



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001857/25

Hearing on the Liability on the 3, 4, 5 and 6 August 2026 in Edinburgh

Employment Judge Porter SIR

Agata Stankiewicz

**Claimant
In Person**

Scottish Prison Service

**Respondents
Represented by:-
Miss Read, solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

It is the judgment of the Employment Tribunal to dismiss all claims made by the claimant in these proceedings.

Introduction

1. The claimant was employed as a Prison Officer between the 8 January 2018 and the 31 May 2025. In these proceedings she claims unfair constructive dismissal and detriment and dismissal due to exercising rights under the Public Interest Disclosure Act. Her claims are defended, and there was a Preliminary Hearing ("PH") in the case on the 26 January 2026. Following the PH the case was set down for a Hearing on the Merits on the 3, 4, 5 and 6 August 2026 in Edinburgh.
2. At the PH the claimant led in evidence and gave evidence herself. The Tribunal heard evidence from Marc Lockhart and Claire Muirhead for the claimant. The respondents led evidence from John O'Connor, Mark Holloway, Linzi Higgs, Steven McCann and Fiona Stoney (formerly Fiona Cruikshanks). The claimant's Line Manager Fiona Williams provided a statement as she was unable to attend the Tribunal. It was explained to the claimant that the

statement did not have evidential weight as the witness was not present to speak to it.

3. The parties referred to a Joint Bundle of Documentation numbered **1-95**.
4. At the outset of the Hearing on the Merits all parties agreed that the Hearing would be confined to the issue of liability only, reserving remedy to a separate hearing.
5. **The Issues**
 - The parties liaised before and during the hearing to produce the undernoted List of Issues
6. **Time Bar**
 - Have the claims under s43B of the Employment Rights Act 1996 been brought in time? The Claimant's position is that the detriments relied upon formed part of a continuing course of conduct following the protected disclosures and culminated in the Claimant's resignation.
7. **Whistleblowing**
 - Did the Claimant make a qualifying disclosure in terms of section 43B of the Employment Rights Act 1996 in respect of the following disclosures:
 - a. An email to Fiona Williams and subsequently to Unit Manager John O'Connor both dated 4 August 2024. (Disclosure 1)
 - b. An email to Fiona Williams and John O'Connor on 14 August 2024. (Disclosure 2)
 - c. An email to Fiona Williams and John O'Connor on 22 August 2024. (Disclosure 3)
 - Did the Claimant's communication(s) amount to show information tending to show disclose information, rather than allegations, options, questions, the voicing of a concern or a statement of position?
 - Did the Claimant have a genuine belief that the disclosure(s) of information were made in the public interest?
 - Was that belief reasonable?

- Did the Claimant have a genuine belief that the disclosure tended to show one or more of the matters listed under section 43B(1) of the Employment Rights Act 1996?
- If so, was that belief a reasonable one?

8. Detriments

- Did the Respondent subject the Claimant to the following detriments contrary to section 47 of the Employment Rights Act 1996 as a result of making any qualifying and protected disclosure?
 - a. On 21 November 2024 being told she was being moved to Hermiston Hall; and
 - b. On 3 February 2025 beginning work as an Operations Officer after opting down.
- If so, was the Claimant subjected to the detriments on the grounds that she made a protected disclosure?

9. Constructive Unfair Dismissal

- Did the Claimant resign in circumstances in which she was entitled to treat herself as being constructively dismissed? In particular:
 - a. Was there a fundamental breach of the employment contract by the Respondent as a result of the cumulative actions of the Respondent namely:
 - i. That there was a failure to address inappropriate and disparaging conduct in the workplace when concerns were raised;
 - ii. That protected disclosures were made regarding bullying, intimidation and abuse of authority;
 - iii. That there was a mishandling of an investigation and failure to provide protection from further detriment;
 - iv. That there was a failure to mitigate known workplace stressors contributing to sickness absence;
 - v. That there was a cumulative breach of trust and confidence leading to the resignation?

- b. If so, did the Claimant resign in response to the breach of her contract of employment?
- c. Did the Claimant waive any breach and affirm the contract?

FINDINGS IN FACT

10. The claimant was employed by the respondents as a prison officer, initially as a Band C at Saughton Hall. After a year she was promoted to Band D, working in Ingliston Hall with longterm male prisoners. The claimant was unable to carry out searches on male prisoners and asked for a move to Ratho Hall which then housed female prisoners as the claimant could carry out searches on female prisoners. Female prisoners were also generally considered to be easier to work with than male prisoners.
11. Female prisoners were moved out of Saughton altogether in 2023 and Ratho Hall was then populated by enhanced male sex offenders.
12. There were 2 officers per landing in Ratho Hall. Other Halls had 3 officers per landing. The claimant gave clear, cogent and compelling evidence on the importance of being able to rely upon the officer with whom you are working. To this end, she gave evidence that it was not uncommon for prisoners to be able to access weapons- in particular knives- and stated that she knew of someone who had trained with her who had lost a finger from one such weapon. The claimant gave uncontradicted evidence that other officers have had broken bones from encounters with prisoners, that the job came with dangers, and that in the course of her employment with the respondents two officers had taken their own life due to the stresses of the workplace.
13. As there are only 2 officers in each landing in Ratho Hall, officers such as the claimant need to be able to rely upon their fellow officer to respond should they press the panic button. In the claimant's own words *'there has to be a tight bond for safety.'* This evidence was not disputed by the respondents and was accepted by the Tribunal.
14. The claimant gave clear and uncontradicted evidence that when she was training the importance of the *'brotherhood'* - ie having each others backs- was emphasised. The claimant gave evidence that aside from the issue of safety, prisoners are quick to identify and exploit divisions between officers.
15. From around 2023, however, the culture in Ratho Hall among prison officers became problematic. The claimant described it as a culture of *'nastiness, snide comments'* *'bullying and intimidation'* and a *'mean girls club'*. The claimant witnessed numerous incidents of bullying of her colleagues. Two female officers were prevalent in the culture of bullying, namely Katie Runciman and

Cary Bankier. The incidents of bullying intensified in 2024. The claimant witnessed officers crying on shift.

