EMPLOYMENT TRIBUNALS

Claimant: Mrs J Percival

Respondent: Bridgewater Community Healthcare NHS Foundation Trust

HELD AT: Liverpool **ON:** 9 and 10 May 2017
15 and 19 May 2017
(in Chambers)
27 September 2017
(in Chambers)

BEFORE: Employment Judge Shotter
Mr A G Barker
Mr P Gates

REPRESENTATION:

Claimant: Mr R Percival, Husband
Respondent: Mr J Crosfill, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that: -

1. The claimant made a protected disclosure and her claim for detriment 15 to 25 on the grounds that she has made a protected disclosure contrary to section 47B of the Employment Rights Act 1996 is not well-founded and is dismissed.

2. The claim in relation to detriment 16 is dismissed on withdrawal by the claimant.

3. Detriments 1 to 14 were not presented before the end of the period of 3 months beginning with the date of the act or the failure to act which the complaint relates in accordance with S.48(3)(a) ERA, it was reasonably practicable for he claimant to have presented her complaints in time, the Tribunal did not have the jurisdiction to consider the detriments 1 to 14 and the complaints are dismissed.

REASONS

Preamble

1. By a claim form received on 6 May 2016 (date of issue by ACAS of the early conciliation certificate 8 April 2016) the claimant, who remains employed by the respondent, alleges she had made 3 protected disclosures which resulted in her being subjected to 25 detriments from 3 June 2014 through to 25 October 2016. The claimant alleged in her Claim Form she had made protected disclosures concerning confidential patient information, inaccurate reporting of data during a contract query with the commissioners leading up to a contract bid, and safeguarding concerns. The claimant maintained there was a "dishonest intent" on the part of higher management employed by the respondent to "cover up" their failures. As a consequence, she had been ignored, policy and procedures had not been followed, timeframes had been "extinguished" and the detrimental effect of a "two-year campaign" had been damaging to her health.

2. The respondent denied that the claimant had made protected disclosures as alleged and if she had, had not been subjected to any detriment on the grounds that she had made a protected disclosure. It is accepted that the respondent did not deal with any of the issues raised by the claimant at a meeting on 23 April 2014 under its whistle-blowing policy as it did not consider the communication amounted to a protected disclosure, in the belief it was a grievance. The respondent maintains the claimant's disclosures concerned her own personal working environment and relationships within the team, she did not state that she had any concerns in relation to patient safety, confidentiality or safeguarding, and nor did she considered the information she was conveying tended to show that a relevant offence or failure as detailed in sections 43B(1)(a)-(f) of the Employment Rights Act 1996 had occurred, or that she was conveying the information with a reasonable belief that doing so was in the public interest.

The 25 detriments

3. During a case management discussion, the claimant produced details of the whistle-blowing events and 15 of the detriments she was claiming, which were accepted as amendments to the claim.

4. At a second case management discussion held on 13 September 2016 the claimant confirmed she relied on two alleged incidents when protected disclosures were made, as follows:

(1) Protected disclosure 1 – Information disclosed jointly by the claimant and Dr Brough orally to Ms Simosa and Mr Scales during a meeting on 23 April 2014, as described in 28 April 2014 email referred to below, and the claimant's 29 July 2016 document.

(2) Protected disclosure 2 – information contained in an email dated 28 April 2014 from the claimant and Dr Brough to Mr Scales and Ms Samosa.

Detriments numbered 1-15 to be dealt with by the Tribunal.

5. The claimant confirmed the 15 detriments she was relying upon, which are paraphrased as follows:

6.1 Detriment 1 – this is an allegation that the Chief Executive, Kate Fallon, ignored the claimant's email dated 3 June 2014 in contrast with the respondent's whistle-blowing policy which stated "where your concerns can be acted upon, actions will be taken promptly and the appropriate responsible person will respond to you".

6.2 Detriment 2 – this is an allegation that the claimant had been "snubbed" by Michael Smith, the Deputy Director of Strategic Development – Sexual Health, when he responded "thank you for your kind offer but I won't ask you to get off your sick bed to come to this meeting" when the claimant requested to attend a service model meeting during her sickness absence, and her manager, Karen Armstrong, had informed her that she would require a GP letter to attend the meeting, which she obtained.

6.3 Detriment 3 – this is an allegation that Kate Fallon deliberately failed to ask for a report that she had told the claimant that she would request. In the expanded list of detriments before the Tribunal at the liability hearing (which ran to 16 pages) the claimant also brought this complaint against Colin Scales and Christine Samosa, alleging that there had been no response to her 14 July 2014 email despite Kate Fallon informing her that she had just spoken with Christine Samosa and had asked her to provide a full response.

6.4 Detriment 4 – this is an allegation that Christine Samosa categorised the claimant's protected disclosure as a "grievance" showing she was not taking the disclosures seriously, and denying the claimant the right to raise her concerns under the whistle-blowing policy. The claimant alleged this was an attempt by Christine Samosa and Colin Scales to "extract" themselves from their failure to adhere to the whistle-blowing policy.

6.5 Detriment 5 – this is an allegation that Christine Samosa on 24 October 2014 sent an email to the claimant informing that "following a review of our disclosures, they did not meet the definition of whistle-blowing. Christine Samosa failed to include within her review the missing lab results, a protected disclosure under health and safety". The claimant alleged that the 24 October 2014 email left her feeling she was the "recipient of severe injustice". It made her fearful of her work environment and "the steps my employer would take when operating outside of policy and procedure".

6.6 Detriment 6 – this is an allegation that in a report written by Christine Samosa titled "Christine Samosa's briefing paper Part 2 of board meeting 6 November" misrepresented the facts at a board meeting held on 6 November 2014 facts, when she described the joint protected disclosure made on 23 April 2014 as a single person disclosure, referring to it as a grievance.

6.7 The claimant also alleges Christine Samosa reported inaccurately to the Board in her briefing paper for 6 November 2014 by referring to laboratory reports as "paper records" which was a reference to missing lab reports thus minimising the impact. The claimant expands this detriment in the document before the Tribunal at the liability hearing to include Christine Samosa reporting Dr Brough and the claimant "did not appear to understand the seriousness of the loss and had not escalate it internally", which the claimant stated was not true as it had been escalated internally, Christine Samosa was aware of this and "had acknowledged Dr Pippa Brough doing so".

6.8 Detriment 7 – this is an allegation that in a letter dated 6 November 2014 that Colin Scales and Christine Samosa confirmed that all grievances and complaints within the department were to be investigated by the Assistant Director, Christine Whittaker, and would be completed in ten days. The claimant alleges that the grievance she raised on 22 October was not activated and had received no HR response. The claimant further alleged the respondent "insulted me in giving a false expectation in timeframes that were grossly unrealistic and unachievable".

6.9 Detriment 8 – this is an allegation that in an email sent on 7 November 2014 to Colin Scales and Christine Samosa the claimant requested terms of reference for grievances and complaints to be investigated, and she not receive a response. The claimant further alleges the procedure was not transparent and its purpose was "to bury facts and deny me a right to justice regarding the whistle-blowing and my need to defend a misdirected bullying allegation held against me since March 2014".

6.10 Detriment 9 – this is an allegation that Christine Samosa in an email sent 28 November 2014 following the claimant's emails of 14 and 26 November 2014 requesting a response for terms of reference, confirmed the investigation into Donna Borg's complaint had been concluded by the investigating officer, and the report would be submitted to Christine Samosa. The claimant complained that the "concluded investigation" held against her since March 2014 was being passed to another investigating officer to investigate together with all grievances and complaints within the department, the whistle-blowing complaint being referred to as the claimant's grievance and placed into a collective investigation along with others. The claimant also complained Christine Samosa had knowledge of Donna Borg's complaint against the claimant made in March 2014 prior to the whistle-blowing, where HR had "misdirected ownership from Sharon Lindley to me". In respect of this complaint the claimant claimed aggravated injury.

6.11 Detriment 10 – this is a complaint in a letter dated 1 December 2014 made against Christine Samosa. The claimant at the liability hearing did not refer to Kate Fallon as the recipient of her complaint; however, in the body of detriment 10 provided in the expanded list of detriments she criticised Kate Fallon for urging employees to drop all complaints and grievances and to start mediation and teambuilding. The claimant alleges that "Kate Fallon's letter confirmed to me that our disclosures were acted on and that I was denied the protection that the policy offers and therefore treated differently to others". The claimant further alleges that she had suffered retribution as a result of her disclosure.

6.12 Detriment 11 – this is an allegation that in a letter dated 28 April 2015 Christine Samosa confirmed to the claimant the outcome of the complaint by

Donna Borg had been upheld, six months after Christine Samosa had informed the claimant "it had been concluded and the report passed". It was then submitted to a second investigation as part of the collective investigations initiated in November 2014.

6.13 The claimant alleges that both investigation officers concluded that the complaint was not made against her, the complainant (Donna Borg) said it was not made against her and it was HR who directed Donna Borg to complain against the claimant. The claimant alleges that she was made the "scapegoat" to protect senior manager as retribution for highlighting service risks, and she had an upheld complaint against her on her file which was misdirected by HR with no evidence to support her wrongdoing.

6.14 Detriment 12 – this detriment is against Pauline Hoskins. The claimant alleges she had raised a dignity and respect complaint against Christine Samosa for mishandling her employment situation and concerns. The claimant alleges she was not supported by HR and that the investigation was flawed from the outset.

6.15 Detriment 13 – this is an allegation that Karen Armstrong and Christine Samosa made changes to the claimant's role by taking away various responsibilities without consulting her. In contract to the detriments agreed at the 13 September 2016 case management discussion, the claimant also raised this allegation against Donna McManus, which was expanded to the claimant being allegedly "told" for the next six months she would work on clinical competencies, and she did not accept that this was due to her long-term sickness. The claimant compared herself with a colleague who had been absent with sickness for six months and alleged that she had been "stripped" of any line management responsibilities or managerial tasks.

6.16 Detriment 14 – this allegation comprises five separate alleged detrimental acts –

6.16.1 The claimant's clinical training was cancelled by Sharon Lindley, the Service Manager, in September 2014.

6.16.2 Retraining as part of the claimant's return to work plan was cancelled for service mobilisation in late September or early October 2014.

6.16.3 Some time during the period from March to May 2014 the claimant escalated concerns about the lack of a contingency plan for the removal of the BPAS referral clinic. Karen Armstrong chose not to put a contingency plan in place. The reference to Christine Samosa made at 5.6.3 in the case management discussion minute was not included in the claimant's expanded list of detriments at detriment 14. Within detriment 14 the claimant alleged in the expanded list that there was a failure on the part of Karen Armstrong to address the need to access midwifery elements to support her professional clinical registration with the National Midwifery Council.

6.16.4 Karen Armstrong removed the claimant from the intrauterine techniques ("IUT") clinic when she had returned to work in September/October 2014. The claimant alleged in her further expanded detriment 14 this was a specialist

clinical skill she had attained in 2010 which supported her pay banding and contributed to her midwifery practice.

6.16.5 The fifth separate alleged detrimental act set out within the case management minute at 5.6.5 was not included in the claimant's expanded list of detriments, and accordingly that complaint has not been considered by the Tribunal; it relates to Christine Samosa who was not named by the claimant in the expanded list.

6.17 Detriment 15 – this is an allegation that during the period from the claimant's first sickness absence to the date of the case management discussion held on 13 September 2016, Christine Samosa ignored eight Occupational Health reports and in particular the opinion expressed in three different reports about the impact of "non-resolution" on the claimant's health.

6.18 In the expanded list the claimant made allegations against Colin Scales, Christine Samosa, Karen Armstrong and Donna McManus concerning the work environment and health impact, alleging the respondent had not taken her wellbeing seriously or addressed matters and maintaining the agreed return to work plans had been breached or "acts of retribution" occurred.

Amended claim to include additional detriments numbered 16-22.

7 The case management minute dated 13 September 2016 records the claimant had permission to amend her claim form to allege seven further detrimental acts or failures. The first six related to the claimant's complaint under the Dignity at Work procedure, the seventh related to a report purporting to uphold a complaint by Donna Borg against the claimant. The additional seven detriments numbered 16-21 were set out. During the liability hearing, the claimant withdrew detriment 16.

7.1 Detriment 17 – this detriment is against Pauline Hoskins and it is alleged she ignored evidence provided by the claimant in 20 respects, set out more fully in the claimant's grievance appeal letter.

7.2 Detriment 18 – this allegation related to Christine Samosa who allegedly delayed the investigation into the claimant's dignity at work complaint deliberately, which was not concluded within the six weeks provided for in the dignity procedure.

7.3 Detriment 19 – this complaint is against Christine Samosa who allegedly attempted to dictate the arrangements for the investigation by Pauline Hoskins of the claimant's complaint, by nominating investigators and by suggesting timescales.

7.4 Detriment 20 – this complaint is against Pauline Hoskins who did not interview Dr Brough.

7.5 Detriment 21 – this complaint is against Pauline Hoskins who did not call Donna Borg as a witness.

7.6 Detriment 22 – this complaint is against Christine Samosa who denied the claimant the right to appeal when on or around 15 April 2015 the claimant received the report upholding Donna Borg's complaint.

Additional detriments 23-25

8 In a document sent 29 December 2016 the claimant sought to add further detriments and her application was heard on 16 February 2017, with the result that the claimant's claim in connection with the restructuring of the respondent's service was not allowed as it was an ongoing issue, and the claimant was granted leave to amend her ET1 with detriments numbered 23 onwards as follows: -

8.1 Detriment 23 – it was alleged the respondent failed to investigate the full content of the complaint made to the Trust on 21 August 2015. This complaint lay against Pauline Hoskins as investigating officer and Harry Holden, the Trust Chairman. In the expanded detriment 23, the claimant alleged it was agreed the whistle-blowing was to have been investigated and during an appeal hearing on 30 September 2016 Pauling Hoskins informed a panel of non-executive directors that her remit was not to investigate whistle-blowing, which contradicted all the information the claimant had previously been told.

8.2 The claimant alleges she had escalated matters to Harry Holden and on 25 April 2016 he had assigned Dorothy Whittaker, a non-executive director, and Esther Kirby, the chief nurse, to investigate. Following their review Harry Holden informed the claimant that they were not able to comment whether this was to be handled under the terms of the respondent's whistle-blowing policy and if so whether it was handled appropriately, and the investigation was put "on hold" "they have also noted…that it is vital the investigation being conducted by Pauline Hoskins is completed". The claimant alleged there was a complete failure by Pauline Hoskins and Harry Holden to investigate, and the respondent was not taking her whistle-blowing seriously and dealing with it in an appropriate manner. In the original documents dated 29 December 2016 detriment number 1 (which became detriment number 24), the claimant also alleged that she had been misled. This was not an allegation raised in the expanded list of detriments at detriment 24, and was not considered by the Tribunal.

8.3 Detriment 24 – this is an allegation involving Colin Scales and Christine Samosa, the claimant alleging that there was a failure by Christine Samosa to deal with her complaint in a timely and transparent manner and in line with policy. It is notable the original complaint was against Christine Samosa, and this was amended in the expanded list of detriments to include Colin Scales. Within detriment 24 the claimant relied on a number of sub-detriments as follows:

8.3.1 The claimant alleges that her complaint against Christine Samosa submitted on 21 August 2016 was sent to Christine Samosa and held onto it by her until 17 September 2016 when she passed it to Paula Woods (Assistant Director, Workforce) and the outcome was received in July 2016. It is apparent to the Tribunal that these dates are incorrect, and it has dealt with in the findings of fact set out below.

8.3.2 The claimant's complaint is that Donna Borg was treated differently in the way the respondent dealt with her complaint and this is described as follows: - "Donna Borg, who during an appeal hearing on 19 October 2016 stated that at the end of the six-week period given her dissatisfaction with the handling of her complaint she phoned Christine Samosa and within the same day she had a meeting with her and Colin Scales."

8.3.3 The claimant alleges Christine Samosa having held onto her complaint for "nearly one month" then requested that the complaint was investigated and concluded within ten days, and yet the respondent did not commence with the "bulk" of the interviews in May 2016, transmitting it was a low priority.

8.3.4 The claimant alleged Christine Samosa directed the Assistant HR Director to assign an investigation officer, and Pauline Hoskins was selected by her.

8.3.5 The claimant alleged she had experience of HR support being present at investigatory interviews, and this was denied to her in relation to her complaint against Christine Samosa, and this caused disadvantage.

8.3.6 Finally, the claimant alleged the respondent failed to escalate and assign the complaint to the Chairman at the outset. In respect of the ten-day timeframe, the claimant maintained this was "knowingly unachievable, disrespectful and insulting".

8.4 Detriment 25 – this allegation is against Christine Samosa, who allegedly refused to authorise payment of the injury allowance. The claimant also alleged Colin Scales and Christine Samosa were "accountable for my ill health and poor working environment, which resulted in three episodes of linked sickness related totally to working environment". The detriment claimed by the claimant was "their inaction placed my working relationships with colleagues under severe pressure, resulting in my third sickness absence in June 2016", claiming aggravated injury.

