Mr Redpath held a meeting with the claimant in which he asked her to consider leaving the respondent's service in return for monetary compensation. The claimant was initially open to the option in principle and took some time to review it, but ultimately decided she wished to remain working and declined the offer. The exchanges were amicable.

26. In early November 2024 the claimant prepared a draft request for a change to her contractual hours (i.e. a flexible working request). She wished to carry out her duties over four days rather than five. She understood that it had to be submitted to Mr Redpath for a decision, and sent it first to Ms McNeilly and Ms McDonald for review and comment. She then sent it to Mr Redpath, who replied to say that it should be Ms McNeilly as her line manager who should decide any request. The claimant indicated at that point that she was going to give further thought to the request when she had time. It was not taken forward, either by her or Ms McNeilly.

27. At the beginning of November 2024 Ms McDonald initiated a performance improvement plan (PIP) with the claimant. They had a meeting on 6 November to discuss concerns, which centred on the existing issues of

caseload management and file organisation. A review period of five weeks was set, to end on 13 December 2024, and in that time Ms McNeilly would have two scheduled catch-up meetings with her. The plan was documented [451-456] and the claimant signed it.

28. At the end of the review period Ms McNeilly did not consider that the claimant had made all of the improvements necessary and arranged a meeting for 10 January 2025. The claimant attended with a trade union representative. One of her points in answer to the suggestion that she had not brought her case files up to date was that she we spending a lot of time on other issues such as her dialogue with Mr Redpath. She believed at this time she was being micromanaged and held to a higher degree of scrutiny and performance expectation than fellow advisors, which Ms McNeilly disputed. The manager gained the impression that the claimant was not taking the process seriously.

29. Ms McNeilly concluded that she was justified in issuing a formal and final warning to the claimant about her performance. She sought advice from the respondent's external HR advisors who initially counselled against giving a final warning without a further period to allow for improvement. Ms McNeilly believed that this was overcautious advice, given without full appreciation of the background, particularly the duration of the period in which the issues identified had remained unaddressed. She spoke again with the advisor and decided to proceed with a final warning as initially intended. She notified Mr Redpath of these discussions and told the HR advisor that 'David is happy for me to go ahead and issue a formal warning to Fiona…'. The claimant took this to be evidence of Mr Redpath directing the process using Ms McNeilly as a proxy. That was not proven. On the balance of probability, and consistent with the evidence of both individuals, it was a reference to Ms McNeilly merely updating Mr Redpath on the process and him respecting her decision as a manager. A final written warning was issued to the claimant by letter of 21 January 2025 [529], to remain live for six months.

30. Ms Somerville invited the claimant on 10 December 2024 to an investigatory meeting on 13 December 2024. The issue for discussion was her alleged refusal to carry out a reasonable instruction, namely use of the 8x8 system. The claimant considered it insufficient notice to prepare and declined. The issue was left until the new year when Ms Somerville sent a further letter on 15 January, seeking to meet on 29 January 2025. There were exchanges between the two regarding which documents the claimant needed in advance. The claimant said on 22 January that her submission in the investigation would be in the form of existing documents, primarily her exchanges with Mr Redpath, his grievance outcome letter and similar.

She said she would have nothing to add and saw no point in holding a meeting. She raised that she was involved in another internal process – this was the performance review matter overseen by Ms McNeilly – and that she had just received an upsetting outcome (the written warning) which she planned to appeal. She was feeling overwhelmed and 'almost at breaking point regarding my wellbeing'. She explained why the month of January was a difficult one for personal reasons.

31. The claimant's dialogue with Mr Redpath over the legality of the client recording policy continued into January 2025. She emailed him on 6 January 2025 to ask whether the respondent ought to be 'abiding by the Caldicott principles, or even require a Caldicott Guardian'. She attached a document on the point which was not included in the bundle. Around the same time Mr Redpath had sought, and received, further advice from the respondent's solicitors about the issue. He emailed his HR advisor to provide an update on this and the current position with Ms Somerville's disciplinary investigation. He attached a reply to the claimant he had drafted for comment.

32. Mr Redpath sent his proposed email to the claimant on 22 January 2025 [531]. He said that the Caldicott Principles applied only within the NHS and therefore not formally to the respondent or the wider Citizens Advice Bureau network. He outlined some parallel measures which were nevertheless in place in an attempt to reassure her that clients' medical information was being adequately protected.

33. Ms McDonald became aware of a further issue arising out of the claimant's PIP process. Stemming from her concerns over client data security, the claimant had adopted a practice of retaining clients' medical information and documents within her own email account rather than uploading them to the case management system the respondent used, named CASTLE. The claimant's reason for doing so was that she believed that once added to CASTLE, client documents could be accessed by any advisor within the wider Scottish CAB network. This was directly disputed in evidence by Mr Redpath, who said that access could only be given to nominated individuals for specified purposes and otherwise it was not possible for an advisor in one location to access case notes held at another.