16. There was a whiteboard in Level 1 of Ratho Hall where recreation took place. Officers started doing drawings and caricatures of other prison officers. One of the officers on Level 1- Davey Thompson- wiped out the drawings. Katie Runciman was annoyed at this and wrote on the whiteboard '*Fuck Davey T*'. A prisoner saw what was written on the whiteboard. The remark remained on the whiteboard until after recreation and was witnessed by a 1st Line Manager, namely Callum Jackson. Callum Jackson took no action about the remark and did not speak to Katie Runciman about it.
17. The claimant was by now becoming increasingly concerned about the divisions between officers. In a passage of uncontradicted evidence she described another incident on Level 3 when a prison officer entered a cell only for a verbal fight to break out between that prison officer and the prisoner in the cell. Cary Bankier was the other officer on duty on the landing and did not go to the assistance of her fellow officer who was left in a dangerous situation.
18. The claimant spent a few days considering whether to report this and other incidents of behaviour by Katie Runciman and Cary Bankier. The decision was a difficult one for her: she liked her job, she was popular; she was not a target for the behaviours and bullying and she had a personal friendship with Cary Bankier.
19. Eventually, in the claimant's own words, she decided that '*enough was enough*.' In saying this she felt that the atmosphere of bullying, intimidation, hostility and bitchiness could not continue in Ratho Hall for the safety of herself and her fellow prison officers. For that reason she wrote an email on the 4 August 2024 to her line manager Fiona Williams. In her email the claimant stated: "*I cannot stand bullying and some people really do think they can get away with anything.*" **59-60**. In the email the claimant described the incident with regard to the writing of '*Fuck Davey T*' on the whiteboard. She also described incidences of Katie Runciman and Cary Bankier coming back late from shifts which resulted in the claimant having to open up solo for outdoor exercise. The email was subsequently forwarded to John O'Connor, the Unit Manager at Saughton and Callum Jackson, line manager **(61-62)**.
20. On 14 August 2024 the claimant sent another email to Fiona Williams and John O'Connor **(66-67)**. This email was sent following a shift with Katie Runciman in which she was rostered with the claimant to work together on a prison landing in Ratho Hall. Katie Runciman refused to communicate with the claimant or work alongside her as it had become known that concerns had been raised by a prison officer and she suspected that that prison officer was the claimant. Two officers usually take the prisoner's choices for dinner; however the

claimant was left to take the prisoner's choices alone. This resulted in the claimant having to co-opt a 'trusted prisoner'- ie one who had a good record inside and could be relied upon to assist prison officers-in this case hold the board with the dinner choices written on it. There was an incident in which Katie Runciman snatched the board from the trusted prisoner and, in the claimant's words, '*was really rude.*' By acting in this way she exposed rifts between prison officers to the prisoners.

21. On 20 August 2024 Katie Runciman and Cary Bankier were informed that a misconduct investigation would take place. Jill Dollard was appointed as investigating manager. Both Katie Runciman and Cary Bankier subsequently went on sick leave.
22. On 22 August 2024 the claimant sent an email to Fiona Williams, Callum Jackson and John O'Connor **(76-78)** . This email highlighted bullying on the part of Katie Runciman and Cary Bankier. The email also highlighted what the claimant described as a "*bitching and moaning culture.*" (77) At the end of the email the claimant stated: "*you cannot run a landing when staff are not talking to each other about work related stuff. It is also not safe for them as they can say – oh, I was doing nothing wrong, people now just say that I looked at them wrong because I am under the investigation. So please keep everyone safe and move them to other halls if they come back to work.*"
23. The claimant gave an articulate, cogent and ultimately compelling passage of evidence on the content of the emails of the 4, 14 and 22 August 2024. The claimant candidly stated that if she worked in Tesco the content of these emails would amount to nothing more than '*high school stuff*'. By this she meant inconsequential personal disputes. The Tribunal believed the evidence of the claimant that the recipients (John O'Connor, Fiona Williams, Callum Jackson) would read the emails in the context of the claimant's workplace and would have concluded that the emails of 4, 14 and 22 August 2024 demonstrated a reasonable belief on the part of the claimant that the health and safety of her fellow prison officers was endangered. . In this respect the Tribunal preferred the evidence of the claimant to that of John O'Connor who stated in evidence that there was nothing in the claimant's emails of the 4, 14 and 22 August 2024 that would lead him to conclude that prison officers were in danger.
24. The Tribunal accepted the evidence of the claimant that in the context of working in Ratho Hall the emails highlighted danger to the health and safety of prison guards in Ratho Hall such as the claimant. The Tribunal noted that in her email of the 22 August 2024 the claimant asked that Katie Runciman and Cary Bankier be moved to other halls on their return from sick leave and noted the claimant's evidence that this was to ensure the safety of those working with them.

25. Jill Dollard completed and issued her Misconduct Investigation Reports into the behaviour of Katie Runciman and Cary Bankier on the 14 October 2024 **(86-103)**. She concluded in each that there was a case to answer that they had not demonstrated the standards set out in the SPS Dignity at Work Policy due to intimidation, derogatory or belittling comments and actions towards others **(92-101)**.
26. Disciplinary Hearings in respect of Cary Bankier and Katie Runciman took place before John O'Connor on the 6 November 2024. John O'Connor issued outcome letters to both Katie Runciman and Cary Bankier that day **(111, 112, 113, 114)**. In each case John O'Connor decided that there was 'No case to answer' and stated that: *"I have explained as the complaint had come from a whistleblower we decided that due to the seriousness of the issues highlighted we felt it was appropriate for the formal process to be adhered to. I added that I believed that the Ratho FLMs were managing the behaviours of the staffing the hall and following the investigation it was clear that these discussions had not taken place. The investigation highlighted that there has been long standing behaviours of various staff that need to be addressed within the hall in line with the Dignity at Work Policy."* **(111, 113)**. The letters to Katie Runciman and Cary Bankier both stated that they would be temporarily removed from Ratho Hall.
27. In evidence John O'Connor said that he reached the decision that the disciplinary process should result in 'No Case To Answer' as he considered that the behaviour complained of involved more individuals than those involved in the disciplinary process. In these circumstances he believed that the best course of action was to deal with the issues by appraisal and management including the use of mediation.
28. The claimant went on sick leave on the 7 November 2024. She submitted a grievance against John O'Connor's decision on the same day. The claimant's grievance is to be found at **119-121**. At page **121** the claimant concluded by stating: *"By failing to take disciplinary action, SPS signals that mistreatment of staff has no repercussions, discouraging victims from speaking out and showing disregard for their well-being and mental health."* **(121)**
29. On 15 November 2024 the claimant met with Stephen McCann, Deputy Governor, to discuss her grievance. Notes of this meeting are to be found at **123**. The final sentence of these Notes records: *"It was explained that 'No Case To Answer' does not necessarily mean that there are no actions or accountability regarding behaviours."* **(123)**. The Tribunal believed the evidence of the claimant when she stated that in the course of the meeting Stephen McCann told her that he did not want to uphold the claimant's grievance as if he were to do so he believed that the staff involved would remain on sick leave- and Saughton Prison was already short staffed. On 18