9 At the outset of the liability hearing, it was agreed following an application made by the claimant that she would present the case and her husband would cross-examine the respondent's witnesses, with the claimant making final submissions. The Tribunal agreed to this course of action on the basis that it was a complex case, the claimant was a litigant in person and the respondent was represented by experienced counsel.

10 The complexity in the case and the time it has taken the tribunal to deal with it, was exacerbated by the state of the documentation relied upon, in addition to the considerable number of detriments claimed. The Tribunal was faced with six bulging lever arch files that could not be used properly as the majority were broken, the pages were duplicated more than once and not in chronological sequence. It was described by Mr Crosfill at the outset of the hearing as a "nightmare" with some justification. This has indeed proven to be the case, as the Tribunal has struggled during a three-day in chambers meeting to come to grips with the correspondence. It has been difficult to find key documents despite the parties agreeing partway through the hearing for a minimal core bundle to be produced. The email exchanges were incomplete and did not follow chronologically, and correspondence/reports/party-to-party communications are duplicated throughout the six bundles. It is the Tribunal's view that had the documentation been properly prepared in lever arch files which did not burst open spilling their contents, with some form of logical progression, and a core bundle, the third day in chambers would not have been needed.

Agreed issues

11 The List of Issues was agreed in a document prepared on behalf of the respondent as follows:

11.1.1 The claimant claims that she had been subjected to detriment on the grounds that she had made one or more protected disclosures contrary to section 47B of the Employment Rights Act 1996 ("ERA").

11.1.2 The respondent does not admit the claimant had made a protected disclosure at the meeting of 23 April 2014 and in the email of 28 April 2014.

11.1.3 One issue for the Tribunal is whether or not the claimant held a reasonable belief that her disclosures were in the public interest, which the respondent disputes maintaining she had not thought about the public interest.

11.1.4 With reference to the 25 alleged detriments, the respondent denies that it treated the claimant detrimentally contrary to section 47B of the ERA. The issue before the Tribunal is whether the claimant was caused a detriment, and whether a reasonable person would have considered themselves disadvantaged. The Tribunal will need to consider the following in relation to each allegation –(a) whether the respondent subjected the claimant to a detriment and if so, what the detriment was. (b) If the decision is that the respondent did subject the claimant to a detriment, whether the respondent did so on the ground that the claimant had made a protected disclosure either at the meeting of 23 April 2014 or in the email of 28 April 2014.

11.1.5 With reference to time-limits, the issue before the Tribunal is whether the detriments claimed by the claimant are within the statutory time limit, and whether any earlier alleged detriment is out of time, or are the detriments claimed by the claimant a series of acts, and therefore within the time limit set out in section 48(3) and 48(4A) of the ERA?

11.1.6 The respondent's position is that claims 1-14 of the 15 original claims are outside the time limits provided, and the issue for the Tribunal is whether they are out of time and if so, was it reasonably practicable for the claimant to bring the claims in time, and if not whether the claims were issued within such further period as was reasonable. Were claims 1-14 a series of linked events and therefore within time? Alternatively, whether the complaints may amount to an ongoing course of conduct which was continuing within the time limits for issuing the claim.

12 It was conceded on behalf of the respondent that claim 15 appears to be in time as were the other additional claims set out above, with the exception of the complaint that on 15 April 2015 Christine Samosa denied the claimant her right to appeal Donna Borg's complaint outcome.

Witnesses

13 On behalf of the claimant the Tribunal heard oral evidence given by her and it took into account the claimant's witness statement which ran to 258 paragraphs. The Tribunal also relied upon a chronology prepared and agreed between the parties.

14 On behalf of the respondent the Tribunal heard evidence from Colin Scales, Chief Executive; Christine Samosa, Director of People and Organisational Development;

Pauline Hoskins, Head of Emergency Preparedness, Resilience and Response ("EPRR") and Assistant General Manager; Jo Cohen, Human Resources Business Partner; Anne Evans, who was due to retire from her position of Line Manager, she was responsible for the absence management of the claimant; Karen Armstrong, Assistant Clinical Director of North West Boroughs NHS Foundation Trust, having transferred there from the respondent on 1 April 2017; Donna McManus, lead Nurse in the sexual health team; and Christine Whittaker, Associate Director of Organisational Development.

15 Turning to the credibility of the parties, the Tribunal preferred the evidence of the respondent's witnesses supported by contemporaneous documents in the main, to that of the claimant when it came to conflicts. In relation to the claimant the Tribunal did not always find her evidence to be credible; and it was not supported by the contemporaneous documentation. The Tribunal has dealt with relevant conflicts in the evidence below in its findings of fact. The Tribunal wish to make it clear that they did not come to a view that the claimant had intentionally not told the truth throughout this case; she was an inaccurate historian and it was difficult for her to analyse the situation objectively. As a result, the view she took of events as they unfolded was inaccurate and on occasions, skewed against her managers in contrast to the reality of the situation.

16 The Tribunal has taken into account the trial bundles, the written and oral submissions, together with references to case law, which have been dealt with below. The Tribunal does not intend to repeat the submissions in their entirety, and has attempted to incorporate them into this judgment with reasons. The Tribunal has made the following findings of the relevant facts.

The Facts

17 The respondent provides healthcare services in Wigan, St Helens, Halton and Warrington, employing around 3.500 employees.

18 The claimant was and remains employed as a Sexual and Reproductive Health Manager in the respondent's Warrington Sexual Health Service, which fell within the respondent's specialised services directorate. The claimant was issued with a contract that confirmed the date of commencement of employment as 9 June 2003 and throughout her employment she was issued with various policies and procedure, including a Grievance Policy dated October 2014, Whistle-blowing Policy dated June 2014 and absence management procedure. The policies have been dealt with below. The claimant is currently at Band 8. She was provided with a job description, and the Tribunal was taken to a job description hand-dated 2010 which confirmed the Sexual Health and Reproductive Manager was on a Band 5, it provided a job summary and set out principal responsibilities. The Tribunal were also referred to an incomplete and undated job description whereupon the Sexual and Reproductive Manager had a principal responsibility of planning and contributing to the integrated sexual health team to oversee its future development, to ensure compliance, lead and monitor youth workers, coordinate links with partners and be the first port of call for communication. In respect of the former responsibilities set out under the heading "Service Delivery" there is a reference to the following: "Under review – new contract". Finally, a job description dated October 2015 was referred to whereupon the Sexual Health and Reproductive Manager was Band 5-6. There is a further reference to the "lead and monitor of youth workers and coordinate links with

partners and be the first port of all for communication to be under review – new contract."

Grievance Policy

19 The grievance policy before the Tribunal is dated October 2015 and gives examples of complaints that can be made, which are set out in a non-exhaustive list, including working environment and organisational change. It was specified that the procedure "may not apply to issues covered by other policies such as whistle-blowing and dignity at work". The policy set out an informal and formal procedure including time limits. For example, under the formal procedure if the grievance is in writing or by using the grievance form at appendix D sent to the line manager, the receiving manager will endeavour to acknowledge receipt within seven calendar days; at stage 2 in 14 calendar days if the grievance is submitted to the next level of management or another manager. It provided that HR would "endeavour" to arrange for a stage three hearing within 28 calendar days. There were no time limits set out with reference to the investigation into the grievance.

Whistle-blowing Policy and Procedure

20 The Tribunal were referred to a Whistle-blowing Policy and procedure for staff raising concerns dated October 2014 which provided a list of concerns at paragraph 1.1. The objective of the Policy was to encourage staff raise issues in connection with the health or safety of any individual or clinical malpractice. At paragraph 5.2, guidance was given on how to raise concerns. At paragraph 5.2.1 there is a reference to the Trust expecting senior managers to take concerns seriously and "where action is not considered appropriate, or may be more appropriately dealt with using some other Trust policy or procedure, you will be advised accordingly in writing". The policy also provided: "Where your concern can be acted upon, action will be taken promptly and the appropriate responsible person will respond to you. There may be circumstances where confidentiality must apply…and feedback may be limited in such circumstances." The Policy was clear; even if the claimant believed she was whistle-blowing senior managers could decide that her complaints should more appropriately be dealt with under the respondent's other policies, such as the Grievance or Dignity at Work Policy.

21 At paragraph 5.2.2, guidance was provided on raising concerns about patient safety stemming from clinical practice. A worker was required to inform the Medical Director or Chief Nurse/Director of Quality, and if they remained dissatisfied, having exhausted all informal and formal procedures, the matter may be referred to the Chief Executive and in the event of the worker still remaining dissatisfied, the Chairman of the Trust who will designate a non-executive director to address the concerns raised directly.

22 Paragraph 5.3 referred to action to be taken requiring the person with whom the worker raised his or her concerns to be required to record them as a whistle-blowing incident with the Director of People and Organisational Development and as an incident for investigation by risk management. It provided that: "Whilst it is not essential, it would be helpful if you could inform the person to whom, you speak that you are raising an issue under the whistle-blowing policy. Those being informed of concerns about patient safety, unlawful conduct, professional misconduct…in any

case treat such concerns as whistle-blowing incidents and deal with them in accordance with this policy and procedure."

23 In paragraph 8 there is a reference to the NHS providing support for individuals and at appendix B there is a policy and procedure for staff raising concerns coupled with a flowchart.

Absent Management Policy

24 The claimant was also provided with an Absence Management Policy and Procedure dated December 2012 which included an NHS Injury Benefit Scheme at paragraph 8 and a temporary injury allowance, the purpose of which was to guarantee an income to an employee who suffers a temporary loss of NHS earnings. Under paragraph 8.3 this limited the claims to a number of circumstances, including injury at work e.g. due to malfunction of equipment, and it was expressly provided: "Entitlement under the scheme may not be considered if a person is injured…or goes off sick as a result of investigations or disciplinary action, or sustains an injury or disease mainly due to or seriously aggravated by the claimant's own culpable negligence or misconduct."

The re-organisation and effect upon the respondent's team

25 The respondent's team has been adversely affected by a number of reorganizational changes. Prior to 2013 the Family Planning element of the Sexual Health Service in Warrington comprising of a small team, was transferred to the respondent in 2011, having previously been part of Warrington PCT. The team was managed by Mandy Skelding-Jones and Dr Pippa Brough, the latter as head of clinical practice, remained a key player in the claimant's department. During this period the claimant was happy and there were no apparent issues. However, in 2013 following a tendering exercise the Genitourinary Medicine ("GUM") staff were transferred to the respondent under the Transfer of Undertaking (Protection of Employment) Regulations ("TUPE"), and thereon in, problems between the team and managers brewed until a number of grievances and complaints were raised.

26 In April 2013, following the TUPE transfer, the claimant agreed to act up in a Band 8A manager's role until 13 October 2015, she undertook this alongside her Band 7 role. In the same month, Donna Borg, a Band 7 Chlamydia coordinator, transferred from the Terence Higgins Trust under TUPE to the respondent, and she reported to the claimant, who was responsible for managing her in accordance with the Band 8A manager's role. The claimant was unhappy that Donna Borg was not a clinician, and as time progressed Donna Borg raised a lengthy grievance that included complaints against the claimant. From thereon in, the claimant's attitude towards the department and managers, took a downturn, even to the extent of the claimant questioning the motive of the human resources department, who she alleged had instigated the Donna Borg complaint, maintain she was not Donna Borg's manager at the time. The Tribunal took the view from the contemporaneous evidence before it, Donna Borg's grievance against the claimant was an all-consuming issue for her, and it coloured the events which followed as the claimant was not prepared to accept she should be the subject of criticism from junior staff and had done nothing wrong. It is notable that these events took place before the claimant made the protected disclosures, and their evidential value is to set the scene for what followed.

27 As a result of the deep-seated organisational changes within the team, it was in turmoil; poorly performing with relationships between team members strained which in turn affected performance and morale, including that of the claimant who was very unhappy. The situation was difficult for the respondent's managers to effectively resolve, and it remained an ongoing problem with relationship difficulties between team members spilling into criticisms of line managers and deepening divides.

28 In October 2013 Sharon Lindley was appointed to act as Clinical Manager, taking over a number of the claimant's acting up duties. It was expected the claimant would revert to carrying out her original Band 7 exclusively, the claimant having chosen not to apply for the position of Clinical Manager. The claimant in the past had been provided with a job description that set out a range of responsibilities, which changed to meet the needs of the business. The Tribunal finds a job description is not a contractual document written in stone, but evolves with time and changes in line with the needs of the organisation, and this was the case in relation to the claimant's job description. The claimant was unhappy that Sharon Lindley was not a clinician; the claimant did not believe a non-clinician could effectively manage the team and she made her position on this matter very clear. Sharon Lindley took over the management of a difficult and troubled team, which had not settled following the transfers into the respondent business, and she struggled to resolve the differences faced with criticisms from the claimant and other clinicians who did not accept she should be managing them.

29 In November 2013 Karen Armstrong, another non-clinician, was appointed to act as Service Manager. The claimant remained unhappy, as she was being managed by two non-clinicians, Sharon Lindley and Karen Armstrong, and this was a problem for her. The claimant held a strong view, which she did not attempt to hide, that managers should be clinicians and those who were not clinicians were unsuitable to take up the position.

30 On 7 February 2014 Karen Armstrong sent a number of managers, including the claimant and Pippa Brough, an email concerning problems regarding the non-implementation of the Chlamydia screening programme. She wrote: "As you are now aware…a contract query in that notice has been issued to the integrated SH service because the Chlamydia Screening Programme (CSP) commissioned in April has not been implemented…Sharon [a reference to Sharon Lindley] and I have looked at the events leading up to this point and it seems to be evident that part of the problem is that no-one was singularly responsible for implementing the programme…Learning from the past, Sharon will be the overall manager of the programme with Janine taking the lead clinical role."

31 Karen Armstrong made it clear that no-one was held "singularly responsible" for the failure, and to avoid further confusion or duplication of work Sharon Lindley was to be the first and only point of contact for all operational issues, and if not Sharon Lindley, Karen Armstrong.

32 There was a reference to Karen Armstrong and Sharon Lindley intending produce a plan "…and gain assurance that we are all clear about our individual responsibilities and are able to carry them out. There will be an opportunity to make some final minor adjustments. As the timeframe, has been so tight and we have had to work from square one, it has not been possible to complete this piece of work in any other way." There was a reference to the team needing to pull together, and that

Sharon Lindley: "…will be discussing motivational deputising with Band 7s to ensure continuity and consistency with such a large group of services…although this has been a tough time, I feel very excited about getting this project off the ground." It is clear to the Tribunal from reading this email that there were issues within the department that needed to be addressed.

33 In response to the email, the claimant on 10 February 2014, sent an email to Sharon Lindley expressing a number of concerns about her job role after she had reverted to Band 7, her substantive post, and querying why Sharon Lindley had been recruited and who appointed her to the role. It is uncontroversial the claimant had shown no interest in remaining at the Band 8A manager's role, which she had not applied for. The Tribunal found the claimant's communication confusing, she referred to the role of Operations Manager no longer existing, to plans being devised between Sharon Lindley and Karen Armstrong concerning the Chlamydia Screening Programme culminating in a statement that "it feels like there is almost a case for constructive dismissal." The Tribunal conclude the claimant, who had not wanted to continue with the 8A role, did not accept the fact Sharon Lindley was a suitable post-holder; she continued to view Sharon Lindley in a negative light and took no steps to hide this fact. It is notable in the email sent 10 February 2014 the claimant's complaints were made, despite an earlier meeting in which she confirmed that she would "take the lead for Outreach".

34 The Tribunal found the claimant, who was no longer in her Band 8A role having relinquished it, found reintegration into her original Band 7 role and the reduction in authority and responsibility difficult, especially given the fact the two managers, Sharon Lindley and Karen Armstrong, to whom she was answerable, were non-clinical, and in the claimant's view should not have been recruited. The Tribunal finds that this was the nub of the claimant's case taken with the Dona Borg complaint, from which the events leading to these Employment Tribunal proceedings cascaded.

35 A meeting took place between the claimant, Sharon Lindley and Karen Armstrong on 11 February 2014 to discuss the claimant's role in response to the letter of 10 February 2014. The result was a constructive discussion and positive outcome reflected by the claimant's email of 13 February 2014 and Sharon Lindley's email advising the claimant "please don't ever let your concerns mount to that level again…" The claimant acknowledged the time given at the meeting and "the pressures we are all under currently" reinforcing the Tribunal's view that this department were under a great deal of pressure.

36 On 19 February 2014 Sarah Jones, a Community Sexual Health Outreach Worker based in Trafford, was brought in to help on a temporary basis.

<u>The Donna Borg Grievance (alleged detriment 9)</u>

37 On 12 March 2014 Donna Borg raised an eight-page grievance following an earlier meeting with Sharon Lindley in which the claimant was referred to by name by Donna Borg, in addition to Teresa Warmsley, another employee, concerning whom Donna Borg had raised complaints in the past, including complaints made to the claimant on numerous occasions but matters did not improve. The claimant had been Donna Borg's manager during the relevant period, and this grievance related to the claimant in addition to other employees. The Tribunal found it could only have

been interpreted in this way despite the gloss given by the claimant during the liability hearing when she sought to minimise the complaint against her.