34. This concern led Ms McDonald to invite the claimant to an investigation meeting in the afternoon of 17 February 2025, which she attended with a trade union representative. A note was taken [584]. Ms McDonald sent a copy to the claimant on 20 February, which the claimant queried for accuracy in a number of respects. Her comments were noted by Ms McDonald, who decided the issue should be the subject of a disciplinary hearing. In the meantime any action in relation to the first disciplinary

allegation – being investigated by Ms Somerville - had been paused. They would now be discussed together at a single hearing. Mr Redpath would chair it.

35. In the morning of 17 February 2025 the claimant attended a separate meeting to deal with an appeal she had submitted against the performance warning Ms McNeilly had issued. It was chaired by a Ms Angel, a Finance Manager of the respondent. The appeal was not upheld, as confirmed in her outcome letter of 21 February 2025 [626].

36. The claimant was invited to a disciplinary hearing, originally scheduled for 28 February 2025 but moved to 14 March and then 21 March when it took place, albeit without the claimant present. The claimant was absent from work from 24 February 2025, certified by her GP as owing to ‘workplace burnout’ and later ‘stress at work’. She was not deemed well enough to return before 6 April 2025, which ultimately fell after the date of her dismissal. An Occupational Health appointment which was provisionally agreed did not take place.

37. The claimant separately raised a grievance on 19 March 2025 [777]. She said she was still not strong enough to attend a disciplinary hearing, raised queries about the documents to be referred to and indicated that she did not believe Mr Redpath would give her a fair and impartial hearing. She asked him to consult the chair of the respondent’s board ‘as to how [the respondent] can ensure I receive a fair Hearing’.

38. Mr Redpath replied to say that the hearing would go ahead on 21 March. The claimant forwarded her grievance to the chair of the board, Ms Hamilton. Mr Redpath followed that with an email to her saying that she didn’t need to do anything in response and he would follow up with her after the disciplinary hearing had taken place.

39. Mr Redpath held the disciplinary hearing in the claimant’s absence. He produced a note which was in effect an amended version of a script and set of questions he had prepared for discussion, had the claimant attended [789].

40. Mr Redpath reached a decision which he confirmed in summary form on 24 March 2025. He provided more detailed reasons in a letter dated 28 March 2025 [805]. It is just over seven pages long. He explained that he had found the claimant guilty of misconduct on both allegations – failure to follow instructions in relation to her refusal to use of the 8x8 system for client calls and breach of process creating additional risk in relation to her handling of client health information. The claimant was treated as having

been summarily dismissed on 24 March. The letter also provided a response to the points raised in the claimant's grievance of 19 March 2025.

41. The claimant was provided with a right to appeal which she exercised by way of an initial email of 4 April 2025 [818] and then more detailed grounds on 12 April [825]. She attended an appeal hearing on 22 April 2024 chaired by Ms Hamilton along with another board member, Mr Thompson as well as a note-taker. She was accompanied by a trade union representative. Minutes were produced [831]. The claimant read out a prepared statement at the end of the hearing and provided a written copy [839].

42. The decision of the panel was issued on 2 May 2025 [844]. The appeal was refused. The claimant believed that the letter was written by an HR advisor and that Mr Redpath had edited it. He had acted as a point of contact between Ms Hamilton, the external HR advisors and a separate firm of solicitors, but there was no evidence of him influencing or taking the decision of the appeal panel or providing input into the outcome letter save confirming the date of one event on request, a factual point.

Discussion and decision

Relevant law

43. An employee has a right not to suffer a detriment on the ground that they made one of more protected disclosures - section 47(B) of the Employment Rights Act 1996.

44. An employee is separately protected against being dismissed for the sole or principal reason that they made one or more protected disclosures - section 103A.

45. A protected disclosure must first be a 'qualifying disclosure' – section 43B:

43B Disclosures qualifying for protection*.*

> *(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
>
> > *(a)that a criminal offence has been committed, is being committed or is likely to be committed,*
> >
> > *(b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

> *(c)that a miscarriage of justice has occurred, is occurring or is likely to occur,*
>
> *(d)that the health or safety of any individual has been, is being or is likely to be endangered,*
>
> *(e)that the environment has been, is being or is likely to be damaged, or*
>
> *(f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*
>
> *(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.*
>
> *(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.*

46. A qualifying will be protected if it is made in the way permitted within section 43(C) to (H).

47. A qualifying disclosure must be all of the following:

    a. A disclosure of information,

    b. Reasonably believed to be made in the public interest, and

    c. Reasonably believed to show the existence of one or more circumstances within section 43(B)(1)(a) to (f).