November 2024 the claimant was advised that her grievance was not upheld (124).

30. The claimant remained on sick leave due to the stress of the process of the misconduct investigation and her subsequent grievance. At this time the claimant also had personal issues connected to her sister's divorce which had a significant impact on her and her family.
31. On the 21 November 2026 the claimant emailed Marc Lockhart, a line manager who reported to John O'Connor, and asked him whether there was any news on staff location as she was concerned that she might be moved from Ratho Hall (130,131). Marc Lockhart advised her by email that there were a few people moving and that she "*was down for a move, to Hermiston*". The Tribunal accepted the evidence of the claimant that moving was unpopular among prison officers generally as a move would entail getting used to new prisoners, working closely with different officers and getting used to the ways of a new prison hall. The claimant also gave uncontradicted evidence that she had been moved 5 times throughout her career as a prison officer; that it was not "*her time*" for another move; and that some prison officers spent their entire career in Ratho Hall without being moved. The claimant had only spent 12-18 months with enhanced sex offenders in Ratho Hall and wanted to continue working with them, particularly as Katie Runciman and Cary Bankier had both been moved and the atmosphere in Ratho Hall was much improved without them. Further, the claimant had become extremely stressed by the investigatory process and did not feel able to move at that time. Her anxiety was compounded by the fact that Katie Runciman had been moved to Glenesk Hall which was near to Hermiston Hall and there was often an exchange of officers between the two Halls.
32. The Tribunal accepted the evidence of Mark Holloway (who was the Deputy Governor at the relevant time) that it was common for staff in Ratho Hall not to want to be moved from there and that there was a high number of appeals from staff in Ratho Hall if a move was proposed.
33. The claimant noted that all the officers who had been involved in Jill Dollard's Misconduct Investigation were being moved from Ratho Hall. In evidence Mark Holloway stated that the claimant was moved to Hermiston because she was an exceptionally good prison officer and an excellent caseworker- and Hermiston needed good caseworkers.
34. The Tribunal concluded that notwithstanding the evidence of Mark Holloway a decision had been taken to move all prison officers involved in the misconduct investigation instigated by the claimant's emails of 4, 14 and 22 August 2024.

35. The claimant's move to Hermiston Hall was confirmed by letter of the 25 November 2024 **(132)**. The claimant appealed the decision to move her to Hermiston Hall by email of the same date addressed to Mark Holloway **(133-134)**. The claimant's appeal hearing took place on the 4 December 2024. Both the claimant and Mark Holloway gave evidence that the appeal hearing was a *"constructive and good meeting"* Notwithstanding this, the claimant's appeal against her move to Hermiston Hall did not succeed. The reasons given in the appeal outcome letter of 09/12/24 were: *"I have sought clarification from your Unit manager as to the rational for your move, to ensure that this is linked to the agreed local process. I can now clarify that your move was felt appropriate for the following reasons: Personal and Team development; Balance of experience and skills amongst the residential function; Requirements from other areas for suitable individuals' skill set. There is a need to continue to drive and develop case management processes across the establishment and it is hoped that the experience you have gained in Ratho will further enhance and support this work in Hermiston."*
36. Other appeals in respect of moves from Ratho Hall were considered at the same time as the claimant's move. Several appeals were successful including an appeal brought by Davey Thompson who had been involved in the misconduct investigation concerning Cary Bankier and Katie Runciman.
37. In evidence, the claimant made reference to the respondents' Dignity at Work Policy **(479-496)** and in particular paragraph 9 where it is stated: *"The complainant will not normally be moved, except at their request or in exceptional circumstances."* **(493)** The Tribunal concluded that none of the respondents' witnesses gave cogent evidence as to why this provision in the Policy was not followed.
38. The claimant remained absent from work on sick leave. The respondents instructed and commissioned an Occupational Health Report which is dated the 27 November 2024 and is to be found at **135-137**. The OH report concluded that the claimant was unfit for prisoner facing duties, but was fit for non prisoner facing duties **(135)**.
39. The claimant returned to work at Ratho Hall on the 3 December 2024. The claimant gave uncontradicted evidence that on their return from sick leave Katie Runciman and Cary Bankier had been moved to other Halls and that accordingly the atmosphere in Ratho Hall had improved considerably and Ratho Hall was again a good working environment.
40. The claimant received a phone call that day from Linzi Higgs, HR Officer on the afternoon of her return to work on 3 December 2024. Linzi Higgs told her that she had to return home as the OH report had concluded that she was currently unfit for prisoner facing duties. Linzi Higgs stated in evidence that the

claimant should have been contacted by her Line Manager to advise her of this in advance of her return to work at Ratho Hall.