38 An example of Donna Borg's references to the claimant in the 12 March 2014 email is as follows: "First meeting at Bath Street was with Janine Percival who introduced herself as my manager…I plugged up the courage to tell Janine about Teresa's behaviour towards me…The pattern continued and I was left feeling more and more alone, I wanted to hand my notice in…Again I voiced my feelings to Janine who told me that it was not worth trying to do anything about Teresa as she did what she wanted because she had friends in high places…I again told Janine I was feeling lost and low and did not want to come into work again. I was promised things would get better. It did not. This continued and things got worse…We went round and round this way and clearly relationships were very raw...I felt isolated, completely lost and under pressure…I have given a very detailed account of my time at Bridgewater, in short I have been so unsupported, isolated, commented on, ignored and ill treated…Janine leaves me bits of chase up jobs to do while she is off but I do not have all the info or the power to give instructions so this just leaves me looking incompetent…After I told Julie she could not take 14 Feb off Janine told me that nobody wanted to work with me, that I did not need to rule with a stick, and she had the backlash the next day."

39 There are approximately six pages of closely knit type in which Donna Borg referred to a number of employees repeatedly, including the claimant. The complaint culminated with Donna Borg referring to the bullying and harassment policy, confirming: "I do not wish to continue working in that environment and feel due to all the people that have played a part it would be impossible to do so, I have been embarrassed, ignored and disrespected in front of the entire office, and further, and a trend is set, also as Janine kept reminding me that Teresa has friends in high places and Trish is her best friend, I am fearful of reprisal…"

40 In an email to Sharon Lindley sent 17 March 2014 the claimant made a formal request for a move out of Outreach into clinical work as she believed she had been "constructively dismissed from my position of Operations Manager for Sexual Health". The Tribunal did not understand the claimant's reference to constructive dismissal in relation to the Operations Manager role, as she had relinquished that role voluntarily, and chosen not to apply for the vacancy. The claimant wrote: "I was given some time to decide on what I wanted to do within the service. The agreement was that I was to come back to you following the launch of the integrated service which I was leading on. From the outset, I have always stated the need for me to have the capacity and resources to meet the Outreach objectives before I could accept this role…Without any one-to-one consultation with me you decided to make me Outreach lead."

41 The Tribunal noted the claimant was going back over old ground that appeared to have been resolved, and her email culminated in a criticism of the department. The Tribunal also noted that the claimant in her evidence at the liability hearing stated she had been told to move into clinical work; but the evidence before the Tribunal was that she had requested to do so and this had been agreed with her. The claimant's evidence in this respect was not credible, and she was found to be an inaccurate historian.

42 On 19 March 2014 at a team meeting Sharon Lindley suggested to the claimant that she should take the lead on "Outreach work". This was not a new suggestion and had been discussed with the claimant previously, who expected to take on the Outreach role. The claimant was provided with a copy of Donna Borg's grievance, to which she reacted to badly and felt very upset by it. In the email responding to the claimant's email of 20 March, Joanne Waldron on 23 March 2014 wrote Donna Borg: "…has confirmed that a complaint is against you but it is under the Dignity at Work policy as opposed to grievance…Donna does mention concerns about other staff members but indicated that she was raising the complaint against you due to the handling of the concerns she raised with you and other staff members and the lack of action resulting in her feeling the way she has described."

Detriment 13

43 The Tribunal noted the claimant was very unhappy that Donna Borg had raised a complaint in this way, but that is the purpose of the respondent's Dignity at Work Policy under which such grievances can be raised in relation to managers. The claimant appeared not to understand this. In an email sent 27 March 2014 by the claimant to Joanne Waldron, HR, she wrote: "I must disclose my concern over this situation…Following the ending of my six-month Band 8 role in October and subsequent handover of all responsibilities relating to this position to Sharon, I have been trying to address my personal position for several months with Sharon and Karen Armstrong. I have sought clarity on what exactly is my role outside of my clinical hours, who is anyone I actually manager, what responsibilities do I have…I felt that I had been constructively dismissed from my previous role when Band 8A ended and Sharon took up post…The outcome of this meeting [a meeting with Sharon Lindley and Karen Armstrong held on 11 February 2014] **was an agreement that I would have some time to reflect on what I could do within my hours and come back to them** [my emphasis]…Before we had a chance to meet again to discuss my position, Sharon without warning during our team meeting on Wednesday 19 March, announced that I was to take the lead on Outreach…I was shocked…I have to say this was devastating…The constant pressure and stress is causing me a lot of anxiety and sleepless nights, the blatant disregard for my feelings and empathy towards my situation…I have heard nothing from Sharon [Lindley] regarding my own personal situation, again piling on the stress and worry that the grievance from Donna Borg has taken all the focus from my ongoing nightmare…My request to work offsite, which I instigated whilst under extreme emotion, is something I no longer wish to do."

44 The references in the claimant's email sent 23 March 2014 to "off kilter" relationships between team members, supports the considerable evidence given to the Tribunal by various witnesses throughout the liability hearing and contemporaneous documents that there were fundamental problems within the claimant's team. The claimant alleges that Donna Borg's complaint should not have been aimed at her, as she no longer line-managed Donna Borg. There was no satisfactory or persuasive evidence before the Tribunal that Donna Borg had been advised by any of the respondent's managers to name the claimant, as maintained by the claimant during this liability hearing. Joanne Waldron set out in the 27 March 2014 email the fact that the claimant had been line-managing Donna Borg as confirmed by the claimant previously. Party-to-party emails ensued, the claimant alleging on 1 April 2014 Joanne Waldron was not neutral and she had the right to

raise a constructive dismissal complaint, requesting another HR officer to be assigned.

45 The Tribunal took the view that the claimant's complaint in relation to her protected disclosure and Donna Borg had no basis; clearly the factual matrix reveals difficulties in relation to Donna Borg's complaint raised under the respondent's Dignity at Work Policy from the outset, and the claimant was alleging she had caused stress and worry as a result of making allegations that she had been effectively "set up" by the Donna Borg complaint. The point is this: the position the claimant took concerning these complaints arose well before she made the protected disclosures, and as a consequence there cannot be any causal link between the two events.

46 In an email sent 27 March 2014 by the claimant to Joanne Waldron she denied responsibility for managing Donna Borg after the 8A role ended, requested clarification as to why she was the recipient of the complaint and indicated a "formal grievance" would be raised against Sharon Lindley. This resulted in the email sent 23 March 2014 to Joanne Waldron. The Tribunal does not intend to set out the emails in any detail, suffice to say they explored the issue raised by the claimant concerning whether she line managed Donna Borg or not in accordance with her job description, which was not to the point as Donna Borg's grievance dealt with the period when the claimant had undisputedly acted as her line manager. A meeting took place on 3 April 2014 to discuss the process relating to Donna Borg's complaint, which the Tribunal does not intend to go into.

47 On 4 April 2014, the claimant met with HR to discuss the Donna Borg complaint and the changes made to her job description. The claimant was informed that job descriptions evolve and change, managers change, and any substantial changes to job descriptions should be communicated to employees. The claimant requested clarification as to what the authorisation had been given to her for managing a Band 8, which was a reference to Donna Borg, and it is clear from the contents of the notes, the claimant was unhappy that Donna Borg's complaint involved a criticism of her management skills.

Incident report – missing Chlamydia Screening Programme ("CSP") results

48 On 8 April 2014 Elaine Unsworth, a clinical nurse, filed an incident report under the respondent's procedure relating to missing CSP results, which had a high-risk rating. The report referred to "**missing or illegible notes**" [my emphasis] and confirmed "Michael Smith is now managing this process with the support of the clinical and service manager. CSP pathway to be produced and implemented". As a result of the incident report the respondent was made aware of the missing records.

49 The claimant was aware that the report had been filed, as was Dr Pippa Brough, and she would appreciate the respondent was thus aware that the records were missing and the remaining details within the report which referred to the Chlamydia Screening Programme ("CSP") and to administrative staff bringing over an envelope of results and placing them by a computer monitor. The results went missing, having been placed on the CSP coordinator and administrator's desk situated in a restricted access room which required two fob entries. An independent search was completed on 8 May 2014. There is a reference to "CSP pathway to be produced and implemented with immediate effect…"

50 The claimant did not raise an issue concerning the missing records on 8 April 2014, despite the records having been missing since 1 April 2014. Elaine Unsworth was the only person who completed the relevant report form setting out the incident.

51 On 10 April 2014, the claimant self-referred to Occupational Health with stress and anxiety. She was then absent due to ill health and submitted a grievance against Sharon Lindley under the respondent's grievance policy alleging Sharon Lindley had: "…not addressed my concerns with regard to my terms and conditions of employment and this has caused problems with relationships at work, unclear organisational reporting and above all a blatant disregard for my dignity and respect. From the outset, **I have always stated I was not opposed to leading on Outreach** [my emphasis] if resources and capacity were in place. I have sought clarity on what exactly is my role outside my clinical hours, who if anyone I manage, what responsibilities do I have, as my operational role appeared to transfer to Sharon when she had taken the position of Sexual Health Manager. Please note I work part-time (five clinics per week with ten hours' admin time)."

52 Given the factual matrix and the fact the claimant had yet to make the protected disclosures, it cannot be the case that the claimant's complaint concerning her role within the department was causally connected to the whistle-blowing. It notable that claimant repeated her allegation that she had been constructively dismissed from her previous role when Band 8 ended and Sharon Lindley took up the post, and that Sharon Lindley on 19 February 2014 had announced to the team "I was to take the lead on Outreach…here she was informing me, along with other colleagues of what I was to be doing, with no prior discussion, no job description or objectives confirmed to me in writing. I have to say this was devastating". The claimant alleged she had not been treated with "fairness, dignity and respect", that she was under "constant pressure and stress" and in relation to the Donna Borg complaint "I wondered what other agenda was at play here". The complaint ran to approximately two pages, and it is against this background, coupled with the events set out by the Tribunal in its findings of fact above, that the claimant made the first protected disclosure.

<u>The events leading up to the 23 April 2014 meeting</u>

53 Prior to the protected disclosure being made an undated letter was sent to Sharon Lindley by Occupational Health with the claimant's consent which stated the following: "I understand due to the recent reorganisation of services within sexual health that there could be an issue regarding her role and job security, and she tells me she has not been issued with a formal job description. Janine tells me she has also been informed that a complaint has been made which is currently awaiting investigation. Due to the nature of the complaint and current circumstances Janine is not sleeping very well and is feeling increasingly stressed and anxious." There was no reference to the protected disclosures until the 23 April 2014 meeting.

54 In an email sent 12 April 2014 from Carole Hugall to the claimant, reference was made to a previous discussion with Christine Samosa and Colin Scales regarding "a staff issue in sexual health" and the claimant was asked to send in key points and a timeline, which she did. At the outset of the document under the heading "Chain of Events document provided to Christine Samosa April 2014" the claimant referred to two "current issues" with regard to Sharon Lindley, including role clarity and "treatment, dignity and respect policy". Issue 3 was that Donna Borg had indicated the claimant was her line manager, which the claimant stated was inaccurate.

55 The claimant set out the background; how she had inducted Donna Borg, and how after completing the 8A role on 1 November her previous role felt "it was now redundant", with her operational work being absorbed by Sharon Lindley. The claimant referred to two incidents, one dated December 2013 relating to the management of Donna Borg and the March 2014 complaint by Donna Borg. A timeline was set out that ran to ten pages dealing with the claimant's personal complaints against individuals and Donna Borg's complaint against her; an allegation that line management lines had been undermined; no consultation concerning Outreach/clinical operations; requests to changes to the claimant's role being ignored by Sharon Lindley; and a complaint about lack of communication concerning her wellbeing. The claimant copied correspondence concerning her issues with Donna Borg, and prior to 23 April 2014 meeting there is no reference to the incident report or the disclosures made by the claimant.

56 It is submitted by the claimant the fact two high level managers, Christine Samosa and Colin Scales, attended the 23 April 2014 meeting must reveal to the Tribunal she was whistle-blowing and this was known to the respondent. Based on the contemporaneous documentation before it, the Tribunal did not agree and preferred the oral evidence of Christine Samosa and Colin Scales to the effect that they understood the claimant and Pippa Brough was intending to discuss the problems within the department, evidenced by the contents of the claimant's 12 April 2014 email and time-line coupled with past events involving the claimant who had made numerous complaints against her managers. The Tribunal accepts Christine Samosa and Colin Scales did not anticipate the claimant would be raising disclosures under the Whistle-blowing Policy, and so the Tribunal found.

57 On 15 April 2014, the claimant commenced a period of sickness absence.

The 23 April 2014 meeting

58 On 23 April 2014, the claimant attended the meeting with Christine Samosa and Colin Scales. Also in attendance with the claimant was Dr Brough.

59 The claimant's case at the liability is that following the IR1 raised on 1 April 2014 no action was taken or investigation started at the time of the meeting, and the claimant was making a protected disclosure concerning this. Taking into account the contemporaneous documents relating to the 23 April 2014 meeting, the Tribunal did not accept the claimant had orally raised a disclosure to the Christine Samosa and Colin Scales concerning the respondent's lack of action in response to the IR1, she has miss-recollected this fact and is found to have been an inaccurate historian who did not give credible evidence in this regard.

60 The claimant also referred to the safeguarding of children and positive Chlamydia results delivered by non-clinical staff, as the second and third disclosures.

61 Immediately following the meeting, Christine Samosa emailed Colin Scales on 23 April 2014 as follows:" There were a number of things that bothered me about the meeting this afternoon, but the main one is the missing results sheet. There did seem to be a lack of awareness about the seriousness of the issue, no-one had flagged it to you, yet Pippa says that Michael knows of it. She clearly hadn't flagged it to Steve. The completed IR1 doesn't seem to have generated any concern or action, that we are aware; we're the governance team/IG team. We haven't reported

it anywhere and the report seemed focussed on why no-one told them that someone was coming to put the result on the computer, they clearly didn't see the need to question who the girl was, why she was accessing files etc., but felt assured it was ok as seemed 'a nice girl'. Do you want me to raise it...see what has been reported and who has done what as a result of the IR1?"

62 It is clear from the contents of the 23 April 2014 letter the completed IR1 was raised at the meeting; Christine Samosa was concerned with the lack of action taken by Dr Pippa Brough and she was entitled to express her views to Colin Scales. In detriment number 6 the claimant alleged Christine Samosa reference that "Dr Pippa Brough and Janine Percival did not appear to understand the seriousness of the loss and not escalated internally. This is not true. It was escalated internally and CS was already aware of this and had acknowledged to Dr Pippa Brough doing so". There was no satisfactory evidence within the documentation to Dr Brough maintaining she had had escalated the loss internally to Christine Samos, and if this was the case, the Tribunal struggles to comprehend why the claimant was so concerned to have this disclosure labelled as a protected disclosure under the Whistleblowing Policy, when it was in the hands of one of the most senior clinical managers. Dr Brough.

The email dated 28 April 2014

63 In an email dated 28 April 2014 from the claimant to Colin Scales and Christine Samosa a "summary of our recollection of what we discussed" was set out and the purpose "of the meeting…was to hear directly what concerns and issues had been raised in an effort for you to gain a greater understanding of the situation". The Tribunal does not intend to repeat the entire contents of the email. It is apparent that items 1-4 dealt with handover, staff concerns, staff sickness and transfer of workers under TUPE. In item 5 the first disclosure was made as follows: "Missing lab reports by transfer worker – IR1 governance incident raised".

64 The sixth item which is relied upon by the claimant as a protected disclosure was as follows: "Collegiate – lack of communication/corroboration, lead given to non-clinical staff member therefore no clinical input. SLA, safeguarding consideration regarding affiliated schoolchildren accessing the college. Results in incident raised following commissioner concern as service start date delayed." The eleventh point raised by the claimant as a protected disclosure is as follows: "Positive Chlamydia results delivered by non-clinical staff".

65 The remaining points raised referred to a number of matters, including poor communication, lack of clarity regarding integrated clinics or primary care plan, exclusion of clinical input for training plans, bullying incident not cascaded to leads and the claimant's personal issues with managers. The claimant indicated, when asked how the respondent could resolve the issues raised, that she was "currently off sick and was unsure how trust in her manager could be restored as personal issues had arisen attributed to her manager and she now also had a complaint against her". The email finished with the following; "as Janine is off work please can a copy of the whistle-blowing be forwarded to her as we believe this has been activated by this disclosure". If the respondent had any doubt the claimant believed she had made a protected disclosure under the Whistle-blowing Policy, the reference to whistle-blowing being activated would have put this beyond doubt. The Tribunal took the view that at this point, Colin Scales and Christine Samosa should have explored with the claimant what aspect of her extensive grievance was to be brought

under the Whistle-blowing Policy, Grievance or Dignity at Work Policy, following a similar process to that carried out later in relation to her grievance and dignity at work complaints. Colin Scales and Christine Samosa did not for the simple reason Christine Samosa came to the view, from which she did not shift, that the claimant's complaints taken cumulatively, amounted to a grievance. Christine Samosa was wrong in law, however, when the Tribunal considered her motivation and the reasons she held this view, it accepted Christine Samosa genuinely believed no protected disclosures had been made, and at no stage did the claimant elaborate or clarify what part of her complaint, amounted to whistle-blowing, given the majority of the issues raised arose out of her contract of employment and dissatisfaction with the way non-clinical managers were running the department she had previously managed for a short period. On the balance of probabilities, looking at events that had passed, s set out above, it was unsurprising Christine Samosa came to the conclusion she did, even if she was wrong.