48. Unless all of the above apply, there will not be a qualifying disclosure – see for example the judgment of the Employment Appeal Tribunal ***in Williams v Brown UKEAT/0044/19.***

49. The requirement to disclose 'information' means that there must be some specific factual detail - ***Cavendish Munro Professional Risks Management Ltd v Geduld UKEAT/0195/09***. Whether that has occurred will depend on the individual features of each case, including the context in which a statement is made. Reference to a hypothetical situation, expression of an opinion or the mere suggestion that a law or legal obligation has been breached without further specification may not be enough.

50. There must be a belief that the disclosure of the information in question is in the public interest, and that belief must be objectively reasonable -

Chesterton Global Ltd (t/a Chestertons) v Nurmohamed [2017] EWCA Civ 979. What is in the 'public interest' is not further defined. It need not apply to all of the public at large, and can involve a smaller group such as all employees, customers or service users of an organisation, or even potentially a sub-group within one of those categories. If the matter raised only relates to the person raising it there will be a greater risk that it is not in the public interest (or that any belief that it is would not be reasonably held when objectively assessed). It is however possible that a disclosure could be made (or reasonably believed to be made) both for personal reasons and in the public interest at the same time. Who is affected, in what way and whether the alleged conduct was intentional could all be factors.

51. There must also be a reasonable belief that at least one of the circumstances in section 43(B)(1) has arisen. The complainer therefore need not know for sure that the relevant situation exists but they must believe that it does. That belief must then be assessed in order to understand whether it is reasonable. It may be reasonable even if later proved to be factually incorrect, for example by evidence which the individual did not know about at the time of the disclosure. Of more relevance is what the individual knew, or ought to have known, at the time of the disclosure. Because the requirement is that the information disclosed 'tends to show' that a relevant scenario exists, the individual making the disclosure does not have to provide absolute proof of it or have gone through an extensive process of weighing up the evidence for and against before their belief is formed – see for example ***Durey v South Central Ambulance Service NHS Foundation Trust and Protect (Intervenor) [2024] EAT 173***.

'Protected' disclosure defined

52. A qualifying disclosure can be protected by being made in various ways or to certain parties. A disclosure by a worker to their employer will qualify under section 43C(1)(a). Normally, a report by them to a more senior colleague will be to their 'employer'. A report to someone equally or less senior is less likely to be, although the recipient's role and specific responsibilities may be relevant, as may be the worker's intention in choosing the recipient and the contents of any specific policy which the employer has put in place.

Were protected disclosures made?

53. Each alleged protected disclosure was considered in turn. The first were her emails of 20 and 21 November 2023. The respondent did not accept these were protected disclosures.

54. The first of those emails fell short of qualifying as a protected disclosure. It did not assert with sufficient clarity or conviction that the respondent was in breach of a legal obligation, or in any other scenario relevant within section 43B(1). The claimant was questioning the basis on which the respondent considered the new practice was lawful. She expressed doubt and gave her own view, but ultimately was asking for further information, rather than conveying a sufficiently fully-formed view of her own.

55. The second email also did not qualify, for slightly different reasons. It only came a day after the first and the claimant had no further knowledge. She said it was reassuring that an external law firm had advised the practice was GDPR-compliant. She again expressed a personal view but did not say the respondent was in the wrong.

56. The claimant next relied on her grievance letter of 2 April 2024. By contrast with her earlier emails above, some time had passed and she had formed a view that the practice was not lawful. She expressed this, using the term 'whistleblowing' and providing the details of how she considered data protection law was not being adhered to. The other requirements of a protected disclosure were also present. The claimant had enough knowledge of the operation of data protection law for her belief to be reasonably held, even if the respondent had been advised otherwise. It was in the public interest for the respondent not to breach its' clients' data subject rights.

57. The claimant's email of 13 May 2024 to Mr Redpath was also a protected disclosure in the same way. In effect it was a restatement of the relevant content of the grievance letter and expressed the claimant's continuing belief in what she had said in it.

58. The claimant's email of 6 January 2025 was not a protected disclosure. It raised three new matters: whether the respondent should be following the Caldicott Principles, whether it was necessary to ask clients making benefits appeals to provide two years' worth of medical records and that many of the respondent's employees were not members of the PVG scheme. These were raised in the form of questions or points for consideration, not allegations of any breach of a legal obligation or similar. The claimant also did not prove that any belief she may have held regarding such breach was reasonable. The respondent disputed that her understanding was correct on each point.

59. Regarding the claimant's email of 21 February 2025, this was a protected disclosure. The claimant was by this point clearly stating to her employer her belief that the practice of holding two years' worth of patient records electronically on the respondent's server breached the data subject rights

of those clients. It was no longer framed as a question. She explained why she believed raising this issue was in the public interest, which it was as again the rights of third-party clients – members of the public – were the subject of the disclosure. Again the tribunal accepted that in light of her knowledge and experience of dealing with data protection issues her belief in what she was raising was both genuine and reasonable.