41. The claimant gave uncontradicted evidence that she lost all trust confidence in the respondents in the period November 2024 to January 2025 due to her grievance not being upheld, the subsequent announcement of her move to Hermiston, the failure of her appeal against the same and the refusal of the respondents to allow her to return to work. This evidence was accepted by the Tribunal.
42. The claimant remained absent on sick leave. A further OH report was commissioned and is to be found at **151-154**. The claimant then reported personal stressors due to family circumstances (**152**). In evidence she stated that the personal stressors were due to her sister's divorce and the consequences of the divorce. The OH report concluded by stating: *"The barrier to work in this case seems to be more related to Ms Stankiewicz –Strobiranda's perceived workplace stressors rather than a diagnosed medical condition. The perceived work place stressors will remain until the workplace issues are addressed through constructive dialogue and resolution to the outstanding issues will promote recovery. The personal stressors unfortunately remain ongoing."* (**153**)
43. On 17 January 2025 the claimant met with Linzi Higgs and Gavin Murray to discuss the OH report (**161-162**). In the course of that discussion the claimant discussed her personal situation and the difficulties this had caused her and her family (161). In the 3rd bullet point of the Notes of that meeting it was recorded: *" You explained that you were not enjoying the role of the Residential Officer and you were looking to opt down back to an Operations Officer. We discussed this at length and you added that if you had been able to remain in Ratho for one more year you would not be considering opting down. You were clear that you did not want to work in Hermiston Hall. We asked if you would consider any other hall and you said either Glenesk or Ingliston. I have confirmed with the Deputy Governor that he is happy for you to take up Line 13 in Glenesk Hall. I understand Gavin has contacted you to discuss this but you are still clear that you want to opt down to an Operations Officer. I would ask you on receipt of this email to confirm if you are happy to take up the line in Glenesk or you still wish to opt down."* (**161**) By Line 13 the respondents meant continue working in a D band as a prison officer.
44. The claimant chose to opt back to a Band C with a salary of more than £10.000 less than Band D. In evidence she stated that she needed a less stressful job at that time for a number of reasons including the stress of making her protected disclosures and the consequences of the same and her own stressful personal circumstances. On the 2 February 2025 the claimant started work in Operations ("Ops") as a Band C. In evidence she explained that she was a

“human taxi” - in other words the claimant's role was to take prisoners to doctors appointments, for education and for other visits. Her evidence was that the work itself was “fine” and everything about the Ops job was “fine”. However, the work entailed close interaction with Band D officers which included Cary Bankier and Katie Runciman. Any interaction she had with Cary Bankier and Katie Runciman was hostile and unprofessional. To this end the claimant's evidence was accepted that Cary Bankier and Katie Runciman ignored her and *“stared her down”*.

45. The claimant did not report this behaviour of Cary Bankier and Katie Runciman to the respondents. She did not do so as she had lost faith in the respondents' ability to address challenging behaviour. In her evidence she stated that she had reported worse behaviour from them and felt that nothing was done about it.
46. The claimant resigned on the 27 March 2025. In evidence the claimant stated that she would have continued working as a Band C officer in Ops had she not experienced hostile and unprofessional behaviour from Katie Runciman and Cary Bankier.
47. The claimant's letter of resignation stated: *“ I would like this email to be my official resignation. I would like my last working day to be Sunday May 18. I am on leave the week after this and early shift the week after and I am hoping to use toil for this as I have accrued a lot of hours. This will make my official finishing date the 31 May.”* (181) The claimant's letter of resignation did not mention that the reason for her departure was continuing behaviours of Katie Runciman and Cary Bankier.
48. The claimant resigned at that point as she had received an offer from employment as a resident artist. The claimant stated that she could not resign before obtaining alternative employment as she needed the income to pay her bills.
49. The Tribunal accepted the evidence of the claimant that she became aware of the right to bring Tribunal proceedings following her termination of her employment. She became aware from the content of emails from other prison officers following her departures. The claimant admitted in evidence that throughout the course of her employment she had access to the internet, to Google Search and to Chat GBT.

Observations on the Evidence

50. The Tribunal found the claimant to be an impressive, highly articulate and wholly credible witness who had an excellent grasp of the issues in this case.

From her evidence, the Tribunal concluded that the claimant was an individual who cared deeply about her workplace and the safety and well being of her fellow officers who worked alongside her. It follows that the Tribunal concluded that the content of the claimant's emails 4, 14 and 22 August 2024 did not consist of the reporting of petty grievances or complaints about 'high school stuff' and were not self serving but did amount to the expression of real concerns around the safety of her fellow officers.

51. Insofar as the respondents' witnesses were concerned, the Tribunal preferred the evidence of the claimant to that of John O'Connor insofar as the recipients' understanding of the content of the emails of 4, 14 and 22 August 2024 was concerned. To this end the Tribunal concluded that the recipients of these emails would have understood that the emails disclosed a reasonable belief on the part of the claimant that the health and safety of her fellow prison officers was likely to be endangered.
52. Further the Tribunal did not believe the evidence of John O'Connor on the reasons for the respondents' decision to transfer the claimant to Hermiston Hall and instead concluded that the claimant's transfer – along with the transfer of other prison officers who had been involved in the misconduct investigation – was due to the claimant's emails of 4, 14 and 22 August 2024 and her grievance of 7 November 2024. The Tribunal reached these conclusions due to the quality and clarity of the claimant's evidence on these issues together with the fact that all of the prison officers who were involved in the misconduct investigation were also transferred.
53. The Tribunal noted that Mark Holloway was a credible, reliable and eloquent witness who spoke highly of the claimant's abilities as a prison officer. The Tribunal noted, however, that he was not a recipient of the claimant's emails of 4, 14 and 22 August 2024 and neither was he involved in the initial decision to transfer the claimant to Hermiston Hall.

The Law

54. S43 B of the Employment Rights Act 1996 provides:

"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 which he is subject;*
- (c) That a miscarriage of justice has occurred, is occurring or is likely to occur;*
- (d) That the health and safety of any individual has been, is being or is likely to be endangered,*
- (e) That the environment has been, is being or is likely to be damaged, or*
- (f) That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.”*

55. S47 B of the Employment Rights Act 1996 provides:

“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.”