Summary of the case had been prepared by Christine Samosa

66 A summary of the case had been prepared by Christine Samosa after the event. It was undated and reflected her interpretation of the meeting. It covered three issues: workload, attitude and operational issues. The claimant was described as a part-time permanent member of staff, Operations Manager Sexual Health/Sexual Health Practitioner Band 7, 26 hours doing five clinics and ten hours' administration time.

67 Concerning the missing CSP results Christine Samosa wrote: "It was reported that the manager, Sharon Lindley, had arranged for someone from Trafford Sexual Health Service to attend Warrington and input data (Chlamydia results) onto the system. Pippa and Janine were unaware of who the person (they did not ask for clarification nor seem to have concern about an unknown person having access to the sexual health database). They mentioned that they had been unable to locate the paper records which had then been missing for two weeks. They did not appear to understand the seriousness of the loss and had not escalated this internally…Concern was expressed that the management team were not clinically led as Sharon Lindley does not have a clinical background, examples were given of non clinical staff within the service delivering talks to youth workers and it was felt that these should only be delivered by clinicians, although it was acknowledged that this occurred only once…The view of Janine was that the leadership was poor, with little communication and a perceived failure to follow process. She stated that she did not like Sharon's personality or style and she did not trust her…Based on this assessment of the case I do not believe this fulfils the definition of whistle-blowing and is a grievance and should be managed as such. It is concerning that the grievance [this is a reference to Donna Borg's grievance] has not been heard/resolved after six months and I will request a review of the process."

68 In an email sent 29 May 2014 from Dr Brough to Colin Scales an update was sought "to see where we are up to following the concerns Janine Percival and I raised about the sexual health management team a few weeks ago, and the adverse affect on nearly all of the clinical and many of the admin staff, both in Warrington and Trafford. I'm not sure things are much improved." Reference was made to "one of the main areas highlighted in the Warrington contract query was reaching our Chlamydia screening targets…" she continued "this management team continues to cause us huge concerns about their competencies, style and engagement…"

The alleged first detriment. 3 June 2014 involving K Fallon, C Scales and C Samosa.

69 The claimant alleges there was a failure by Kate Fallon, Colin Scales and Christine Samosa to respond promptly to the concerns raised on 23 and 28 April 2014. On the 3 June 2014, the claimant emailed the CEO, Kate Fallon, relating to her complaints against Sharon Lindley and the constructive dismissal, the first item she referred to in the correspondence. The second item was the "shock and disbelief" at Donna Borg's complaint, the policy was set out in detail. The third item was "23 April 2014 whistle blowing" and it was maintained the 23 April meeting took place under the Whistle-blowing Policy. The Tribunal noted there was no reference prior to, at the 23 April 2014 meeting that it had taken place under the Whistle-blowing Procedure, and a request for a copy of the Procedure was made on 28 April 2014. In contrast to the claimant's pleading, whilst she referred to being put on medication for stress, the claimant did not state in the letter it was medication she had never required prior to these problems occurring.

70 In a response sent 6 June 2014 Kate Fallon informed the claimant she would look into the matter.

71 In an email sent 10 June 2014 to Karen Armstrong the claimant chased up mediation. There were numerous communications during this period between the claimant, her union representative and the respondent concerning a number of matters including the concerns raised and Donna Borg's grievance. The claimant was not being ignored, and whilst Christine Samosa did not accept a protected disclosure had been made, she took the view that a way forward was required to resolve the issues within the claimant's team. The issue of missing results and service delivery concerns were being managed by Michael Smith, and the operational issues were being addressed. Donna Borg was relocated to Trafford to try and ease matters.

The second alleged detriment - 11 July 2014 – involving Michael Smith

72 The claimant in an email sent 9 July 2014 asked if Michael Smith had any objection to her attending a meeting concerning a service model during her long-term sickness absence as long as her doctor agreed. Michael Smith responded "I'm sorry to hear you are still too unwell to attend work. Thank you for your kind offer but I won't ask you to get off your sick bed to come in for this morning."

73 On the 3 July 2014, a long-term sickness review meeting took place with Karen Armstrong and the claimant together with her union representative.

74 The third alleged detriment - 3 – 14 July 2014 involving C Samosa, C Scales and K Fallon.

75 Following an exchange of emails the claimant wrote to Kate Fallon on 14 July 2014 "incensed" by Michael Smith's communication of 11 July 2014. The claimant's concerns were stated as mediation (which she had been told would take place when she returned to work), clarity on her role since 2013 that "culminated" in her sickness, and no acknowledgment or update regarding the whistle-blowing investigation.

76 Kate Fallon, who was absent off sick, responded 40 minutes later having just spoken with Christine Samoa concerning the claimant and she wrote as follows;

"I…understand the WSHS situation is very complex and I am sure everyone is doing their best to get it sorted out. You will now that the procurements by St Helens and Halton have consumed a great deal of time and I apologise if the process around your case has been delayed whilst they were addressed. I have asked Christine to provide you with a full response as possible as soon as she can. When I return to work, I will be asking for a full report on the whole situation and proposals for a resolution." This was not carried out in good time and so the Tribunal finds.

Sickness Review Meeting

77 In a sickness review meeting held on 30 July 2014 with Amy Prescott, the claimant's manager, reference was made by the claimant to the whistle-blowing. Amy Prescott on 30 July 2014 sent an email to Christine Samosa subject matter "Heads up". She wrote "Janine said she has sent a whistle-blowing letter to Kate Fallon and had not had a response. She also said that she attended meetings with yourself, Colin and Pippa and was expecting some feedback after she provided a time line to you. Janine said that after she provided the information which were related to clinical concerns, Sharon Lindley and breaches of policy, she had chased up for some responses. **Karen did ask in the meeting if Janine would provide her with the information related to clinical concerns so that she could review/action as necessary but Janine did not want to give her the information** [my emphasis] …"

78 Christina Samosa emailed on 30 July 2014 "Colin and I were very clear when we met Janine that we were not going to get involved in the management of her case, but I will do a response for Kate to send if that helps".

79 The claimant returned to work on 22 September 2014 following a sickness absence and a one-to-one meeting took place on 1 October 2014.

80 On 29 September 2014 Matthew Harris, RCN Assistant Officer, wrote to Christine Samosa seeking confirmation as to "what the issues are the Trust are looking in to that service, and what response they can expect in relation to their whistle-blowing complaint … I understood that a tender process was underway in that service as well" and he requested information concerning that.

81 On 7 October 2014, a number of staff attended a Clinical Review Panel including the claimant. The minutes record the following under the heading "whistle blowing…a number of staff within the sexual health service…have raised concerns and these are being addressed through a variety of routes including the dignity at work and grievance policies. A member of staff has asked that these be considered as whistle-blowing". It is clear that at the meeting the whistle-blowing alleged envisaged a raft of issues, including matters covered by the Dignity at Work Policy, and not the three issues now before the Tribunal.

Detriment 4 - "I felt my employer was not taking whistle blowing seriously and dealing with this in a proper manner and this related to Christine Samosa".

82 In response to Matthew Harris's email of 8 October 2014 requesting an update regarding the whistle-blowing complaint, Christine Samosa wrote "I am not aware Janine submitted a formal whistle blowing. I have been trying to find out where this

has been lodged…I am aware that Janine has a grievance, but not aware of whistle-blowing".

83 On 22 October 2014, the claimant raised a grievance against Sharon Lindley.

Detriment 5 - 24 October 2014 email involving Christine Samosa

84 In an email sent on 24 October 2014 from Christine Samosa to the claimant categorising the elements of the claimant's concerns, the former having reviewed emails and information sent over the past few months and there is a reference to Pippa Brough meeting with Dr Ward and Colin Scales who "have agreed that the whole of the sexual health team…[they] will be sitting down to look at all of the issues within the service to seek a way of resolving the issues. The details of that meeting should be available within the next week... I am aware that MIAA are looking into the issues that have been raised regarding reporting of activity and this review was commissioned by the Trust as soon as the issue was brought to our attention … whilst I fully accept that the timescales to resolve this situation is unacceptable and needs to be resolved to everyone's satisfaction I do not believe that this falls within the definition of whistle blower as defined by the NTDA…I am advised that the issues have been dealt with using the appropriate HR processes and I have asked for a full report in to time scales.. Whistle blowing does not include grievances e.g. a problem or complaint about staff about their work, working conditions or employment rights."

85 The Tribunal's view is that the respondent via Christine Samosa did seriously consider whether the claimant had whistle-blown or raised a grievance, concluding the latter, it is notable that in dealing with it as grievance, nothing was lost. The same information was before the respondent, which was acted upon.

86 The claimant asserts Christine Samosa failed to include within her review the missing laboratory results, a protected disclosure under health and safety detriment to her, the Tribunal does not accept this was a detriment on the facts before it.

Detriment 6 - A report written by Christine Samosa entitled "Christine Samosa's briefing paper Part two of the Board Meeting 6 November"

87 The detriment alleged involved Christine Samosa and Kate Fallen. In relation to this alleged detriment the claimant maintains the report to the board misrepresented facts as she had made a joint protected disclosure with Dr Brough and was being represented as a single person disclosure, under the heading "Janine Percival - Sexual Health Warrington". The claimant also alleges Christine Samosa's decision to deal with the disclosures as a grievance amounted to a detriment, and the reference to missing laboratory reports being referred to as "paper records" to minimise the impact.

88 The Tribunal fails to understand the detriments allegedly caused to the claimant in relation to the report written by Christine Samosa. The claimant had been aware for some time Christine Samosa did not accept a protected disclosure had been made, and was under a duty to inform the board of this view, as she had done so earlier in respect of Kate Fallen. She was also aware the laboratory reports were not computerised records; they were paper records.

89 In an email dated 31 October 2014 from the claimant to Christine Samosa the claimant responded to Christina Samosa's email of 24 October 2014 criticising her for the six-month delay. She wrote; "to inform me that you do not believe this falls within the definition of whistle blowing as defined by the NTDA…I still uphold there was a failure to identify service risks, potential failure to comply with legal obligations (loss of results/inaccurate records) and therefore patient safety had the potential to be compromised…**I was aware that an investigation was in progress regarding lost patient lab reports and this further transmitted to me our concerns were being acted on. I believe the fact that this investigation took place concludes our whistle blowing complaint was active. Also, the fact that an investigation took place, should have evidenced that our concerns regarding management communication issues, staffing/office organisation, and inability to enable team collaboration was accurate and serious issues were unfolding**" [my emphasis]. The recent involvement of MIAA has arisen, I believe following the data reporting of Chlamydia". The claimant's email continued with references to her concerns with the Service Manager, both on a behavioural and operational basis. She confirmed that Colin Scales had agreed to re-instate her training, conclude the Donna complaint against her, and investigate the concerns she had with the Service Manager. The communication finished; "I understand Andrea Allery's leaving today, I raised a formal grievance with her against Sharon Linley on 22 October, I am a waiting for an acknowledgement that this is now in progress". The Tribunal finds that contrary to the case presented before it at the liability hearing by the claimant, she was aware investigations were in progress and the only issue she had was the respondent's failure to label the disclosures as whistleblowing.

90 The Tribunal finds there is no causal connection between Christine Samosa referring to the claimant by name and omitting Dr Brough, having considered the explanation given by Christine Samosa, which was that Dr Brough had not progressed the whistle-blowing complaint unlike the claimant, the Tribunal concluded there was no intention to deliberate mislead or an act of deliberate pre-meditated wrongdoing as alleged by the claimant. The Tribunal accepted the perception of Colin Scales and Christine Samosa at the meeting of 23 April 2014 the claimant had not made a protected disclosure, Christine Samosa who took part in the meeting and heard what the claimant had to say, was entitled to reach this conclusion but not after she received the 28 April email.

91 The Tribunal did not accept that Christine Samosa's reference to the missing lab reports being referred to as "paper records" was an attempt to minimise the impact of the claimant's disclosure; it was factually correct and the reference not dissimilar to the IR1 report.

92 On 2 November 2014 Dr Pippa Brough was asked to report to Kate Fallen, in which she did referring to "a sadness about a previously happy and successful service appearing to implode…there has never been a grievance raised in the Warrington sexual health centre since I have worked there in 22 years." Regarding "serious patient concerns" she wrote "I totally support this statement. I can assure you there are no urgent serious patient concerns currently as I have raised the most recent one, with potential loss patient or inaccurate submission and it is being investigated. I have not felt encouraged when raising serious issues... The main reason there are no urgent concerns is because the staff are excellent clinicians and would not allow any compromise of care within their powers". She referred to her leading role "embracing change and progression". The Tribunal accepted

submissions made on behalf of the respondent, to the effect that by 2 November 2014 at the latest, the claimant's protected disclosures had been dealt with and there was nothing of concern to report by Dr Brough. The claimant was unable to comprehend the position objectively, and her belief that the respondent should accept she and Dr Brough were whistle-blowers in name, consumed her.

93 On 4 November 2014 at a round table meeting with staff was proposed as a way forward.

94 In a letter dated 5 November 2014 from Kate Fallen confirming that as CEO she should not be expected to offer an opinion, a number of complaints, grievances and concerns had been lodged in the service over a period of ten months from clinical staff and managers which she referred to "an unprecedented situation…during this time, I note we have had an internal investigation into an information government breach which had to be reported to the Information Ombudsman and we have had to commission an external investigation regarding alleged anomalies in reporting Chlamydia screening numbers. Also during this time the Trust has worked hard to present a solid bid for the tender which external commissions had put out for contract…thus securing the future for Bridgewater...It is my responsibility to ensure that all of the services we provide are safe for patients. I have received an assurance from Dr Brough in this regard". In the penultimate paragraph, she referred to the outstanding and resolved grievances being brought to a conclusion "as soon as possible…The team dynamics would be reviewed before a decision is made if further intervention was necessary". Taking into account the factual matrix, it was clear to the Tribunal the respondent's managers were taking issues ranging from the claimant's complaints to the grievances raised across the department, seriously and sought resolution.

Detriment 7

95 On 6 November 2014 Christine Samosa wrote to the claimant referring to the staff grievances made through the respondent's dignity at work process and how it "is now essential that we seek to understand and resolve the issues and accordingly it has been agreed that Christine Whittaker...Will review each of the cases, through interviews, consideration of investigation reports already completed and review the themes and concerns. It is anticipated that this work will be concluded within ten working days". Christine Samosa confirmed that the contact would be made with the claimant, whereupon Christine Whittaker would determine whether or not there was a case to answer and resolution. The reference by Christine Samosa and Colin Scales in the letter of 6 November 2014 to an anticipated time scale of ten days is the seventh detriment, despite the claimant being aware at the time ten days was unrealistic.

96 The claimant maintained that Christine Whittaker in her statement informed Pauline Hoskins she only found out about the ten working days when received a copy of the 6 November 2014 letter, following which she then responded to Colin Scales and Kate Fallen stating she would not be able to meet that deadline, but nothing hangs on this.

97 The Tribunal had difficulty understanding the detriment caused to the claimant by the contents of the 6 November 2014 letter. It is undisputed the following complaints were to be investigated - Donna Borg's complaint against Janine Percival, Sharon

Lindley's complaint against Pippa Brough and the claimant's complaint against Sharon Lindley plus two others. Christine Samosa in oral evidence conceded ten working days in which to carry out the investigation was optimistic and unrealistic. There is no evidence that the timeframe was set so as to disadvantage the claimant in any way; the timeframe was applicable to all that had raised grievances and complaints under the Dignity at Work Policy. All the grievances and complaints were to be dealt with at the same time but on an individual basis in order that the respondent could establish any common threads with a view to resolving issues and minimising damage to the department caused by the breakdown in working relationships.

98 There was no evidence before the Tribunal that the respondent had intentionally not followed its own grievance procedure in an attempt at "being manipulative and doing everything possible to frustrate by deviating away from policies to suit their own agendas and bully me into submission so I would either comply or leave the Trust" as alleged by the claimant. The Tribunal did not find the over ambitious reference to an "anticipated" ten working days was intended to give the claimant (and her colleagues involved in the grievances) a "false expectations in time frames that were grossly unrealistic and unachievable". It is clear from the contemporaneous documentation managers were under an enormous amount of pressure as a result of the earlier TUPE transfers, reorganisation and employee relationships within the department "imploding". The reference to ten working days reflected a genuine intention on the part of management to resolve the outstanding issues without further delay, and had the claimant considered the matter more objectively, she would have realised that not every action carried out by managers was aimed at "affronting, abusing or prejudicing her", and nor was every action "intended to cause her an injustice or disadvantage".