60. The last document relied on as a protected disclosure was the claimant's letter to Mr Redpath of 24 February 2025. The letter listed various enclosures, not all of which were included in the bundle. It was still appreciable however that this letter was a protected disclosure. One of the enclosures was the email discussed immediately above, and so at the very least she was repeating that disclosure. She also explicitly said that the respondent's case note system contained 'multiple GDPR breaches'. She gave examples of the type. She repeated her view that uploading patient records to the respondent's system was 'potentially a breach of both confidentiality & data protection'. Towards the end of the letter she appears to withdraw slightly, saying that she believed the respondent only 'may' have been committing such breaches, but the overall tone and degree of detail strongly suggest a firm belief that breaches were occurring. In any event, as stated, the letter was a protected disclosure by virtue of re-presenting her email of 21 February 2025.

61. To conclude therefore, the claimant made protected disclosures by way of the following:

    a. her grievance letter of 2 April 2024;

    b. her email of 13 May 2024;

    c. her email of 20 February 2025; and

    d. her letter of 24 February 2025.

62. Before moving on it is notable that there was a gap of some nine months between the second and third protected disclosure. This, coupled with the fact that there were communications which the claimant made and believed to be protected disclosures but were not, were considered when moving to the next stage of considering whether detriments or, ultimately, dismissal had occurred in a way connected to them.

63. The claimant's complaints were next considered in light of those findings.

Section 47B – detriment on the grounds of protected disclosures

Time bar

64. There was a preliminary time bar issue which affected part of this complaint. Under section 48(3), a detriment complaint can only be presented to the tribunal within three months of the detriment in question occurring, unless (i) it was not reasonably practicable for it to have been presented within time and then, in that case, (ii) it is presented within such further time period as the tribunal considers reasonable. In practical terms, the detriment must have occurred less than three months before the period of ACAS early conciliation commences, assuming that the claim itself is lodged with the tribunal within such further period as the relevant rules allow.

65. The claimant began early conciliation on 11 April 2025, meaning that any detriment complained of must have occurred no later than 12 January 2025 for it to be in time.

66. The detriments in the claimant's list were as follows, in summary form:

    a. Detriment (a) – threatening disciplinary action in late 2023 and/or early 2024;

    b. Detriment (b) – inviting her to a disciplinary hearing by letter of 13 February 2024;

    c. Detriment (c) – in April 2024 conditionally withdrawing the threat of disciplinary action in order to coerce her into complying with a procedure she believed was unlawful;

    d. Detriment (d) – at the same time informing the claimant that she would be monitored with the threat of disciplinary action;

    e. Detriment (e) – instructing Ms McNeilly not to engage in discussion about the policy which she had refused to follow;

    f. Detriment (f) – subjecting her to increased scrutiny, monitoring and criticism compared with colleagues;

    g. Detriment (g) – selectively monitoring her use of the telephone system and not doing the same with colleagues;

    h. Detriment (h) – mischaracterising concerns she had raised about Ms McNeilly as bullying allegations and carrying out an unnecessary investigation into them;

i. Detriment (i) – requiring her to maintain a full caseload with inadequate management support whilst being involved in internal processes;

j. Detriment (j) – various aspects of the capability procedure (discussed further below);

k. Detriment (k) – removing or limiting access to training, peer quality-checking work, development opportunities, social policy work and other non-core opportunities or activities;

l. Detriment (l) – decreased working conditions and support at the same time as increased scrutiny and procedural escalation;

m. Detriment (m) – hostile interaction or avoidance by Mr Redpath;

n. Detriment (n) – aspects of the disciplinary process, discussed further below;

o. Detriment (o) – failure to ensure independence and impartiality in internal procedures;

p. Detriment (p) – not adequately addressing her grievance of 19 March 2025;

q. Detriment (q) – proceeding with a disciplinary hearing when she was certified as unfit to attend work;

r. Detriment (r) – in relation to the disciplinary outcome letter, discussed further below;

s. Detriment (s) – relying on external advice which was not disclosed;

t. Detriment (t) – inviting her to a welfare meeting on 13 September 2024 during which a discussion about the possible termination of her employment was proposed;

u. Detriment (u) – refusing her flexible working request in November 2024;

v. Detriment (v) – continuing with various actions and processed in the knowledge that she was experiencing increased stress and wellbeing issues; and

w. Detriment (w) – her dismissal.

67. The nature and timing of each alleged detriment were further clarified in the claimant’s evidence. Based on all of that, detriments (a) to (h), (k), (m), (t) and (u) were time-barred. Each was in the nature of actions said to have

occurred on a given date (or date range) falling on an earlier date and not continuing beyond it. The tribunal only had power to decide those complaints on their merits if it was not reasonably practicable for the claimant to have raised them within time (i.e. starting the process of early conciliation less than three months after the date of each) and also that the additional time period from that deadline until 11 April 2025 was reasonable.