56. Although the word ‘disclosure’ is not itself defined in the ERA, it is clear that the phrase ‘disclosure of information’ in S.43B is intended to have a wide reach and that an employee simply has to communicate the information by some effective means in order for the communication to constitute a disclosure of that information.
57. In **Kilraine v Wandsworth London Borough Council** 2018 ICR 1850, CA, the Court of Appeal held that, in order for a disclosure to be a ‘qualifying disclosure’ within the meaning of S.43B(1) ERA, the disclosure had to have sufficient factual content. The Court went on to stress that the word ‘information’ in S.43B(1) has to be read with the qualifying phrase ‘tends to show’ — i.e. the worker must reasonably believe that the information ‘tends to show’ that one of the relevant failures has occurred, is occurring or is likely to occur. Accordingly, for a statement or disclosure to be a qualifying disclosure, it must have sufficient factual content to be capable of tending to show one of the matters listed in S.43B(1)(a)–(f). Whether an identified statement or disclosure in any particular case meets that standard will be a matter for the judgement of the tribunal in the light of all the facts of the case. The question of sufficiency of information is likely to be closely aligned with the issue of whether the worker making the disclosure had the reasonable belief that the information disclosed tends to show one of the six relevant failures. **Kilraine** is also authority for the proposition that the information imparted by a disclosure should be viewed in the context in which it is made.

58. Insofar as 'detriment' is concerned, s47B provides protection from any detriment: there is no test of seriousness or severity and the provision could well be breached by detrimental action that seems very minor to an objective observer. The employer's motive is irrelevant in determining whether there has been a detriment. Changing roles or workplace can amount to a detriment (**Barclays Bank plc v Mitchell EAT 0279/13**).
59. S.43B(1) requires a reasonable belief of the worker making the disclosure, not just a genuine belief. This introduces a requirement that there should be some objective basis for the worker's belief. This was confirmed by the EAT in **Korashi v Abertawe Bro Morgannwg University Local Health Board 2012 IRLR 4, EAT**, which held that reasonableness under S.43B(1) involves applying an objective standard to the personal circumstances of the discloser.
60. S95(c) of the Employment Rights Act 1996 provides:
- "Circumstances in which an employee is dismissed.*
- (1) For the purposes of this Part an employee is dismissed by his employer if -*
- (a) The employee terminates the contract under which he is employed (whether with or without notice), in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*
61. In the leading case in this area, **Western Excavating v Sharp 1978 ICR 221** the Court of Appeal ruled that, for an employer's conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract. As Lord Denning MR put it: *'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.'*
62. In order to claim constructive dismissal, the employee must establish that:
- there was a fundamental breach of contract on the part of the employer
 - the employer's breach caused the employee to resign
 - the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal

63. A constructive dismissal is not necessarily an unfair one — **Savoia v Chiltern Herb Farms Ltd** 1982 IRLR 166, CA.

64. S48 (3) of the Employment Rights Act 1996 provides for the right to bring a complaint to an Employment Tribunal in respect of breach of s47B of the Employment Rights Act 1996. S 48(3) provides:

“An employment tribunal shall not consider a complaint under this section unless it is presented (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates, or where that act or failure is part of a series of similar acts or failures, the last of them, or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.”

65. When a claimant tries to excuse late presentation of his or her ET1 claim form on the ground that it was not reasonably practicable to present the claim within the time limit, three general rules apply:

- S.111(2)(b) ERA (and its equivalents in other applicable legislation) should be given a *‘liberal construction in favour of the employee’* — **Dedman v British Building and Engineering Appliances Ltd** 1974 ICR 53, CA
- what is reasonably practicable is a question of fact and thus a matter for the tribunal to decide. An appeal will not be successful unless the tribunal has misdirected itself in law or has reached a conclusion that no reasonable tribunal could have reached. As Lord Justice Shaw put it in **Wall’s Meat Co Ltd v Khan** 1979 ICR 52, CA: *‘The test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer’s complications into what should be a layman’s pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the [employment] tribunal, and that their decision should prevail unless it is plainly perverse or oppressive’*
- the onus of proving that presentation in time was not reasonably practicable rests on the claimant. *‘That imposes a duty upon him to show precisely why it was that he did not present his complaint’* — **Porter v Bandrige Ltd** 1978 ICR 943, CA. The case of Porter is also authority for the proposition that the test is not whether the claimant knew of her rights but whether he or she ought to have known of them.

66. If the claimant fails to argue that it was not reasonably practicable to present the claim in time, the tribunal will find that it was reasonably practicable — **Sterling v United Learning Trust** EAT 0439/14.
67. Even if a claimant satisfies a tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour. The tribunal must then go on to decide whether the claim was presented “*within such further period as the tribunal considers reasonable.*” Thus, while it may not have been reasonably practicable to present a claim within the three-month time limit, if the claimant delays a further three months, a tribunal is likely to find the additional delay unreasonable and decide that it has no jurisdiction to hear the claim.

Submissions

68. **The undernoted are summary of the submissions from the claimant and the respondents, in their own words**

The Claimant

Claimant's Closing Summary

I have structured my submissions in line with the agreed List of Issues.

Time Bar

I submit that my claim was presented in time because the detriments formed one continuing course of conduct, beginning after my disclosures in August 2024 and ending with my resignation. Alternatively, I ask the Tribunal to extend time as I acted reasonably throughout, exhausted the Respondent's internal procedures and promptly entered ACAS before bringing my claim.

Protected Disclosures

My disclosures concerned bullying, intimidation and abuse of authority affecting multiple members of staff. I genuinely believed they were made in the public interest to protect staff, prison safety and public confidence.

Importantly, John O'Connor himself referred to me as a whistleblower, yet the Tribunal heard that senior management did not recognise or act on that. I respectfully submit this demonstrates inconsistency in how my disclosures were handled.

Detriments

The agreed detriments are my move to Hermiston Hall and my subsequent move into Operations.

The evidence showed that the staff rotation process was not followed in my case. I also relied on the Dignity at Work Policy, which provides protection for those reporting misconduct. I did not ask to move, yet I was the person removed from my post and ultimately lost around £10,000 a year by moving into Operations.

Constructive Dismissal

The Deputy Governor described me as an enthusiastic and committed officer. That demonstrates I loved my job and had no desire to leave SPS.

My mental health deteriorated only after the investigation and the Respondent's handling of my disclosures. I ultimately resigned because the relationship of trust and confidence had broken down.