99 The Tribunal observed a continuous thread throughout the history of this case, and the claimant's attitude towards management, highlighted by her given oral evidence on cross examination. The claimant maintained that due to a conflict of interest she could “never” be managed by Christine Samosa. It is clear from the documentary evidence the respondent accepted there had been no immediate response to the claimant’s complaints, although there was an attempt to deal with the claimant's issues in due course. The Tribunal finds the delay in response was due to all of the matters set out above, and had no causal nexus to the fact the claimant had made protected disclosures. The fact there was no concession on the part of the respondent at any stage during the process that a protected disclosure had been made and the claimant's complaints should have been dealt with under the Whistle-blowing procedure contributed towards the claimant’s perception that management were prejudicing her, causing an injustice and disadvantage, albeit that perception was misconceived.

Detriment 8 - 2 November 2014 email involving Christine Samosa and Colin Scales

100 In an email sent by the claimant on 7 November 2014 the claimant complained the respondent had deviated from its grievance procedure and she sought assurance that it would not be detrimental to her and requested if they "agree our terms of reference then I think we can adopt this approach". The respondent has accepted there was no immediate response, although there was an attempt to deal with the claimant's issues in due course. The Tribunal, on the balance of probabilities, finds the lack of response was due to all those matters set out above,

and had no causal nexus to the fact that the claimant believed she had made protected disclosures.

Detriment 9 - 28 November 2014 (following 14 and 28 November 2014 request to the response for terms of reference set out in the 7 November 2014 email.

101 In an email sent on 13 November 2014 Amanda Gregory wrote to the claimant "further to your recent correspondence with Chris Samosa I write to confirm arrangements to investigate your grievance…Chris Whittaker has been asked to undertake a collective review to include individual concerns". It was conceded by the respondent on 7 November 2014 email was not addressed. It is notable in the claimant's response on 14 November 2014 she complained she had not had confirmation in writing that the grievance against Sharon Lindley was active, despite Amanda Gregory making it clear on the 13 November 2014 she was seeking to confirm arrangements to investigate the Sharon Lindley grievance. The Tribunal find it is inconceivable the claimant could think that the Sharon Lindley grievance had not been activated, it finds this is indicative of the claimant's stance taken at the time, and how the respondent could do no right for wrong. The Tribunal formed a view, having heard evidence from the respondent's witnesses, that the decision to deal with all the issues together but under separate basis, was an attempt to resolve problems within the department and was not causally linked to any protected disclosures.

102 The claimant's suggestion that the respondent was attempting to bury the whistle-blowing did not appear to be the case as managers were clearly attempting to deal with each individual complaint raised by the claimant, albeit under a different policy other than whistle blowing and this coincides with the view taken by Christine Samosa that the claimant had not raised protected disclosures. It is the Tribunal's view that no detriment had been caused to the claimant, and had there been, it was not causally linked to her protected disclosures. It is difficult for the Tribunal to understand what detriment was caused to the claimant by the respondent using policies other than the Whistle-blowing Policy, it is outcome as opposed to process that is of the ultimate importance and the claimant was aware very early on all her complaints were being investigated and not ignored, evidenced by Dr Brough's communication. The claimant was treated no differently to her colleagues, and the Tribunal finds she was not subject to a second investigation in connection with the Donna Borg grievance, which also took in excess of 6-months to resolve.

103 The claimant alleges the respondent was doing "everything possible to frustrate and bully me into submission". The Tribunal found there was no evidence to substantiate this claim, nor was there evidence of the claimant being unlawfully discriminated by any "an equal and unjust treatment". The Tribunal notes that the claimant during this period and this liability hearing considered the respondent's actions to be "an act of retribution that had been calculated to cause me further anguish. The Trust abused its position by not following policy and subjecting me to further stress and anxiety, knowing how this would impact on my fragile mental state". Had the claimant stepped back from the situation, which she was unable to do, she would have discovered the respondent's managers were doing the very best they could in a difficult situation, albeit at times they were inefficient and failed to deal with matters proactively and with expediency. She would also have realised that there was no causal link with the protected disclosures raised and that she was

protected as a whistle-blower under the Policy, whatever view was taken by managers, evidenced by the existence of these proceeding.

Detriment 10 - 1 December 2014 communication from Christine Samosa

104 Kate Fallen wrote to the claimant on 1 December 2014 in an identical letter as that sent to her colleagues who had "outstanding grievances" in the following terms; "I wrote to you on 5 November to assure you that the senior management team are taking this situation very seriously and arranging a definitive, comprehensive investigation of all of these matters. We appointed Chris Whittaker to undertake this task and I am sorry to say that progress, even for this, is painstakingly slow, despite my request for urgency. Reviewing the whole situation and recognising that I have not personally looked into individual cases, I can see that the delays in investigations which have occurred, for whatever reasons, have aggravated what have, since March 2014, been very difficult circumstances for all concerned. I am sorry that it has not been possible to resolve the situation so far and it appears to me that it is most unlikely, without the equivalent of a forensic investigation, that we will ever be able to reach a conclusion that will satisfy each individual concerned. As you know, we have had an internal audit into one element of the team's remit and we have had to file a full report regarding an allegation of lost laboratory results with the Information Commissioner during this period. Thus far, there is no evidence that there has been professional misconduct or criminal activity, but what is clear is that there has been many hurt feelings and offence has been taken on several sides…there is some learning for us all here". The letter was not aimed solely at the claimant and both she and her colleagues were sensibly urged to withdraw grievances, start mediation and team building. It was clear to Kate Fallen a fresh start was needed, "there is much to do to meet the revised specification for the service that will necessitate a number of changes in work patterns and performance reporting…we will need to review both the management and practice in Warrington". A meeting was arranged.

105 There was no evidence whatsoever before the Tribunal that the claimant and Dr Brough had been threatened with suspension, as alleged by the claimant, and the Tribunal took the view the claimant was exaggerating to bolster up her claim. The facts are that following the 1 December 2014 letter, there was an attempt by Kate Fallen to resolve the disputes in a straightforward manner without investigation but by mediation and team building. A meeting took place attended by key managers, Kate Fallen, Colin Scales, Michael Smith, Christine Samosa and Karen Armstrong together with two union representatives and other team members in order to resolve the situation. The Tribunal found their attempt at resolving the impasse and relationship difficulties was entirely related to the running of the department and welfare of its employees, there was no causal link whatsoever with the claimant's protected disclosures. There was no evidence the claimant was treated any differently to her colleagues, all were invited to drop their grievances essentially for the good of the department and each other. The Tribunal does not accept the claimant "suffered retribution as a result of our disclosure" during this period, and it found she did not.

106 In an email sent to the claimant from Amanda Gregory on 13 November 2014 she wrote to confirm arrangements to investigate the grievance in relation to Sharon Lindley by Christine Whittaker who had been asked to undertake "a collective review to include individual complaints". A meeting was suggested with the claimant and her RCN representative.

107 In an email sent on 12 December 2014 from the claimant to Christine Samosa she wrote "I was informed by Matthew…that you had told him Christine Whittaker was dealing with the concluded complaint against me by Donna Borg. I must stress that I am fundamentally in opposition to this. My belief is that the report was finalised around 28 November…despite my request for urgency is being ignored as the outcome of this complaint has no reason to be held back. I strongly feel that there is now a real lack of transparency...instead of the ten-day action promised…I and others are urged to drop our complaints, enter into mediation and team building…I feel I am being subject to detriments in respect of raising concerns about the service".

Constructive dismissal allegation

108 During this period the claimant was in communication with Christine Whittaker concerning the investigation as, Karen Griffiths, who had originally been tasked to carry out the investigation into the Donna Borg complaint, did not have the time and she passed through to Christine Whittaker her notes to be incorporated into the review. The contemporaneous emails record the fact that Karen Griffiths was unable to complete the investigation due to her "day job". The claimant was unhappy with this, she believed Karen Griffiths had completed her report (when she had not), and she was being punished for whistle-blowing as per her email sent 18 December 2014 to Janine Percival. This is a perpetual theme in the claimant's emails to various managers. For example, in an email sent 18 December 2014 from Colin Scales to Christine Samosa he referred to the claimant's language and tone as “completely inappropriate, let alone the content.” I think Chris W finishes today for Christmas hols. Is there anything at all you want me to do to help with the investigation". The email is a reference to the earlier email of 18 December 2014 which the claimant questioned the "transparency and integrity of HR" threatening to claim constructive dismissal and whistle-blowing, alleging the respondent's "inactions have perpetuated untold stress and anxiety…I feel the abuse of power from the senior management team of the organisation is totally unacceptable and firmly believe in essence I am being bullied by them".

109 In an email sent 19 December 2014 Kate Fallen assured the claimant "no one is trying to prolong or complicate the issues in hand" and apologised for the claimant feeling upset. She wrote "it has taken far too long to resolve the various grievances...even the process I initiated in October is taking far longer than we expected. I have made enquiries about the state of Karen Griffith's piece of work and I am informed that she has not completed the report, so I am not sure who gave you to understand otherwise…I do know that Chris Whittaker is working as hard as she can to complete her task of reviewing the whole situation and each of the complaints within the team. Meanwhile, as I wrote to you and re-iterated when I came across to Bath Street to talk about the new contract, and I sincerely hope that we can get all the issues resolved and move forwards to make a great success of delivering that. I can assure you that my senior officers are working hard to achieve this. We had a year of unprecedented change in 2013/2014 across the Trust and in each service and this is always difficult, for all concerned. I will continue to keep a watchful eye on the progress".

110 Bearing in mind Dr Kate Fallen was the Chief Executive of Bridgewater Community Healthcare NHS Foundation Trust who had met with the claimant on 18 December 2014 to discuss her concerns followed an email of the same date, the

claimant criticism of Kate Fallen for "allowing this to go so far, and to feeling "shattered" by it was an extreme reaction bearing in mind the communications that had taken place.

111 On 23 December 2014, the claimant complained Donna Borg was working in Warrington and she felt unable to work in the department as "this has added pressure and outstanding inference of damage to my reputation". An email sent 30 December to Karen Armstrong accused Colin Scales of supporting a "bullying culture" and Christine Samosa "waging against me" as a punishment for whistle-blowing. The claimant reiterated that the investigation into the Donna Borg complaint had been completed, (when she had been informed it had not), she criticised Karen Armstrong for Donna Borg working in Warrington and concluded "**I would like to propose, that we stick to the agreement we made during my time off sick, that is for me to do clinical work and for me to complete my GUM training at Trafford** [my emphasis]. At any time remaining I would prefer to work from home until the outcome of Donna's complaint against me is communicated and the investigation and outcome of my complaint against Donna Borg is complete". It is clear to the Tribunal as at 30 December 2014 the claimant had agreed to carry out clinical work only and to complete her GUM training, despite the claimant's evidence to the contrary at this liability hearing.

112 The claimant also communicated through Matthew Harris, RCN, and on 2 January 2015 Christine Samosa emailed Matthew Harris confirming "you are correct in your statement that it is very unusual that the CEO and Director of HR are personally and directly involved in an employment matter before a hearing or appeal stage, but hopefully this indicates a genuine willingness to try to conclude this matter and to enable individuals involved to move on". Christine Samosa reiterated the email previously sent to the claimant apologising to her and she confirmed that the reports had yet to be completed, and when it was it would be released. Christine Samosa wrote "Christine Whittaker has stated that she will review the notes taken by Karen Griffiths and meet with her in order to complete this. I would suggest that you and I get together to determine how best to resolve this situation…please be assured that Kate, Colin and I would like to see this matter resolved as a matter of priority". There was no evidence before the Tribunal to suggest the sentiments expressed in the respondent's emails sent to the claimant during this period were less than genuine.

113 In an email sent on 15 January 2015 from the claimant to Karen Armstrong she referred to the return to work agreement (clinical and GUM competencies) and whether the organisation was discussing new role activities; "I believe the proposal is YAS mobilisation, safeguarding, meds management along with clinical word and then post April will be operationally managing YAS, leading on safeguarding and clinical work". In an email sent on 12 January by Karen Armstrong copied to the claimant, it was confirmed that the claimant would be leading on YAS service.

114 On 6 February 2015 Christine Whittaker sent to Christine Samosa the remit of her report as follows; "this report has been written following the investigation originally conducted by Karen Griffiths, Clinical Manager…in November 2014 it was determined that the original Investigating Officer did not have sufficient capacity to write up the report of the investigation. As I have been asked to conduct other investigations within the Warrington Sexual Health Service and had a remit to provide an overarching report into the service, I was asked to review the interviews

that had already taken place and complete the report ensuring that KG's findings were reflected within the final document. In order to ensure that the report was accurate as possible I intended to hold meetings with the complainant, DB and the recipient of the complaint JP (the claimant) to ensure that the conclusions I drew from reviewing the transcripts of the interviews were a correct interpretation of their opinions. DB attended a meeting on 28 November 2014. JP declined the opportunity to meet with me as she believed the investigation had been concluded and the report written. Despite confirmation that the report had not been written she continued to decline the opportunity to discuss her interview with me". The Tribunal finds as a fact that the claimant did so decline the invite.

115 In February 2015 Christine Samosa prepared a report to the Clinical Review Panel subject updated on whistle blowing cases, that referred to; "whilst there have been issues raised within the Warrington Sexual Health Service and these were categorised as whistle-blowing concerns by the member of staff, it is clear that these clearly fall within the definition of a grievance". The Tribunal finds this was a reference to the claimant's protected disclosures, and there was no attempt by Christine Samosa to hide the fact the claimant believed her complaints fell into the category of whistle-blowing, when Christine Samosa took the contrary view by maintaining they fell into a definition of a grievance.

116 On 21 February 2015, the clinical review panel met and minutes were taken, which recorded on whistle-blowing, Christine Samosa confirmed there had been no new cases since the panel last met and an update was given on the current cases. With reference to Warrington Sexual Health the minutes reflect "Chris Samosa confirmed that the issues raised do not fall into the category of whistle-blowing and are more personal grievances".

Claimant's threat of constructive dismissal

117 Christine Samosa prepared a report to the April Clinical Review Panel in which she again referred to issues being raised within the Warrington Sexual Health Service categorised as whistle-blowing concerns by the member of staff, and it was clear that these "clearly fall within the definition of a grievance". The Clinical Review Panel held on 22 April 2015 was minuted, reference was made to Warrington Sexual Health. Christine Samosa "advised that this case was not felt to be a whistle-blowing case. One person's claims had been upheld in relation to culture and behaviours within the service. The RCN were advising that the member of staff would be looking to take the Trust to a constructive dismissal route".

118 On 19 April 2015, the claimant instigated a complaint against Christine Samosa, sent to Harry Holden the Chairman, to which she received a response by email sent 25 April 2015. He confirmed that "I have asked Dorothy Whittaker, non-executive Director, and the Chief Nurse, Esther Kirby, who have responsibility for whistle blowing/freedom to speak up for the Trust Board, to investigate complaint as a matter of urgency". The claimant was told they would review the documentation relating to the handling of her case in April 2014 which included the Dignity at Work complaint. Reference was made to the claimant's intention to issue Employment Tribunal proceedings. On the issue of time limits, the Tribunal finds at the very latest by 25 April 2015 the claimant intended to issue Employment Tribunal proceedings, was receiving advice from her union in respect of this and had been so for a number of months when she repeated referred to being constructively

dismissed as set out above. It accepted Harry Holden's explanation that the review of the claimant's complaint did not proceed on the basis that the outcome report was imminent and there was no causal link with the protected disclosures.

Detriment 11 - Letter 28 April 2015 from Christine Samosa

119 Christine Samosa received the final report from Christine Whittaker, which she forwarded to Matthew Harris confirming no disciplinary action was to be taken against the claimant, regular team meetings and supervision one-to-ones were to be instigated within the team, there was to be clarification of the team structure, roles and responsibilities and "consideration is given to the role of the operational manager for the team and the links with the clinical leadership. In my view this post should be a senior clinical lead role, to provide nursing leadership and the strong performance achievement ethos into the team". Several other suggestions were also made.

120 On 28 April 2015 in a letter from Christine Samosa to the claimant, the outcome of the "incredible thorough investigation" was set out, including confirmation of interviews with seven witnesses into Donna Borg's complaint. The outcome was "Ms Borg's allegations are largely upheld; however, it is not believed that the sole responsibility for the circumstances can be attributed to yourself. It was concluded that it was the culture and working practices within the Warrington Sexual Health Service team which led to the allegations. Had an appropriate team infrastructure within team meetings and individual supervision been in place it is likely that the concerns would have been dealt with in an informal manner without the need to use formal policy". No action was taken against the claimant on this basis.