68. The onus of establishing that the exception applied falls on the claimant. She did not explain why she did not begin a claim earlier. I noted from the evidence that she was a member of a trade union, that her workplace had a prominent union presence and she had brought a representative from it to hearings from January 2025 onwards. She had the resources to research legal concepts and the ability to understand them, which was demonstrated by her claimed expertise in and evident familiarity with data protection law, and the knowledge she had more recently acquired through research in relation to employment law and tribunal procedure for the purposes of her claim. She said that she had attempted to start ACAS early conciliation earlier but in discussion with her union representative that was not initiated or completed, and so did not result in the earlier presentation of a claim to the tribunal.

69. The tribunal recognised form the evidence and accepted to some degree that there was less of an expectation that the claimant should have begun early conciliation following some of the earlier alleged detriments. This was because the issues she was relying on were smaller in number and magnitude. There was less of an expectation that they would escalate to the point of requiring formal processes to resolve them. It was more plausible for her to argue that she was, and ought to have been, less aware of the need to make a claim during that time in order to protect her position, or conversely that it was more reasonable to allow the respondent an opportunity to rectify matters informally and directly, such as by Mr Redpath’s response to her grievance of 2 April 2024. Related to this, she did not appear to be receiving trade union advice at the outset (it was apparently available to her but she had less of a reason to rely on it as closely as she did latterly).

70. However, into the second half of 2024 too many events had taken place which she later wished to rely on. Those included the deterioration of her working relationship with Ms McNeilly, the alleged declined flexible working request, the proposal for her to leave in return for a settlement payment and the beginning of the PIP. At some point around this time she had began taking the advice of her trade union. There was no apparent reason why she could not have contacted ACAS as a provisional measure and a

precursor to presenting a claim within the months of September to November 2024.

71. As a consequence of all these matters, it was not within the tribunal's limited powers to justify a relaxation of the rules governing time limits. The above noted detriment complaints were out of time.

72. The remaining alleged detriments were accepted to be either within time or potentially part of a continuing act which extended beyond the cut-off point of 12 January 2025. Those are dealt with in turn below.

Detriment complaints within time

73. The general approach taken for each such alleged detriment was to consider as follows:

    a. Did what the claimant alleges happen?

    b. If not, what did happen?

    c. Was what happened a 'detriment' caused by her employer?

    d. If so was it on the grounds of – i.e. materially influenced by – the making of one or more protected disclosures.

74. It was recognised that, in terms of (d) above, it is a 'reason why' test rather than a 'but for' test which applies when assessing any possible connection between the protected disclosure or disclosures relied on and the alleged detriment. Even if the detriment would not have arisen had the claimant not made disclosures, that alone will not be enough. The connection must be closer – the disclosures must have influenced the decisions taken in some material way whether consciously or subconsciously – see for example ***Chatterjee v Newcastle Upon Tyne Hospitals NHS Trust [2019] 9 WLUK 556***.

Determination of detriment complaints

75. **Detriment (i) – requiring the claimant to maintain a full caseload whilst subject to formal internal procedures and without effective management support.** This was taken to be an alleged continuing act from around mid-November 2024 when the PIP was put in place until the end of the claimant's employment. In essence, the claimant maintained that she was unfairly expected to carry out her normal duties at full capacity despite being required to use time and energy to take part in the other processes going on, namely at that time performance management and disciplinary procedures, although she also raised a grievance. As well as

attending meetings she had to consider documents provided to her and respond to them with her own position.

76. On the evidence, it was not accepted that the claimant was working without effective management support at any relevant time. This was her perception but there was no reason why she could not call upon either Ms McNeilly or Ms McDonald whenever she needed. Her evidence suggested that she did not consider she needed much support and she preferred to work autonomously. It was accepted that the claimant was expected to carry out her core duties as normal. No direction was given that her workload should be reduced. However, nor did she ask for any such reduction and there was no evident reason why she could not have done. It was not obvious to the respondent that she needed such a measure. The degree of time she spent on participating in these processes was significantly dictated by her own approach to them, particularly her preference to communicate in writing and at length. The onus was on the respondent to show that there was no material influence by any protected disclosure on its treatment of the claimant, to the extent that occurred as opposed to the claimant's perception. The onus was satisfied.