Public Interest

This case is about more than me. Prison officers must be able to report bullying and misconduct without fear of suffering detriment. The Tribunal heard evidence showing inconsistencies in the understanding and application of SPS policies by senior management. I respectfully submit that protecting those who raise concerns is clearly in the public interest.

For those reasons, I ask the Tribunal to find that my disclosures were protected, that I suffered the agreed detriments because of those disclosures, that I was constructively dismissed, and that my claims should succeed.

Thank you.

The Respondents**Time bar**

The Respondent submits that the whistleblowing detriment claim is out of time under section 48(3) of the Employment Rights Act 1996. The alleged detriments occurred on 21 November 2024 and 3 February 2025 and were distinct issues involving different decisions and subject matter, rather than a continuing series.

The claim was lodged on 30 July 2025. It was reasonably practicable to present it in time: ignorance of the right to bring a claim or applicable time limit should not be accepted, as the Claimant had access to union support and search engines and could have sought further advice.

Protected disclosure

If jurisdiction is established, the emails must disclose information which, in the Claimant's reasonable belief, was made in the public interest and tended to show a relevant failure under section 43B(1). The Respondent submits that the emails concerned interpersonal conduct, bullying allegations and workplace dissatisfaction. They did not communicate facts tending to show danger to health or safety, breach of legal obligation or another statutory category. The later explanations about officer safety, mental health, staffing and public consequences were not contained in the emails and reflect hindsight. Even if genuinely held, the asserted beliefs were not objectively reasonable on the information disclosed. The concerns affected a limited workplace group and lacked the wider dimension needed for a reasonable belief that disclosure was in the public interest. The public interest test cannot be held to have been in the mind at the time the Claimant sent the emails based on the evidence heard. Accordingly, no qualifying—and therefore no protected—disclosure was made.

Detriment and causation

Under section 47B, the Claimant must establish detrimental treatment on the ground that she made a protected disclosure; the disclosure must materially influence the decision, rather than merely precede it.

The staff rotation was not a detriment and, in any event, resulted from operational need, collective decision-making and the Claimant's skills – there was no other reason for the move. Her move to an Operations Officer role followed her own request, after discussion and an alternative residential role being offered. Neither decision was caused by the August emails.

Constructive unfair dismissal

Under section 95(1)(c), the Claimant must prove a fundamental contractual breach, resignation in response to that breach, and no affirmation. For breach of mutual trust and confidence, the Respondent must have acted, without reasonable and proper cause, in a manner calculated or likely seriously to damage the relationship. The continued conduct (of alleged bullying) now relied upon was not reported (admitted by Claimant) so the Respondent could not address it. The Claimant gave no reason when resigning, worked her notice, sought information about returning and later applied for another role. Those facts do not establish resignation in response to a fundamental breach and, alternatively, demonstrate affirmation. The Respondent therefore invites dismissal of both claims.

Discussion and Decision

The Tribunal turned to the Issues in their determination of this case. The Tribunal took the Issues out of sequence, determining Time Bar as the last issue.

Whistleblowing

Did the Claimant make a qualifying disclosure in terms of section 43B of the Employment Rights Act 1996 in respect of the following disclosures:

- a. An email to Fiona Williams and subsequently to Unit Manager John O'Connor both dated 4 August 2024. (Disclosure 1)
- b. An email to Fiona Williams and John O'Connor on 14 August 2024. (Disclosure 2)
- c. An email to Fiona Williams and John O'Connor on 22 August 2024. (Disclosure 3)

Did the Claimant's communication(s) amount to show information tending to show disclose information, rather than allegations, options, questions, the voicing of a concern or a statement of position?

Did the Claimant have a genuine belief that the disclosure(s) of information were made in the public interest?

Was that belief reasonable?

Did the Claimant have a genuine belief that the disclosure tended to show one or more of the matters listed under section 43B(1) of the Employment Rights Act 1996?

If so, was that belief a reasonable one?

69. In determining these issues the Tribunal considered their Findings in Fact. To this end the Tribunal believed and accepted the claimant's passage of evidence that the emails of 4, 14 and 22 August 2024 should be viewed in the context of the situation of the working environment in Ratho Hall. It was not disputed in evidence that there were only two prison officers per landing; that it was not uncommon for the prisoners to have access to weapons; that prison officers had sustained injuries at the hands of prisoners and that the claimant was aware of a colleague who had lost a finger; and that it was imperative that prison officers had a good working relationship with each other and would support one another in circumstances where one of them could find

themselves in a dangerous situation at any time. The Tribunal believed that the recipients of these emails (Fiona Williams, John O'Connor and Callum Jackson) would have been well aware of the working situation and of the dangers that prison officers would find themselves in if their fellow prison officers were not supportive of them or if they did not work well together.

70. In reaching this conclusion the Tribunal found of particular assistance the candid passage of evidence by the claimant to the effect that the emails of 4 August 2024, 14 August 2024 and 22 August 2024 would amount to no more than "*high school stuff*" if she worked in Tesco but would be read by their recipients in the context of working in the reality of the prison service in Ratho Hall. In this respect the Tribunal preferred the evidence of the claimant over the evidence of John O'Connor who stated in evidence that the emails of 4 August 2024, 14 August 2024 and 22 August 2024 disclosed no reason to believe that the health and safety of any individual would be endangered.
71. In reaching the conclusion that the claimant's emails of 4 August 2024, 14 August 2024 and 22 August 2024 were all qualifying disclosures due to their context the Tribunal relied upon the case of **Kilraine v Wandsworth London Borough Council 2018 ICR 1850, CA** that the context of a disclosure should be considered in determining whether it is a qualifying disclosure. In the circumstances of this case the context in which the emails were sent was the reality of the working conditions in Hermiston Hall and in particular the facts that there were only two prison officers per landing and that the prisoners could and did access weapons.
72. The Tribunal also found that the claimant's communications disclosed information rather than allegations, or the voicing of a concern. Again, the Tribunal reached this conclusion due to the context in which these communications were made and the claimant's candid passage of evidence in which she stated herself that her emails of 4 August 2024, 14 August 2024 and 22 August 2024 would amount to no more than "*high school stuff*" if she worked in Tesco but they were intended to be read, and were in fact read in the context of working for the respondents in Ratho Hall.
73. The Tribunal had no doubt that the claimant had a genuine belief that her qualifying disclosures of 4 August 2024, 14 August 2024 and 22 August 2024 were made in the public interest. In reaching this conclusion the Tribunal had regard to the fact that at the time of the disclosures the claimant herself was not the target for the behaviours of Cary Bankier and Katie Runciman and that indeed she had a friendship with Cary Bankier which she lost as a result of her disclosures. The reason that she sent the first email of 4 August 2024 was, as she said herself, "*enough was enough*" in that the atmosphere of bullying, intimidation, bitchiness and hostility could not continue for the sake of the safety of those working in Ratho Hall. The Tribunal concluded that this belief

was reasonable as she herself had witnessed the breakdown in relationships between prison officers in Ratho Hall and knew from seeing Cary Bankier fail to go to the aid of a fellow officer, and from her own experience, how it could endanger the safety of her fellow officers.