121 The claimant alleges before this Tribunal "this outcome was released six months after Christine Samosa had already informed me it "had been concluded and the report was passed. The Tribunal finds the claimant was not caused a detriment as alleged, and both she and her union representative were aware the report had not been concluded. She was aware Karen Griffiths had commenced the investigation which had then been completed by Christine Whittaker who wrote the report as set out on the face of the report titled "Report on the investigation into a complaint under the Dignity and Respect at Work Policy". There was no evidence before the Tribunal that Karen Griffiths, as the first Investigation Officer, had finalised the report. The Tribunal finds that there was only one report prepared, and that was set out in a lengthy comprehensive document and referred to in the outcome letter dated 28 April 2015.

122 The claimant submitted at this liability hearing recent evidence was made available to her confirming both Investigation Officers concluded that the complaint was not made against her, but Donna Borg had stated the complaint was not made against the claimant, who had been "supportive" and it was HR who directed it to "sit with the claimant". There was no evidence of this apart from the claimant's say so, the contemporaneous documents support the respondent's case that only one report was prepared, and the Tribunal found, as indicated above, Donna Borg had named the claimant within her complaint.

123 The claimant also alleged the second investigation changed the lines of enquiry to include several staff, delaying the investigation by a further six months. The evidence before the Tribunal was that, whilst there was delay caused by the fact

the first Investigator was unable to continue due to work pressure, by 18 December 2014 the claimant had refused to participate further in to the investigation process relating to the Donna Borg complaint, having first been interviewed on 1 August 2014.

124 Despite the claimant's evidence to the contrary, she was not held guilty for the Donna Borg complaint. There was no satisfactory evidence before the Tribunal that Donna Borg's complaint was upheld against the claimant, that it had been misdirected by HR and there is no evidence the claimant was made a "scapegoat to protect senior management as retribution for making the disclosure" and the Tribunal found this was not the case. It is notable the claimant's criticisms of Donna Borg's grievance commenced well before she had made the protected disclosures.

Detriment 12 – email 21 August 2015 – Pauline Hoskins

125 On 21 August 2015, the claimant's union representative, Matthew Harris, raised on her behalf, a Dignity and Respect complaint against Christine Samosa for mishandling the claimant's employment situation and concerns. The letter ran to 12 pages and referred to the claimant being "forced to consider her position" it expressly referred to the Dignity at Work policy and four key complaints under which 28 matters were detailed.

126 At issue number 8 the claimant's whistle-blowing complaint "which is denied" was referred to, and an explanation was sought as to why "this was not made clear at the time consistent with Trust policies". Several of the issues raised related to the claimant's grievances, her return to work, job description and the complaint was "in effect Janine is executing her right to appeal the outcomes of the investigation as per the policy", which was a reference to the Donna Borg outcome. In relation, the paragraph "whistle-blowing," this was essentially that the claimant's complaint was not dealt with under the respondent's whistle-blowing policy and there were no outcomes under that policy. The claimant also complained about the alleged lack of preparation and support following the transfer of undertakings and so on, and in the final paragraph she referred to the employment relationship being "broken" and to be being left with "this last internal grievance to force answers and admissions".

127 Prior to and following the 21 August 2015 communication an exchange of party-to-party emails which included one sent 6 August 2015 to Matthew Harris from Christine Samosa which referred to the following: "The report that Janine has received it is very clear that the outcome of the investigation was the concerns of Donna Borg had been upheld, but that the issue was a cultural one rather than something that could be attributed to Janine and therefore no action is being taken..."

128 It is clear from the party-to-party correspondence the claimant's exit package was discussed throughout this period. For example, in an email sent 6 August 2015 Matthew Harris referred to the claimant's disappointment that the respondent was not prepared to consider an exit package for the claimant who remained off sick. She was "focussed very much on the lack of response to many queries in relation to her job role, relations with Donna Borg and contact, failures to identify culpability in the investigation report (which according to the dignity policy should have allowed a right of appeal) and the following threat was made; "I must insist you revisit the exist negotiations with appropriate colleagues, which might avert legal proceedings".

129 In an email sent to Christine Samosa and copied to Matthew Harris from Colin Byrne (who represented the claimant as her union representative and senior RCN officer). He wrote: "…and she felt that her only option, without an exit agreement, was to lodge a grievance which I see Matthew has done on her behalf in a letter to you dated 21 August. I am instructed that the member wishes the Trust to investigate and respond to her grievance as per her contractual rights."

130 In a response of the same date Christine Samosa confirmed she would be appointing an investigating officer.

131 By 30 October 2015, the claimant was to go from full pay to half pay, and the reduction in income was in her mind and formed the backdrop to her request for an exit payment, and so the Tribunal found from the contemporaneous documentation.

132 On 15 September 2015 in an email to Matthew Harris from Christine Samosa he was informed that Christine Samosa was "awaiting confirmation of the investigating officer for this grievance and will confirm that hopefully in the next day or two". He was informed that there would be no barriers to the claimant returning to work. There was a delay between 21 August 2015 the 15 September 2015 emails; the Tribunal find this was not causally linked to the protected disclosures, and as evidenced by the contemporaneous documentation, was a result in the parties exploring a financial resolution coupled with the claimant's offer to leave her employment and had this come to pass, would have put a stop to the grievance process.

Detriment 19 involving Christine Samosa

133 The claimant alleges Christine Samosa attempted to dictate the arrangements for investigating the claimant's complaints, in particular by nominating investigators and by suggesting timescales. The Tribunal did not find the claimant was caused a detriment by the actions of Christine Samosa.

134 In an email sent 17 September 2015 from Christine Samosa to Paula Woods she was asked to deal with the claimant's grievance. Christine Samosa wrote: "The clear majority of the grievance is against me so I cannot be involved **and have agreed that with Matthew this week** [my emphasis]. We need to agree who will be the commissioning manager (I would suggest Carole Williams as Carole is a personal friend of Janine and Michael is implicated in some of the grievance) and that someone like Pauline or Dot or Wendy or Wendy Burson or Carl be asked to investigate. She is looking to come back into work in a few weeks' time…and in light of the fact that the original grievance got caught up with the wider sexual health issues we do need to be able to turn this round very quickly, so whoever takes it on will need to have the capacity to do the investigation in a matter of weeks as we can't let it drift…I'm not sure what her desired outcome is – we were exploring an exit strategy…when I spoke to Colin we did talk about them lodging it with a Tribunal…" The claimant submitted that as the grievance was against Christine Samosa there was a conflict of interest in her suggesting who the commissioning manager should be. The Tribunal accepted that Christine Samosa, as head of HR, was in a position to make suggestions and the claimant could not say, one way or another, how she had been prejudiced and why.

135 In an email sent 18 September 2015 Paula Woods informed Matthew Harris that she was dealing with the grievance, and "seeking someone to investigate matters as a priority." Her involvement was not questioned at the time.

136 In a letter dated 28 September 2015 from Karen Armstrong, the claimant was invited to a meeting to discuss her recent absence, and the outcome of the investigation into Donna Borg's complaint. The absence review meeting took place on 5 October 2015. The claimant was accompanied by Matthew Harris. A letter was sent to the claimant by Karen Armstrong dated 6 October 2015 which confirmed what took place at the meeting, and the suggestion that on the claimant returning to work she would "consolidate her clinical skills" and: **"You agreed that this would be your preference. It was agreed that you would concentrate on your clinical work for up to six months following your return, before taking on other projects** [my emphasis]. It was noted that should you complete the clinical competencies in a shorter timeframe, you would commence other work earlier. I provided you with a copy of the job description for your post of Sexual and Reproductive Health Manager/Practitioner. You agreed that this was the job description for your post and stated…it did not fully reflect your areas of responsibility. I explained that I had reviewed the job description and was of the view that it was still current with the exception of two responsibilities which I felt no longer sat within the remit of the post following the re-commissioning of the service – lead and monitor youth workers within Sexual and Reproductive Health Services…coordinate links with partners and be the first port of call for communication. I explained that I didn't consider that you should have responsibility for the administration staff and queried why this had been included in your job description in the first place. I also considered that it wasn't appropriate for you to be the main port of call for communication with partners, particularly in view of the number of partners increasing since 1 April 2015."

137 Within the body of the letter there was a reference the developments within the service, the number of changes that had occurred due to integration and mobilisation following revised requirements from the commissioners, and a request that "all staff were required to undertake different work and projects following the re-commissioning of the service on 1 April 2015". The claimant was informed that she would have the opportunity to take on additional work as the service continued to develop and the example of clinical governance was given. It was agreed that when the claimant returned to work a discussion would take place concerning the claimant's role, and the job description updated to reflect this discussion. Contrary to the claimant's submissions before this Tribunal it was clear by reference to the contemporaneous documentation her job description had not ben irrevocably changed, and she had agreed for some time to concentrate on clinical responsibilities and the claimant's evidence was not rooted in the reality.

138 The return to work interview form reflects the claimant having been absent from 30 April 2015 to 6 October 2015 with stress, that she was happy to return with phased induction and support, to reconsolidate skills, learning and clinical competencies. It had been suggested that the review of events leading up to absence would result in mediation. The claimant would return on a phased basis, shadowing in clinics.

139 In the emails, which followed, it became apparent that the respondent had difficulty finding an investigating officer who had time to deal with the claimant's

grievance until Paula Woods in an email sent 15 October 2015 to Matthew Harris confirmed Pauline Hoskins, Head of Emergency Preparedness, Resilience and Response, would be progressing the grievance.

140 In an email sent 15 October 2015 to Matthew Harris, the claimant referred to the confirmation to her that "the current job description" was temporary and that after five months' absence it was: "…agreed by all I needed a period of time to consolidate clinical work. It would have been negligent not to offer this given my period of absence. However, this was not anticipated by me to be at the complete expense of managerial work." This email is contrary to the case presented by the claimant at this liability hearing, when she denies any such agreement being reached.

141 The claimant criticised Pauline Hoskins following the letter dated 23 October 2015 she sent headed "Re: Grievance". Following the letter, Pauline Hoskins sought to arrange a meeting with the claimant "to discuss and explore further the issues you have raised". She referred to the grievance being dealt with in accordance with stage two of the respondent's grievance policy, which was enclosed. The claimant complains Pauline Hoskins failed to investigate the complaint under a "different policy, stage two of the Trust grievance policy, and this policy occurred two months after my complaint was made, without any consultation". The claimant also complained two investigation meetings took place in November and December 2015 without HR present, which was "a deviation from which I had previous experience".

142 The Tribunal find the claimant's complaint concerning reference to stage two of the Trust grievance policy incomprehensible, given Matthew Harris' reference in party-to-party correspondence to the grievance investigation. For example, in an email sent 14 October 2015 to Christine Samosa copied to the claimant. With reference to the two investigation meetings which took place in November and December 2015, the first meeting was held on 17 November 2015 with the claimant and Elaine Unsworth as her workplace colleague. Pauline Hoskins took the meeting and notes were taken for the claimant to check, which she did. When asked why HR was not present Pauline Hoskins' response was that "HR don't attend these meetings now, and any HR issues would be taken back to Louise Henderson, the HR lead for the investigation".

143 The claimant alleged at that meeting that the complaint was under the Dignity and Respect at Work policy, and she did not agree that it was a stage two grievance which Pauline Hoskins noted and confirmed she would take it back to HR; she had been advised the investigation was being dealt with under the grievance policy as set out in correspondence to the claimant.

144 The Tribunal has difficulty in understanding how the claimant was caused a detriment by Pauline Hoskins' investigation, whatever policy the complaints were brought under. It was notable in the notes of the investigation meeting there are references to an investigation under the Dignity and Respect at Work policy, the Donna Borg complaint being currently in appeal by the claimant; two grievances against Sharon Lindley to the effect that she was "forced" down the mediation route by Karen Armstrong; a counter-complaint against Donna Borg; a third complaint against Karen Armstrong and the whistle-blowing complaint. The issues and policies referred to and relied upon by the claimant were far ranging, multi-faceted and confusing.

145 A number of emails were exchanged internally, with the claimant and Matthew Harris, concerning the claimant's allegations, and whether they were being managed in line with the Dignity Policy or the Grievance Policy, which suggests confusion all round In an email sent 24 November 2015 from the claimant to Pauline Hoskins copied to Matthew Harris, she confirmed that it a complaint brought under the Dignity and Respect Policy, and in an email sent 2 December 2015 by Louise Henson, HR Manager, to Matthew Harris prior to a meeting with the claimant on 4 December 2015 she referred to the following: "As well as the document dated 1 August 2015 from you to Chris Samosa…Janine has submitted another document to Pauline entitled 'Summary of Events' which lists 75 events/details of information…Janine has requested that her complaint is investigated in accordance with the Dignity and Respect at Work policy. The Trust grievance policy refers to employee concerns, problems or issues related to their work, Ts & Cs and management decisions. The Trust's Dignity and Respect at Work policy refers to employees who believe they have been bullied or harassed. There are key differences between the two policies in that the grievance policy will result in a hearing following an investigation, whereas the Dignity at Work policy also requires a hearing if there is sufficient evidence to substantiate the claims and warrant a disciplinary hearing. For this reasons Janine needs to be clear/specific about who she feels has acted in a bullying/harassing way towards her…It would be helpful if you could reconcile the document dated 1 August…and the summary of events document to show why you both feel the complaint should be investigated in line with the Trust's Dignity and Respect at Work policy."

146 There followed a further exchange of emails concerning this issue, with the claimant repeating herself, maintaining from the outset that this was a complaint under the Dignity and Respect Policy.

147 In a meeting held on 4 December 2015 the claimant complained there should be someone from HR attending, as they had attended interviews during the Donna Borg investigation and "this is being treated differently". She complained that the lack of HR was not a "robust way of doing things – there should not be disparity, it should be the same for everyone". Pauline Hoskins replied, as she had done before, that it was not usual practice for HR to attend now and "my letter to you confirming the arrangements for our meeting said that Louise Henson was the HR contact but I would have said if I was bringing anyone with me". When asked why the claimant felt it important for HR to be at the meetings her response was "they could take notes. I think you need someone to take notes". The claimant was informed that that was not the role of HR and notes would be taken, which they were and the Tribunal took the view the claimant was not disadvantaged in any way by a lack of HR presence, and it found the claimant's attitude surprising, given the suspicion with which she regarded HR.

148 During the investigation meeting Matthew Harris referred to the claimant making a "formal grievance against the Trust". The complaint was about "dignity and respect and the senior management's collaborative inability to deal with the issues". There is also a reference to the complaint against Christine Samosa for the way in which she had handled the whistle-blowing issue. The notes of the meeting ran to 14 pages. Throughout the claimant was represented by Matthew Harris.

149 Following the meeting, there were further communications as to whether or not the claimant's allegations overlapped the respondent's Grievance Policy and

Dignity at Work Policy. On 4 December 2015, Mathew Harris sent an email to the claimant informing her of this, and on 7 December 2015 a further email to the respondent stating: "I can see that there may well be aspects of the case that are covered by different policies. It might be worthwhile considering that two policies DAW and grievance, do equally apply, and should be reflected in the outcome report…Having met last week, I think that Janine was clear on who she feels was culpable for what, but I will invite Janine to reflect on that, and maybe invite Pauline to comment as well."

150 In an email sent 3 February 2016 to Pauline Hoskins from the claimant copied to Matthew Harris, she wrote, "The complaint I made was under the Dignity and Respect Policy. I had never suggested anything other". The claimant complained about the progress of her complaint. She does not address Pauline Hoskins' earlier email sent to her on the same date which requested that the claimant: "…go through Matthew's letter of 1 August 2015 and the summary of events…to show why you both feel the complaint be investigated in line with the Trust's Dignity and Respect at Work. Matthew's emails dated 4 and 7 December 2015 also indicated that he could see there may be aspects that are covered by different policies…It would be very helpful to have this information and I therefore attach a template which I would ask you to complete please, detailing what the complaints are, who they are against, the outcome required and the relevant policy. I do feel that it is important that we are clear about this before proceeding further with the investigation."

151 The claimant was given until 19 February 2016 to provide the information.

152 In an email sent 5 February 2016 to Pauline Hoskins, the claimant agreed there has been a misunderstanding, blaming HR on the basis that: "I was not aware or advised by HR at the outset of my complaints that I could use the application of both parties. You are correct in some areas. There is an overlap where both policies should be applied. Therefore, I am going to review my complaint and advise accordingly against each point the policy to be used."

153 By 9 February 2016 the matter was still not entirely clear. Louise Henson emailed Matthew Harris referring to the Grievance Policy, stating: "My understanding from the investigation process so far is that it is still not totally clear what Janine's complaint is about and who it is against. Therefore, further details and clarification is required from Janine. However, my understanding is that Janine's complaint is linked to a series of events…"

154 The claimant alleges that she was caused a detriment by this email, which she found "insulting and demeaning". The claimant alleges that the Trust applied pressure on her to "dilute ownership" from Christine Samosa to others, and for the claimant: "…to use a "different policy with less disciplinary action. This complaint was not being afforded due to process or regard, it was being deliberately delayed and processes manipulated causing me detriment…This was the trigger for an Employment Tribunal. I felt little importance was afforded to my complaint as this came six months after it was raised. I felt the investigation was flawed from the outset. Lines of enquiry were not thoroughly investigated, hearsay is accepted without evidence and the actual evidence is ignored." The Tribunal found the claimant's complaint at the liability hearing concerning the alleged delay mischievous and with no basis. She would have been aware of the true cause for the majority of

the delay; her inability to clarify the array of complaints and grievances she had raised.