77. **Detriment (j) – application of capability procedures including the PIP, the written warning of 21 January 2025 (without adequate time for improvement) and the involvement of the CEO in the decision despite external advice not to issue a warning without adequate time for improvement**. The decision to put the PIP in place was taken before 13 November 2024 and a complaint about that in particular it was therefore time-barred for the reasons explained above. In any event, the tribunal again did not find that everything the claimant relied on as fact had been established on the evidence. Clearly the PIP had been implemented and she had received a written warning at the end of it. It was also correct to say that external advice had not been followed, although this was a more nuanced situation than the claimant realised, only fully explained by Ms McNeilly in her oral evidence. The advisor had recommended not issuing a final warning following completion of the initial review period. Ms McNeilly had wanted to issue a warning and believed one was justified in light of the more extensive knowledge she had than the advisor about wider context and preceding events. She had discussed the matter further with the advisor and it was then agreed that issuing a final warning was permissible. Whether Mr Redpath was 'involved' was a question of degree. Ms McNeilly informed him of the decision she wished to take and so he was clearly 'aware' but there was no evidence of him taking the decision himself or influencing it. The evidence of both witnesses was that it was her decision which he accepted she was entitled to take.

78. The tribunal was conscious of how little knowledge Ms McNeilly had of the claimant's protected disclosures – what precisely was said, when and how - and also the fact that their existence. The effect they had did not affect her from day to day. Mr Redpath had made it clear to her at the beginning of 2024 that he was communicating with the claimant about the issue and neither she nor Ms McDonald should become drawn into the discourse.

79. The tribunal accepted that Ms McNeilly's motivations were solely grounded in her own experience of how the claimant worked. The PIP set out the issues which were identified and had to be addressed, such as taking too long to close cases and delays in preparing case notes or adding them to client files. By the review meeting on 10 January 2025 Ms McNeilly believed that actions were still outstanding. The claimant queried some of those but the fact remained that the warning which followed was based on Ms McNeilly's genuine perception that the claimant had not satisfied all of the requirements of the PIP and not materially influenced by protected disclosures.

80. Mr Redpath's involvement in the decision to issue the warning was considered separately. He obviously had much greater knowledge of the claimant's protected disclosures. As noted above, he was aware of the PIP process in his capacity as a senior manager. Ms McNeilly told him she wished to issue a written warning to the claimant. He approved of it in the sense that it was her decision to make as the claimant's line manager. There was no evidence of him influencing the decision, and by extension doing so because the claimant had made protected disclosures.

81. **Detriments (n), (o) and (q) – progressing investigatory, disciplinary and appeal procedures lacking independence and impartiality; proceeding with disciplinary action when the claimant was unfit to work and considered herself unable to participate in formal proceedings**. These three alleged detriments were considered together as they overlapped significantly.

82. There are various strands to these allegations. The first is that there was a lack of independence in the disciplinary and grievance processes. This was in terms of overlap between the people involved in dealing with them and the fact that Mr Redpath was involved at all given that he was the person the claimant had disagreed with over the issue of client call recording and to whom she had made disclosures. The respondent had a small management structure. Mr Redpath carried responsibility for all operational matters, overseen by the board which was more focussed on strategic issues. The approach taken in the disciplinary process, involving Mr Redpath taking the initial decision and any appeal being heard by a panel composed of board members, is common in organisations of that size and

structure. Given the operational nature of the disciplinary allegations it was not untoward to take this approach and not have it decided in the first instance by either the board or, as the claimant requested, some other approach which she did not specify, but after the allegations were investigated by a third party. Both went beyond what the respondent reasonably required to do and left little by way of internal appeal options. The evidence given by Mr Redpath and Ms Hamilton on these points was sufficient to discharge the burden of proof as to whether there was any link between protected disclosures and the decisions about how the disciplinary procedure would be followed. The claimant's protected disclosures did not materially influence decisions as to who would fulfil each role in the process.

83. The claimant also referred to what she saw as selective reliance on external HR advice. This included another reference to Ms McNeilly's issuing of a warning despite initial advice to allow the claimant more time, discussed above. Whilst the claimant may have gained the impression that the respondent only wished to listen to advice when it supported its own motives against the claimant, this was not borne out by the evidence when more fully explored in the hearing.

84. The fact that the disciplinary hearing had gone ahead without her attendance was a further aspect the claimant raised. The tribunal accepted Mr Redpath's evidence in relation to that decision. He considered that the issue had been outstanding for over a year, the claimant had undertaken on more than one occasion to comply with the policy, only to go on silently refusing to do so and she had expressed her position in detail by writing. He felt that resolution of the issue had been deferred too many times. As such his decision was a product of his patience running out over an issue he believed had been resolved before but which continued to take up his time on a recurring basis. It was not materially affected by the disclosures themselves.

85. The claimant mentioned failure to provide timely hearing notes and relevant documentation. It was not clear which items she was referring to or in which process – disciplinary hearing, appeal, or grievance, although she did mention a delay in receiving notes of her appeal hearing. There was no obvious evidence of this occurring other than through an oversight, less so any detriment to her. The issues in the process were well defined and she responded to them extensively throughout.

86. **Detriment (p) – failure to deal adequately with her grievance dated 19 March 2025, initially and by appeal.** Mr Redpath's approach to dealing with the grievance was not, as he had done the previous year, to postpone any disciplinary action and deal with it. Instead he continued with the

disciplinary process and, in light of the decision he reached, he provided a written response to the grievance in his disciplinary outcome letter.