74. The Tribunal concluded that the claimant's disclosures of the 4 August 2024, the 14 August 2024 and the 22 August 2024 did show a genuine and reasonable belief that the health and safety of her fellow prison officers in Ratho Hall had been and was likely to be endangered. To this end the Tribunal had regard to the fact that there were only two prison officers per landing in Ratho Hall and it was imperative from a safety perspective that they worked closely together. In this respect the claimant had witnessed Cary Bankier fail to go to the aid of her fellow prison officer when he got into an argument with a prisoner. The Tribunal also had regard to the uncontradicted evidence that it was not uncommon for prisoners to have weapons; that prison officers did get injured and that the claimant knew of a prison officer who had lost a finger; and that there had been two suicides by prison officers in the course of the claimant's employment. The Tribunal also had regard to the fact that if prisoners became aware of a division between prison officers then that would be exploited by them

Detriments

Did the Respondent subject the Claimant to the following detriments contrary to section 47 of the Employment Rights Act 1996 as a result of making any qualifying and protected disclosure?

- a. On 21 November 2024 being told she was being moved to Hermiston Hall; and
- b. On 3 February 2025 beginning work as an Operations Officer after opting down.

If so, was the Claimant subjected to the detriments on the grounds that she made a protected disclosure?

75. In determining these issues the Tribunal noted that : there is no test of seriousness or severity and s47B could well be breached by detrimental action that seems very minor to an objective observer. The Tribunal also noted that the employer's motive is irrelevant in determining whether there has been a detriment and that changing roles or workplace can amount to a detriment **Barclays Bank plc v Mitchell** EAT 0279/13
76. The Tribunal accepted the evidence of the claimant and, to a certain extent Mark Holloway, that a move from Ratho Hall constituted a detriment to her. To

this end the Tribunal accepted the evidence that moving was unpopular among prison officers generally as a move would entail getting used to new prisoners, working closely with different officers and getting used to the ways of a new prison Hall. The claimant also gave uncontradicted evidence that she had been moved 5 times throughout her career as a prison officer; that it was not "*her time*" for another move; and that some prison officers spent their entire career in Ratho Hall without being moved.

77. The Tribunal also noted that all of the prison officers who were involved in the misconduct investigation instigated by the claimant's emails of the 4, 14 and 22 August 2024 were moved from Hermiston Hall at the same time as the claimant. The Tribunal disbelieved the evidence of John O'Connor that such moves were not connected to the claimant's disclosures and instead preferred the evidence of the claimant. The Tribunal determined that the proximity of the movement of prison officers to the misconduct investigation led to the conclusion that the decision to move prison officers was a consequence of the claimant's disclosures of 4, 14 and 22 August 2024 and the subsequent misconduct investigation and disciplinary procedure.
78. The Tribunal then considered the detriment of the 3 February 2025 of beginning work as an Operations Officer on Band C. In determining this issue the Tribunal noted that the claimant had initially been willing to move from Hermiston and work as a Band D in Glenesk Hall (161) and that this had been offered to her by the respondents; but that she had chosen to step down and work as a Band C in Operations. The Tribunal concluded that in these circumstances the claimant's decision to move down to a Band C was motivated largely by her personal issues at that time and in particular her sister's divorce and the impact that that had on her own family. In these circumstances it is the conclusion of the Tribunal that the respondents did not subject the claimant to the detriment of beginning work as an Operations Officer at Band C on the 3 February 2025 after opting down from a Band D.
79. After considering the foregoing the Tribunal concluded that the claimant was subject to the detriment of being moved to Hermiston Hall on the 21 November 2024 on the grounds that she made a protected disclosure but was not subject to the detriment of beginning work as an Operations Officer on Band C on 3 February 2025 on the grounds that she made a protected disclosure.

Constructive Unfair Dismissal

Did the Claimant resign in circumstances in which she was entitled to treat herself as being constructively dismissed? In particular:

- a. Was there a fundamental breach of the employment contract by the Respondent as a result of the cumulative actions of the Respondent namely:
 - i. That there was a failure to address inappropriate and disparaging conduct in the workplace when concerns were raised;
 - ii. That protected disclosures were made regarding bullying, intimidation and abuse of authority;
 - iii. That there was a mishandling of an investigation and failure to provide protection from further detriment;
 - iv. That there was a failure to mitigate known workplace stressors contributing to sickness absence;
 - v. That there was a cumulative breach of trust and confidence leading to the resignation?
 - b. If so, did the Claimant resign in response to the breach of her contract of employment?
 - c. Did the Claimant waive any breach and affirm the contract?
80. The Tribunal considered firstly the alleged failure to address inappropriate and disparaging conduct in the workplace when concerns were raised. In determining this issue the Tribunal noted that as a result of the claimant's protected disclosures there was an investigation by Jill Dollard which concluded that there was a case to answer in respect of misconduct on the part of Cary Bankier and Katie Runciman **(92, 101)** John O'Connor subsequently found that there was "*no case to answer*" **(111,113)** in respect of each individual; however, the Tribunal noted that Cary Bankier and Katie Runciman were both moved to other Halls by the respondents following the disciplinary process. The Tribunal noted that on her return to work on 3 December 2024 the claimant found Ratho Hall to be once again a good working environment. In these circumstances and taking all the evidence into account the Tribunal did not conclude that there was a failure on the part of the respondents to address inappropriate and disparaging conduct in the workplace when concerns were raised.
81. The Tribunal then considered whether protected disclosures were made regarding bullying, intimidation and abuse of authority. The Tribunal concluded that the emails of 4, 14 and 22 August 2026 constituted protected disclosures on the issues of bullying and intimidation but not abuse of authority. The Tribunal concluded that the claimant was subject to detriment, namely being told that she was being moved to Hermiston Hall on 21 November 2024 , on the grounds of making such protected disclosures.