155 The Tribunal found regarding the party-to-party correspondence that the complaints were not clear to the respondent, as set out in Louise Henson's email of 9 February 2016, and this issue was well known both to the claimant and the union. She was also aware that no timescale could be given due to the number and complexity of all the issues raised, that it would take some time and the Tribunal does not find the claimant was caused a detriment due to the respondent seeking clarification of her claims, when they were genuinely found to have been unclear and confusing.

Detriment 13 – 5 October 2015 return to work meeting involving Christine Samosa, Karen Armstrong and Donna McManus, Clinical Nurse Manager following the claimant's second episode of sickness

156 The claimant alleges that she was presented with a draft job description depicting changes to her previous job description which she had not been consulted on and maintaining the "one" presented was significantly different and was in draft form. The claimant alleged (despite clear evidence to the contrary) she was told "for the next six months" she could work only on clinical competency. The claimant maintains she felt "totally demoralised and fearful", her position was undermined, she felt her colleagues would see this return as a downgrade and that an inference could be made about her capability or some perceived wrongdoing. The Tribunal did not find the claimant was so disadvantaged. The letter of 6 October 2015 which set out what had taken place at the absence review meeting the day before referred to a "draft" job description, and to the agreement reached with the claimant as borne out by the chronology set out above, that she would undertake clinical work for "up to six months" following her return from a lengthy sick leave, with a view to consolidating clinical skills after such a long absence.

157 The Tribunal did not find the claimant was disadvantaged, the respondent's intention being to revisit her job description after a period, possibly less than six months, to discuss her area of responsibilities against the background of a reorganisation and re-commissioning of the service. The letter reflects an agreement reached that: "During your return period Donna [McManus] will work with you to identify the areas you managed previously and to discuss your responsibilities moving forward. It was further agreed that your job description can be updated to reflect this discussion."

158 In short, it was envisaged on the part of the respondent that the claimant would return to work in her clinical role, discussions concerning her job description would take place with a view to agreement being reached. There was nothing in the letter of 6 October 2015 which pointed to the claimant being "stripped" of line management responsibility or managerial tasks in the future, and there was no suggestion that her position had been undermined and she had been deskilled.

159 The Tribunal found several discussions had taken place relating to the claimant's job description with Karen Armstrong prior to the return to work meeting on 5 October and as early as 2014 prior to the three protected disclosures being made, as the claimant believed her job description had changed when she

relinquished the grade 8A post, and she agreed 4-5 areas in which the claimant's role was to be changed.

160 The 6 October 2015 letter records Karen Armstrong's perception of the return to work meeting the day before. The Tribunal notes Karen Armstrong contradicted her witness statement when she stated that she did not have a copy of the job description, when at paragraph 5 there is a reference to her providing the claimant with a copy of the job description, but nothing hands on this.

161 It is apparent from the vast amount of documentation before the Tribunal that there were further changes in the respondent's organisation and new requirements for the team. In a nutshell, the claimant was being asked to be more flexible after she had relinquished the responsibilities of the 8A role. The service had changed, it had picked up several new clinical responsibilities and the contemporaneous communications, both internal and party-to-party, point to the discussions concerning the claimant's job description and changes that the reorganisation may necessitate, having no causal link with the protected disclosure. In short, the claimant had been absent for a substantial amount of time; there had been a reorganisation and this necessitated future changes made to roles and ultimately job descriptions across the department.

Detriment 14 – the claimant alleges she was caused a detriment as a result of Karen Armstrong's decision relating to training and NMC registration

162 The claimant's pre-planned clinical training was cancelled by Sharon Lindley, the Service Manager, in or around September. The Tribunal notes there was no reference to this event in the claimant's chronology or her witness statement. There was no evidence before the Tribunal that Karen Armstrong was aware that the claimant's training had been cancelled. The issue was not raised with Karen Armstrong despite the fact she line-managed the claimant who was off work sick at the time. The Tribunal found Karen Armstrong was not responsible for managing the claimant's training, she took no decision in respect of it, and the fact that the British Pregnancy Advisory Services (BPAS) referral clinic was removed through the commissioner's strategic decision, was outside the control of Karen Armstrong and the respondent. The undisputable evidence before the Tribunal was that the claimant was responsible for her own training, and this was not the responsibility of the respondent or indeed Karen Armstrong, and the claimant, who is an experienced nurse, would have known this.

163 A return to work was agreed with the claimant, and Karen Armstrong was not involved in the rostering of the RUT clinic. There is no satisfactory evidence that Karen Armstrong removed the RUT clinic. There is no reference to this event in the chronology, and the only reference made by the claimant in her witness statement is to Karen Armstrong being aware of the protected disclosure, which the Tribunal did not accept based on the contemporaneous evidence before it. The Tribunal therefore did not find as a matter of fact that Karen Armstrong removed the claimant from the clinic intrauterine techniques and there was no evidence, and nor could the Tribunal raise any inference, that Karen Armstrong had adversely affected the claimant's training and NMC registration as "retribution" for the claimant bringing a protected disclosure.

Detriment 15 – work environment and health impact: detriments against Colin Scales, Christine Samosa, Karen Armstrong and Donna McManus

164 The claimant alleges that she was absent due to sickness (her third episode) and this was attributable to the working environment and "actions or inactions" taken by the respondent where "agreed return to work plans have been breached or acts of retribution have occurred". The claimant alleged there had been "protected, sustained and unyielding neglect over a two-year period, with wrongdoings and paralysis in achieving resolutions at the very top of the organisation".

165 The Tribunal considered the factual matrix set out above and found the claimant's allegations had no basis. For example, at the interview on 19 August 2014 following the claimant's long-term absence, the form records mediation was offered, and an Occupational Health appointment arranged. In an email sent 17 September 2014 from the claimant she set out the phased return and what hours she wanted to work, to which Karen Armstrong responded on 17 September 2014, "that sounds like a really sensible plan". Another example was Donna McManus agreeing the claimant could return to work on six-month clinical duties with a view to mitigating her stress, which was the reason for her absence at work. Finally, in the investigation report prepared by Neil Gregory, there was a reference to one-to-ones taking place and discussions that took place between the claimant and Donna McManus relating to her health and wellbeing.

Detriment 17 – involving Pauline Hoskins

166 In relation to detriment 17, the claimant alleged Pauline Hoskins had ignored the evidence provided by the claimant in 20 respects, set out more fully in the claimant's grievance appeal letter. The Tribunal does not intend to detail the claimant's appeal letter.

167 There was no satisfactory evidence before the Tribunal that Pauline Hoskins had ignored the claimant's documentation as alleged. The claimant provided a substantial number of documents including just under 100 emails, several which were duplicated. The undated email setting out the claimant's appeal ran to almost 30 pages, in which she detailed why Pauline Hoskins carried out a poor investigation.

168 The Tribunal considered Pauline Hoskins' investigation report dated June 2016. This is a significant document to which the Tribunal was taken only in the sense of the recommended apology, but not to any of the issues raised by the claimant concerning Pauline Hoskins' failure to consider all the documents she had been provided with, and there was no satisfactory evidence before the Tribunal as to what documents were provided and not relied upon, and the alleged effect of the omission on Pauline Hoskins' findings. In other words, in response to a theoretical question, could the outcome of Pauline Hoskins' report have been different had she considered the documents allegedly missed, there was no evidence whatsoever before the Tribunal that it would have been, and it is difficult to see how the claimant was caused a detriment had all of her correspondence not been considered as alleged. The claimant's reference to this in a lengthy appeal is insufficient. There was no evidence Pauline Hoskins knowingly omitted the documents so as to skew her

report (which did not appear to be the case), and had this had been the case there was no causal link to the protected disclosures. The claimant's 30-page response to Pauline Hoskins' report sets out her disagreement with Pauline Hoskins' conclusion. The Tribunal has not heard any evidence one way or another. The claimant's view was different to that of Pauline Hoskins, who had independently carried out a comprehensive investigation compiled in a lengthy report with which the claimant disagreed, and that is the end of the matter.

The Pauline Hoskins' Report

169 The Tribunal made the following observations concerning the content of the investigation report:

169.1 Pauline Hoskins was appointed investigating officer on 15 October 2015 following the claimant's complaint sent to Christine Samosa on 21 August 2015.

169.2 Meetings had taken place with the claimant and Matthew Harris concerning the planned investigative process and proposed terms of reference.

169.3 The witness statements were considered, including that of Dr Pippa Brough.

169.4 46 appendices were considered, although the Tribunal accepted Pauline Hoskins' evidence that all of the information provided by the claimant (including the emails and their duplication) were considered and the most relevant documents were set out in the appendices.

169.5 Pauline Hoskins was not reinvestigating the Donna Borg complaint.

169.6 She made a number of findings in respect of all of the claimant's allegations listed separately. At paragraph 8 she referred to the whistle-blowing complaint denied to be whistle-blowing by Christine Samosa.

169.7 Joanne Waldron had confirmed Donna Borg did name the claimant when she spoke to Andrea Allary in March 2014.

169.8 There was evidence of a lack of clarity within the Sexual Health Service about their roles and the service structure (Pippa Brough's statement at appendix 7 was referred to).

169.9 In summary and conclusion, a number of points were made, including a reference to Karen Armstrong and Sharon Lindley's attempt to address the claimant's concerns about her position.

169.10 With reference to the protected disclosure it concluded "it was made clear to Janine at the meeting of 23 April 2014 that her concerns would be dealt with within the service…When she and Pippa Brough brought up the issue of missing Chlamydia results Colin Scales and Christine Samosa recognised the seriousness of this issue and an investigation was put in place. I have concluded that there is evidence that Christine Samosa and Colin Scales did address the issues which they considered to be within their remit following the meeting in April 2014".

169.11 With reference to the whistle-blowing complaint, it was found that whistle-blowing was first used in the summary dated 28 April 2014 and "they did not receive a response until 8 October when Christine Samosa sent an email to Janine to say she was not aware Janine had submitted a formal whistle-blowing disclosure and on 24 October 2014 Christine emailed Janine to say that the concerns did not meet the whistle-blowing criteria…I have concluded that this should have been made clear to Janine sooner, but there is evidence that the issues themselves were taken seriously and were being addressed".

169.12 With reference to the claimant's duties, there is reference to the claimant being absent for two long periods and to a number of changes within the service taking place: "I have concluded that there are sound reasons for some of Janine's duties having been passed to other members of the team, but I have not seen evidence that she was consulted or informed beforehand. Although it is acknowledged that it would not have been easy, given the difficult relationships within the team and the changes to the management of the service, it would have been advisable for Janine to have been involved in any discussion".

Detriment 18 made against Christine Samosa

170 The claimant alleges the investigation into the claimant's dignity complaint was "deliberately" delayed and not concluded within the six weeks provided for in the dignity procedure. The Tribunal has touched on this above. Having considered the contemporaneous exchange of internal email, the Tribunal concluded there was no deliberate delay. The claimant's complaints were complex and far reaching, and it would have been impossible for a reasonable employer acting reasonably to have completed such a complex investigation within a six-week period. It is notable that there was difficulty in finding an investigator with sufficient experience, and the extensive detailed report prepared by Pauline Hoskins could not have been produced in a six-week period. It is also notable that there were communications to the claimant inviting her to meetings, seeking clarification of complaints, she was on holiday and her union representative was not present. These are all matters that contribute to any delay; there was no causal nexus with the claimant having made protected disclosures.

Detriment 20 & 21 involving Pauline Hoskins

171 The claimant alleged that Pauline Hoskins did not interview Dr Brough. This is correct. Dr Brough provided a written statement and additional supporting evidence, which was referred to and included within Pauline Hoskins' report. Dr Brough's six-page statement with appendices was referred to by her. The claimant does not say what information Dr Brough would have given over and above that included in her statement, had she been interviewed. Given Dr Bough's status as the Clinical Director of Sexual Health, it was not unreasonable for her to provide a written statement accepted as part of the investigation. In conclusion, the Tribunal did not find the claimant had been caused any detriment as a result of Pauline Hoskins accepting Dr Brough's written statement and supporting appendices.

172 The claimant further alleges Pauline Hoskins did not call Donna Borg as a witness prior to finalising her report. The Tribunal notes the claimant did not ask for Donna Borg to be interviewed and Pauline Hoskins reasonably took the view it was not necessary to do so as the Donna Borg complaint had been dealt with and the

outcome had not resulted in any action being taken against the claimant. Further, the claimant has not shown she was caused any detriment by the fact that Pauline Hoskins had not obtained a statement from Donna Borg.

Detriment 22: appealing Donna Borg's grievance outcome.

173 The claimant alleges that in or around 15 April 2015 she attempted to appeal the outcome of Donna Borg's complaint and she was denied "her right" to appeal by Christine Samosa. The Tribunal found the respondent's procedures did not provide for an appeal by an employee in respect of a grievance outcome relating to another employee. The complaint was raised by Donna Borg, she was the only one who could bring an appeal and there was nothing for the claimant to appeal against.

Detriment 23

174 The claimant alleges there was a failure to investigate the full contents of the complaint made to the Trust on 21 August 2015 by the investigating officer Pauline Higgins and Harry Holden. he claimant clarified her complaint included four themes, one of which was whistle-blowing. The terms of reference for the investigation was agreed and accepted by Pauline Hoskin, this included all themes and points within the claimant's complaint document "including whistle-blowing were to be investigated".

175 The claimant alleged during an appeal hearing on 30 September 2016 Pauline Hoskins informed a panel of non-executive directors, Matthew Harris and the claimant that her remit was not to investigate whistle-blowing and "this contradicted all the information I have previously been told". When the claimant escalated matters to Harry Holden on 19 April 2016 he assigned Dorothy Whittaker and Esther Kirby to investigate. Following their review, Harry Holden informed the claimant "they are not at this stage able to comment whether this was handled under the terms of the Trust's whistle-blowing policy and if so, whether it was handled appropriately. They have also noted (as I am sure you will agree) that it is vital the investigation being conducted by Pauline Hoskins is complete". The claimant maintained that this assured her that the whistle-blowing element and her complaint was therefore being investigated "properly" and it was on this basis that Harry Holden put on hold the investigation. The claimant alleged there was a "complete failure" by Pauline Hoskins and Harry Holden to do what was agreed, "thus resulting in me not being given a fair and transparent investigation, causing significant stress and untold anguish".

176 It was clear from the report of Pauline Hoskins that she accepted Christine Samosa's view the claimant had not made a protected disclosure and criticised the respondent for the delay in informing the claimant of this. The outcome of Pauline Hoskins investigation may not have been to the claimant's liking, nevertheless, as at April 2016 the issues alleged by the claimant had been considered, numerous meetings had taken place, Dr Brough had confirmed there were no outstanding concerns and the claimant had been in communication regularly with members of the management team, ranging from the chairman, the CEO, head of HR, HR officers and her line managers. This formed the backdrop of the investigation carried out by Pauline Hoskins and to the claimant's complaint before the Tribunal that the investigation should have concluded her protected disclosures had met the whistle-blowing criteria, and the respondent failed to deal with it seriously because it failed to acknowledge this. This is the nub of the claimant's case, but it is one in which she

ignored the fact that the disclosures she made together with Dr Brough were dealt with to Dr Brough's satisfaction; and the claimant, who worked closely with Dr Brough, would have been aware of the position.

177 The claimant felt she had been caused a detriment because in her view, she did not have the protection to the respondent's Whistle-blowing Policy. The Tribunal agreed the respondent should have dealt with the disclosures as protected disclosures from the time it was made clear the claimant relied on the Whistle-blowing Policy. The respondent did not shift from this position, and the Tribunal accept the respondent's rigid attitude caused the claimant upset because she believed she had raised serious matters under the Whistle-blowing Policy and not the Grievance Policy nor the Dignity at Work Policy, and whilst her actual complaints were dealt with and not ignored, it was not under the whistle-blowing procedure, when they should have been. The effect of time limits in relation to the respondent failing to deal with the disclosures made as protected disclosures is set out below. In short, the claimant was made aware on 8 October 2014 (see detriment 4), 24 October 2014 (detriment 5), 6 November 2014 (detriment 6) and so on, that Christine Samosa did not accept she had made a protected disclosure. On the 31 October 2014, the claimant questioned this, maintaining the fact the disclosures were investigated must point to them being protected under the Whistle-blowing Policy. The claimant did not issue proceedings for detriment until 6 May 2016, well outside the 3-month statutory time limit, she had threatened constructive dismissal proceedings and was supported by her trade union during the entire period, and the Tribunal found it was reasonably practicable for her to have issued proceedings within the statutory time limits.