87. As a general observation, the matters raised in the grievance were all, save one, about the disciplinary process Mr Redpath proposed to follow. As such it was not obviously unreasonable or detrimental in itself for him to deal with them as part of that process, or after it, as he deemed appropriate. The remaining point was that the claimant believed the respondent had not adequately considered her wellbeing in January and the first half of February that year.

88. The claimant said the respondent had failed adequately to address the matters in her grievance, including at the appeal stage. As above, they were dealt with in Mr Redpath's disciplinary outcome letter of 28 March 2025. He gave a response to the five points relating to the disciplinary process and requested further information from her in relation to the point about her welfare, which he did not see as influencing the outcome of the disciplinary process in the interim. The claimant may disagree with the stance he took on those points, but he addressed them as far as were obviously relevant, and did so adequately.

89. Mr Redpath's evidence as to why he responded to the grievance this way was essentially as described under discussion of alleged detriment (o) above. In essence, the main disciplinary issue had remained unresolved for over a year and he wished there to be a prompt conclusion without any further delay. Without going so far as to call the grievance a stalling tactic, he saw it as an attempt by the claimant to buy further time. His refusal to deal with it before the disciplinary case could be viewed as an exercise of discretion at the harsher end of the spectrum, but as with many procedural issues the claimant was aggrieved about, the tribunal's remit was not to evaluate the process through the lens of general reasonableness under the terms of section 98(4). Rather, the question was whether the approach taken by Mr Redpath – in relation to a particular aspect or overall - was both detrimental to the claimant and on the ground that she made protected disclosures. The evidence showed otherwise in the second of those questions. He had, in simple terms, run out of patience with trying to resolve what he viewed as her disobedience of workplace rules in an informal way.

90. **Detriment (r) – issuing the disciplinary outcome letter dated 28 March 2025 said to contain misrepresented or mischaracterised material facts and/or failing to reflect the claimant's position**. The claimant would have expected Mr Redpath to send a letter confirming and explaining the decision he took after the disciplinary hearing he held, and so that much could not be a detriment in itself. The claimant's case was taken to be that the decision itself and the grounds given for it were the issue. The letter is

just over seven pages long. She specifically referred to the second paragraph in which it was said the meeting had been rescheduled three times before at her request, pointing out that not each of those occasions was requested by her. She also pointed out that there was a reference to a previous hearing being scheduled in December 2024 and then deferred, which she could not remember happening. These were minor factual errors, acknowledged by Mr Redpath in evidence. They were not a central element of the letter and not influenced by protected disclosures. The claimant did not go into detail as to any other aspects she was referring to as misrepresenting material facts or failing to reflect her position.

91. The letter had a section entitled ‘Findings’ and it is taken that the claimant disagreed with how some of those were phrased, and also that matters she considered were important were not recorded there. The factual findings themselves appear substantially true and relevant to the disciplinary allegations against her. They form a substantial case in support of those allegations.

92. The tribunal therefore did not accept the claimant’s fundamental criticism of the letter in terms of its accuracy or completeness. There was no detriment as alleged. Further, there was no evidence that its content, whether in terms of the factual findings or the conclusions reached, was materially influenced by the claimant’s disclosures. It was focussed on the adjacent but separate issue of her repeatedly refusing to follow instructions. The claimant’s suspicion that Mr Redpath had an ulterior motive was not backed up by evidence.

93. **Detriment (s) – relying during the disciplinary and appeal process on undisclosed advice allegedly obtained from external data protection advisers and/or external HR advisers.** In the hearing the claimant did not dispute that the respondent had received such advice and the tribunal found that it had. As such the position was not merely ‘allegedly’ described. It was not clear why the respondent relying on external parties who had greater expertise in the areas of enquiry could amount to a detriment applied to the claimant. If anything this would have been beneficial to her, and at worst neutral.

94. The final aspect of the claimant’s allegation of detriment was that the advice was not disclosed to her. This was true, but there was no onus on the respondent to do so and she had no reasonable expectation that advice of that nature would. The tribunal recognised that she pressed particularly for further details of the advice given by the respondent’s data protection advisers, who were a law firm. The advice was therefore covered by legal privilege and was not disclosed to the tribunal. She could not understand how they could have advised the respondent that its call recording practice

was lawful when she believed it was not. Mr Redpath did not disclose the advice received in its original form. He did seek advice on a number of occasions and specifically referred the claimant's concerns to the advisor. One occasion of doing so resulted in a change to the client greeting being made.

95. It is appreciable why the claimant was frustrated at not being given sight of the advice given directly by the advisors. However, the respondent's right not to disclose that must be respected. She was repeatedly assured that the essence of the advice was that the practice she was being asked to follow was lawful. This should have been sufficient to allow her to carry out the instructions she had been given. Mr Redpath believed that by reassuring the claimant of this was the equivalent of sharing the legal advice he had been given, and was sufficient.