82. After having regard to their Findings in Fact the Tribunal concluded that the actions of the respondents on the 21 November 2024 constituted a fundamental breach of the contract of employment between the claimant and the respondents.
83. The Tribunal then considered whether there was a mishandling of an investigation on the part of the respondents who failed to provide the claimant from further detriment. The Tribunal found no evidence to support this contention. To this end the Tribunal noted that the conclusions of Jill Dollard were not challenged; that Katie Runciman and Cary Bankier went on sick leave after being told that they were to be subject to disciplinary hearings; and that both Katie Runciman and Cary Bankier were transferred to other Halls on their return from sick leave.
84. The Tribunal proceeded to consider whether there was a failure to mitigate known workplace stressors contributing to sickness absence. Again, the Tribunal found no evidence to support this contention. The claimant did find the process of making protected disclosures, the misconduct investigation and the outcome of the same and her grievance to be stressful which contributed to her sickness absence. The Tribunal understood the known workplace stressors to be the presence of Cary Bankier and Katie Runciman in Ratho Hall; however, the Tribunal noted that both went on sick leave after being advised of the misconduct investigation and neither returned to Ratho Hall.
85. The Tribunal then proceeded to consider the issues of whether there was a cumulative breach of trust and confidence leading to the claimant's resignation and whether the claimant resigned in response to the breach of her contract of employment. In deciding this issue the Tribunal had regard to the conclusions that there was a fundamental breach of the contract of employment between the claimant and the respondents; but that that breach had taken place on the 21 November 2026 when the move to Hermiston Hall was proposed. The Tribunal noted that the claimant's own evidence was that she lost all trust confidence in the respondents in the period November 2024 to January 2025 due to her grievance not being upheld, the subsequent announcement of her move to Hermiston, the failure of her appeal against the same and the refusal of the respondents to allow her to return to work.
86. The Tribunal noted that the claimant resigned on the 27 March 2025. The claimant's evidence was that in the period 3 February 2025 to 27 March 2025 her job in Operations was '*fine*'. The reason that the claimant resigned then was that she had difficulty in her interactions with Cary Bankier and Katie Runciman. However, she did not report these difficulties to the respondents and there was no failure on the part of the respondents to deal with such difficulties caused by the behaviours on the part of Cary Bankier and Katie

Runciman. The claimant also gave evidence that she resigned at that time because she had found another job.

87. The claimant's letter of resignation (**181**) did not reference that she was resigning due to a breach or breaches of her contract of employment.
88. In these circumstances it is the conclusion of the Tribunal that the claimant did not resign in response to a breach or breaches on the part of the respondents of her contract of employment. It is also the decision of the Tribunal that the claimant waived the breach of contract on the part of the respondents on the 21 November 2025 by, firstly, the passage of time since that breach and, secondly, her return to work in Operations on 3 February 2025 which, by her own evidence, was *'fine.'*
89. It is for these reasons that it is the judgment of the Employment Tribunal that the claimant's claim of constructive unfair dismissal fails.

Time Bar

Have the claims under s43B of the Employment Rights Act 1996 been brought in time? The Claimant's position is that the detriments relied upon formed part of a continuing course of conduct following the protected disclosures and culminated in the Claimant's resignation.

90. The conclusions of the Tribunal are that the claimant was subjected to detriment on the 21 November 2024 on the grounds of making protected disclosures on the 4, 14 and 22 August 2024. The detriment was being told that she was being moved to Hermiston Hall.
91. The claimant's ET1 was received on the 30 July 2025 An Acas certificate was issued on the 27 May 2025.
92. Against this background the Tribunal considered whether the ET1 was presented

"(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."
s 48(3) of the Employment Rights Act 1996.

93. In determining whether it was "not reasonably practicable for the complaint to be presented before the end of that period of three months" the Tribunal had regard to the claimant's evidence that at all material times she had access to the internet, to Google, and to Chat GBT. The claimant stated in evidence that she only became aware of the right to bring proceedings to an Employment

Tribunal on receipt of messages from colleagues advising her of this following her departure from the respondents.

94. The Tribunal noted their conclusions that the claimant is impressive, highly articulate and wholly credible witness who had an excellent grasp of the issues in this case.
95. In determining this issue the Tribunal noted that the statutory provisions on time bar have to be given a liberal construction in favour of the employee. However, the onus remains on a claimant to persuade a Tribunal that it was not reasonably practicable to bring a claim in time. **Porter v Bandridge Ltd 1978 ICR 943**, CA. The Tribunal noted that this case is also authority for the proposition that the test is not whether the claimant knew of her rights but whether she ought to have known of them.
96. The Tribunal noted that the claimant gave no evidence as to why it was “not reasonably practicable” for her to have presented a claim timeously. Her evidence on time bar was simply to the effect that she became aware of her right to bring proceedings from colleagues post termination of her contract of employment. In these circumstances the Tribunal concluded that the claimant ought to have enquired and known of her right to bring a claim before she brought the present proceedings.
97. Against that background it is the decision of the Tribunal that the claimant’s claim arising from the detriment on the 21 November 2024 is time barred and therefore fails. Further and in any event even if the Tribunal had found that it was ‘*not reasonably practicable*’ for the claimant’s claim to have been brought within the statutory 3 month time limit, the additional delay to 30 July 2025 in bringing the claim is not reasonable.
98. It is for all these reasons that it is the judgment of the Employment Tribunal to dismiss all claims brought by the claimant in these proceedings.

Employment Judge: J Porter SIR
Date of Judgment: 17 August 2026
Entered in register: 25 August 2026
and copied to parties