96. Ultimately there was no identifiable connection between the claimant making her protected disclosures and Mr Redpath's approach. There was no evidence, for example, of him concealing or editing advice he had been given suggesting that the process was unlawful or carried risk. It is difficult to see how, had such advice been received, the respondent would have continued the practice without changing it. Both the respondent and its solicitors would have been unnecessarily exposed to future risk, both financial and reputational.

97. **Detriment (v) – continuing treatment of the claimant when it ought to have known she was experiencing increasing stress, vulnerability and deteriorating wellbeing.** The treatment in this context is taken to be processes which were live in early 2025, namely performance management and disciplinary proceedings. These were accepted to involve detriments as they were essentially punitive in nature.

98. By that time the claimant had been refusing to follow the direction to use the 8x8 system for over a year and had actions outstanding at the end of her PIP. Both the decision by Ms McNeilly to issue a warning and that of Mr Redpath to press ahead with a disciplinary hearing were grounded in those processes and were the next logical step. Mr Redpath's decision to hold the hearing despite the claimant protesting that she was not well enough to attend may well have fallen foul of the test of reasonableness under section 98(4) but that provision did not apply to the claimant's case. The critical issue in relation to each aspect of the 'treatment' referred to was whether a material factor behind it was that the claimant made protected disclosures. There was no evidence to suggest such influence. Both managers saw areas of longstanding operational concern which had not been remedied by giving the claimant instruction and time to adapt, resulting in escalation to a more formal response.

99. **Detriment (w) – the claimant's summary dismissal on 24 March 2025**. The tribunal noted that at the time of deciding this claim it is competent to pursue a complaint of detriment by a fellow worker or an agent of their employer under section 47B(1A) where the detriment is their dismissal by that person - ***Timis v Osipov [2018] EWCA Civ 2321***.

100. The claimant alleged that her dismissal by Mr Redpath fell within the scope of this provision. He was another worker employed by the respondent. He dismissed her in the course of his own employment. Dismissal is clearly a detriment in the sense that it was disadvantageous to the claimant for her to lose her job.

101. In essence this complaint falls within, or logically follows from, the tribunal's decision in relation to detriment (v) above. Mr Redpath's decision flowed from the conclusions he had reached regarding the claimant's two failures to comply with client and case management procedures, one of which had been ongoing for over a year. He had personally taken time to address it on a number of occasions, seeking external advice, and the claimant had agreed to adhere to the process each time it was raised, only to refrain from doing so. Her disclosures were answered. By the time of the dismissal decision those were not the issue for him. He considered the discussion that they generated had been exhausted, agreement had been reached on a way forward and the claimant was wilfully disregarding instructions.

102. As an observation, many of the alleged detriments were connected to the making of disclosures (some which were protected and some ultimately not) in the claimant's mind because of the proximity of subject matter between them. This was particularly so in relation to the actions of Mr Redpath. The tribunal however reminded itself that the test of whether there was a connection does not require consideration of whether the detriment would have been avoided but for the disclosures, but rather whether the disclosures which were protected became a significant part of the reason in the decision maker's mind for choosing to act as they did. A connection of this nature was not present in relation to any of the alleged detriments.

Automatically unfair dismissal – section 103A ERA

103. The legal test to be applied under section 103A involves a different degree of linkage between the disclosure or disclosures relied upon and the act complained about, namely dismissal. The former must be 'the reason (or, if more than one, the principal reason)' for the latter. This connotes a stronger connection between the two than merely a material, or 'more than minor or trivial', influence. The onus fell on the respondent to show that the reason for dismissing the claimant was otherwise.

104. The tribunal has already concluded above that Mr Redpath's decision to dismiss the claimant as an individual co-worker was not a detriment on the grounds that she made protected disclosures.

105. On the same basis, his reason for dismissing her was not solely or principally that she had made protected disclosures. For completeness this took in consideration of the procedure which led up to that decision, the factual foundation for the decision and how it was communicated to her, aspects of which were also found not to be whistleblowing detriments. As explained in relation to the detriment complaint, the making of disclosures was adjacent to the issues which led to the initiation of a disciplinary process and ultimately dismissal, but they were less of a factor after initially being raised and answered in late 2023 and early 2024, and it was the claimant's own conduct which remained as the issue in Mr Redpath's mind from then on. This was the sole, or at least the principal reason why he dismissed her as both his outcome letter and oral evidence confirmed.

Conclusions

106. The claimant's complaints were unsuccessful. Although she had proved some necessary aspects, the respondents were able to discharge the onus of proof whenever it fell upon them. The claims must therefore be dismissed.

107. Accordingly there is no need to make further orders to deal with remedy.

Date sent to parties 10 August 2026