<u>Detriment 24 – Failure of the HR Director to deal with my complaint in a timely and transparent manner in line with policy (C Samoa, C Scales)</u>

178 This complaint refers to the period 21 August 2015 to 17 September 2015 against Christine Samosa who received the claimant's complaint and did nothing before passing to Paula Woods. The Tribunal has dealt with the facts of this complaint above, which it does not intend to repeat apart from emphasise during this period discussions were taking place at the claimant's instigation for an exit settlement to avoid legal proceedings, various conversations took place between Christine Samosa and the claimant's union representatives, and from the outset when the claimant submitted the grievance/complaint under the Dignity at Work Policy, it was not entirely clear that the allegations were against Christine Samosa, to whom the complaint had been sent, until the matter was clarified by the union.

179 Given the fact Christine Samosa was seeking clarification on whether the claimant could be offered an exit package under the MARS scheme and claimant's exit was explored during this period, correspondence was exchanged during the 3-week period and beyond. It is remarkable the claimant brings this complaint, when the reality of the situation is that the claimant was unable to clarify her various claims and complaints, the policies in which they were being brought and people involved by February 2016. It is difficult to understand, bearing in mind the factual matrix, how the claimant was caused a detriment by the fact Christine Samosa did not action her complaint between 21 August 2015, when she first received it and 15 September 2015.

180 Taking into account the contemporaneous documentation, the Tribunal found the "delay" had no causal connection with the protected disclosures, and was not on the ground of the claimant having made the 3 protected disclosures as alleged. The evidence reveals there was timely and transparent communications between the parties, oral and written as set out in the substantial amount of correspondence that continued to be exchanged. There cannot be a real comparison between the complexity of the claimant's grievance and the more straightforward complaint raised by Donna Borg under Dignity and Respect policy, which took 6-months until outcome was reached.

Detriment 25 – Injury Allowance Application

181 The facts in relation to this detriment are not disputed. The claimant made an application, her line manager, Diane Evans, considered the relevant Policy and rejected the application on the grounds that the claimant was not eligible. A report was prepared to this effect based on the proviso set out in the NHS Injury Allowance Scheme that injury allowance is payable when an employee is on authorised sickness absence or phased return to work with reduced pay or no pay due to injury, disease, or other health condition that is wholly or mainly attributable to their NHS employment. It is undisputed the relevant Policy provides injury allowance cannot be considered where the absence is as a result of disputes relating to employment matters. Diane Evans took the view the claimant's absence came under this category, and there was no evidence before the Tribunal that she was aware when she came to this decision, the claimant had made a protected disclosure, which is unsurprising as nobody in the respondent believed she had.

182 In accordance with the respondent's procedure Diane Evans' report was forwarded to Christine Samosa, who accepted the conclusion taken by the claimant's line manager. The Tribunal found Diane Evans and Christine Samosa followed the policy and came to the only conclusion they could come to, namely, the claimant was absent having submitted a number of complaints and grievance as set out above, categorised as an employment dispute, and therefore, she was not eligible to be considered for an injury allowance.

The law

183 The general legal principles were not disputed by the parties.

184 S.47B Employment Rights Act 1996 ("the ERA") provides- "(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. S.47B(1)A ERA 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 (a) by another worker of W's employer in the course of that other worker's employment, or (b) by an agent of W's employer with the employer's authority, on the ground that the worker has made a protected disclosure. S.47B(1B) provides "Where A is subjected to detriment by anything done or mentioned in subsection 1(A) that thing is treated as also done by the worker's employer. S.47B(1C) sets out for the purpose of subsection 1(B) it is immaterial whether the thing done is with the knowledge or approval of the worker's employer.

185 S.43A and B sets out the meaning of qualifying disclosures. S.43B provides:- "(1)In this part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following, …(b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject…(d) that the health and safety of any individual has been, is being or is likely to be endangered…(f) That information tending to show any matters falling within any of the preceding paragraphs has been, is being or is likely to be deliberately concealed."

186 It is agreed between the parties as information must have been disclosed, and it is necessary for the Tribunal to analyse what is alleged to be disclosed to see whether it constitutes information. This was a key issue in the case. The Tribunal were reminded that a mere statement of disagreement, or expression of concern, or voicing a complaint, or seeking a reassurance, does not constitute a disclosure of information, and it was referred to Cavendish Munroe Professional Risks Management v Geduld [2010] ICR 125 and Everett Financial Management Limited v Murrell EAT/552/02/MAA. In Cavendish the EAT illustrated the distinction by hypothetical examples in a hospital scenario, "The wards have not been cleaned for the past two weeks", discloses information; "You are not complying with health and safety legislation" is an allegation. It was submitted on behalf of the respondent Ms Percival must say or write something that goes beyond a mere assertion and include conveying facts. It was accepted in the skeleton argument filed on behalf of the respondent, sub-section 43L(3) provides that a disclosure of information takes place for these purposes even if the person to whom it is made already knows of it, however a mere repetition of known facts in support of an allegation may not without more, amount to a disclosure.

187 In closing submissions on behalf of the respondent the Tribunal were referred to the EAT decision in Korashi v Abertawe Bro Morgannwg University Local Health Board EAT [2012] IRLR 4 in which it was held that reasonableness under S.43B(1) 'involves of course an objective standard', meaning that those with professional or 'insider' knowledge will be held to a different standard than laypersons in respect of what it is 'reasonable' for them to believe.

188 On behalf of the respondent the Tribunal were referred to the EAT decision in Chesterton Global Limited t/a Chestertons v Nurmohamed [2015] IRLR 614. The Court of Appeal had not been promulgated prior to closing submissions. In the judgment of Mr Justice Supperstone it was held that, "The objective of the protected disclosure provisions is to protect employees from unfair treatment for reasonably raising in a reasonable way genuine concerns about wrongdoing in the workplace". The sole purpose of the amendment to section 43B(1) of the 1996 Act by the 2013 Act was to reverse the effect of Parkins v Sodexo Limited, in which it was held that a breach of a legal obligation owed by an employer to an employee under his or her own contract of employment might constitute a protected disclosure. The words "in the public interest" was introduce to do no more than prevent a worker from relying upon a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications. It was observed that the question for consideration under section 43B(1) of the 1996 Act is not whether the disclosure per se is in the public interest, but whether the worker making the disclosure had a reasonable belief that the disclosure is made in the public interest. The test of "reasonable belief" in section 43B(1) has remained the same since the

introduction of the public interest test. Applying the case of Babula v Waltham Forest College [2007] IRLR 346, a Court of Appeal decision, the public interest test can be satisfied where the basis that the worker's belief that the disclosure was made in the public interest was objectively reasonable.

189 It is not sufficient for a worker to have made the qualifying disclosure to gain protection; the disclosure must fall within one of the six the requirements set out under ss.43C-43H ERA. S43(C) provides for the disclosure to his (a) employer or another responsible person. The claimant made her disclosure to the employer.

Burden of proof

190 It is not disputed that the burden of proof is upon the claimant to establish on the balance of probabilities and whether in fact and as a matter of law there was a legal obligation on the employer in each of the circumstances relied on; the information disclosed tended to show that a person had failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, and/or that the health and safety of any individual has been, is being or is likely to be endangered and that the claimant held a reasonable belief in that failure or likelihood of failure.

191 It is not disputed the burden of proof in establishing a detriment also lies with the claimant. In a claim for detriment the claimant must prove that she has made a protected disclosure and that there has been detrimental treatment on the balance of probabilities, the burden is then on the respondent to prove the reason for the treatment. S.48 ERA sets out the burden of proof, s48(2) provides that on a complaint of detriment in contravention of S.47B it is for the employer to show the ground on which any act, or deliberate act, was done — S.48(2). Where a claim is brought against a fellow worker or agent of the employer under S.47B(1A), then that fellow worker or agent is treated as the employer for the purposes of the enforcement provisions in Ss.48 and 49, and accordingly bears the same burden of proof as the employer — S.48(5)(b). Once all the other necessary elements of a claim have been proved on the balance of probabilities by the claimant — i.e. that there was a protected disclosure, there was a detriment, and the respondent subjected the claimant to that detriment — the burden will shift to the respondent to prove that the worker was not subjected to the detriment on the ground that he or she had made the protected disclosure.

Detriment

192 The EAT decision in the well-know case of London Borough of Harrow v Knight [2002] EAT/0790/2001 held that the legal authorities clearly establish that the question of the "ground" on which the employer acted in victimisation cases requires an analysis of the mental processes (conscious or unconscious) which caused him so to act. The Tribunal has considered the mental process of those employees who allegedly caused Ms Percival a detriment on the ground of the protected disclosures.

193 If the Tribunal find that the worker was subjected to a detriment it is necessary for the claimant to establish that the detriment arises from an act, or a deliberate act, by the employer. In the well-known EAT decision in London Borough of Harrow v Knight [2002] EAT/0790/2001 it clearly established that the question of the "ground" on which the employer acted in victimisation cases requires an analysis of the mental processes (conscious or unconscious) which caused him so to act. The

Tribunal considered the mental process of the respondents in relation to the 24 detriments now alleged by the claimant.

194 The term "detriment" is not defined in the ERA, but it has been construed in discrimination law which is applicable to S.47B detriment claims. A detriment will be established if a reasonable worker would or might take the view that the treatment accorded to them in all the circumstances had been to their detriment. On this point the Tribunal was referred to Blackbay Ventures Ltd v Gahir [2014] ICR 747 at paragraphs 84/85 in which there was a reference to the House of Lords judgment in Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830, Shamoon v Chief Constable of Royal Ulster Constabulary [2003] IRLR 285, De Souza v Automobile Association [1986] IRLR 103 and Ministry of Defence v Jeremiah [1979] IRLR 436; "the court or tribunal must find that by reason of the act or acts complained of, a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work…But once this requirement is satisfied, the only other limitation that can be read into the word [detriment]…one must take all the circumstances into account. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances of his detriment? An unjustified sense of grievance cannot amount to a detriment…"

195 The Tribunal accepted the submission put forward on behalf of the respondent that the issue of whether there is a detriment is objective and not subjective. It was referred to Keane v Investigo Others UKEAT/0389/09/SM; in which it was held "where an employee is not genuinely interested in the stated aim or objective then they will have suffered no detriment if it is not achieved, even if another employee would be genuinely (and reasonably) disappointed."

Causation

196 The Tribunal was, on behalf of the respondent, referred Fecitt v to NHS Manchester [2012] IRLR 64. In the case of a detriment, the Tribunal must be satisfied that the detriment was "on the ground that the worker has made a protected disclosure" (section 47B(1), ERA 1996). The EAT has held that the detriment must be more than "just related" to the disclosure. There must be a causative link between the protected disclosure and the reason for the treatment, in the sense of the disclosure being the "real" or "core" reason for the treatment.

197 In Fecitt the Court of Appeal held where an employer satisfies the Tribunal that it acted for a legitimate reason, then that necessarily means that it has shown that it did not act for the unlawful reason being alleged. One of the main issues before the Court of Appeal concerned the causal link between making the protected disclosures and suffering detriment, and it was held that s.47B will be infringed if the **protected disclosure materially influences (in the sense of being more than a trivial influence)** [my emphasis] the employer's treatment of the whistleblower. "Where a whistleblower is subject to a detriment without being at fault in any way, tribunals will need to look with a critical – indeed sceptical- eye to see whether the innocent explanation given by the employer for the adverse treatment is indeed to genuine explanation…if the reason for the adverse treatment is the fact that the employee has made the protected disclosure, that is unlawful." Lord Justice Elias at paragraph 41 set out the following: "Once an employer satisfies the tribunal that he has acted for a particular reason…[this Tribunal found in Ms Percival's case it was

to remedy a dysfunctional team] – that necessarily discharges the burden of showing that the proscribed reason played no part in it. It is only if the tribunal considers that the reason given is false (whether consciously or unconsciously) or that the tribunal is being given something less than the whole story that it is legitimate to infer discrimination in accordance with the Igen principles." This test is particularly relevant to the present case and was applied by the Tribunal when considering the evidence, particularly that given by the respondent's managers and their explanation that in their belief, the claimant had not made a protected disclosure. The Tribunal recognised it would be a relatively straightforward matter for an employer to maintain it had not accepted protected disclosures to have been made, and then proceed to treat the employee detrimentally on this ground.

198 It was submitted on behalf of the respondent if the respondent fails to establish an innocent reason, it follows automatically that the claimant's case succeeds. Provided the true reasons do not include the prohibited reasons the case must fail; Kuzel v Roche Products Ltd [2008] IRLR 530 and Serco Ltd v Dahou [2017] IRLR 81.

199 With reference to raising inferences, the Tribunal were invited to assess each detriment separately, and then stand back and have regard to the totality of the allegations and to consider, in the light of that wider picture, whether any inferences can be properly drawn - Horlorku v Liverpool city Council [2015] UKEAT/0020/15/DA in which it was said: "The fact that the issues are as defined…does not mean that the Tribunal in this case was required to consider each of the allegations made by the claimant as if it was a completely separate act with no relationship to the others. Experience teaches that few acts between the same parties can in truth be said to be completely unrelated. To understand why the parties act as they do in respect of a particular situation, regard may need to be had to evidence as to how they have behaved towards each other on other occasions…A Tribunal considering a case of discrimination must be alert to the inferences which it may properly draw form the evidence that, despite the denials of the alleged discriminator, nonetheless it might have occurred. The Tribunal, with this guidance in mind, took into account all of the evidence, both from the claimant and respondent, when it arrived at its findings of facts and analysis of whether the claimant had suffered a detriment, and if so, was it on the grounds that she had made a protected disclosure. The respondent has offered a reasonable explanation for a number of the alleged detriments, and on that basis, there was no requirement for the Tribunal to raise inferences. In particularly, it considered the respondent's explanation in recognition of the fact that it may be possible for a respondent to deny an employee had made a protected disclosure and then cause them to suffer detriment on the grounds that they have done so.

200 In Horlorku the EAT warned that a Tribunal must carefully examine the whole of the circumstances to ensure that by focusing upon individual episodes it does not miss the eloquence of the story told by considering the whole, a claim of discrimination does not great stronger because there is a greater number of complaints, a particularly relevant comment to this Tribunal, given the raft of complaints made by the claimant, and detriments within detriments.

Time limits – law and conclusion

201 With reference to time limits, the issue before the Tribunal is whether the detriments claimed by the claimant are within the statutory time limit, where the

earlier alleged detriment out of time, or are the detriments claimed by the claimant a series of acts or an ongoing course of conduct, and therefore within the time limit set out in section 48(3) and 48(4A) of the ERA? In order to analyse this issue the Tribunal has considered all of the evidence before it, as set out in its finding of facts above.

202 The respondent's position is that claims 1-14 of the 15 original claims are outside the time limits provided, and the issue for the Tribunal is whether they are out of time and if so, was it reasonably practicable for the claimant to bring the claims in time, and if not, whether the claims were issued within such further period as was reasonable. Alternatively, were detriments 1-14 a series of linked events and therefore within time, or did they amount to an ongoing course of conduct which was continuing within the time limits for issuing the claim?

203 It was conceded on behalf of the respondent that claim 15 appears to be in time as were the other additional claims set out above, with the exception of the complaint that on 15 April 2015 Christine Samosa denied the claimant her right to appeal Donna Borg's complaint outcome.

204 A complaint that a worker has been subjected to a detriment for making a protected disclosure must be presented to an employment tribunal 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 the act or failure to act is part of a series of similar acts, the last such act or failure to act —S.48(3)(a) ERA

205 In a complaint that a worker has been subjected to a detriment the Tribunal will need to consider the point in time at which the alleged detriment is said to have occurred, and not the point in time at which the disclosure or disclosures relied upon were made — Canavan v Governing Body of St Edmund Campion Catholic School EAT 0187/13.

206 On behalf of the respondent the Tribunal was referred to S.48 ERA, the strict reasonably practicable approach and the "acts and omission" concept, "series of similar acts" and an "act extending over a period" in discrimination law. The Tribunal agreed that there was no good reason why the language and/or approach should be different within the same statue or other employment protection statutes: Arthur v London Eastern Railway Ltd [2007] IRLR 58.

207 In respect of a "series" of similar acts, reference was made to Bear Scotland Ltd and others v Fulton and others [2015] IRLR 15 in which it was held "a series" connotes a factual and temporal link, and a temporal link cannot exist if time that has passed between the events exceed the time limit for the cause of action i.e. 3 months in the case of Ms Percival. The Tribunal accepted this to be case, and that a factual link required for acts to form part of a series of similar acts can only be determined after full consideration of all the evidence, including making findings for the reason of any treatment and whether there was any collusion (i.e. were the acts organised or concerted in any way) or other connection between the alleged perpetrators: Arthur v London Eastern Railway Ltd in which it was said "Depending on the facts I would not rule out the possibility of a series of apparently disparate acts being shown to be part of a series or to be similar to one another in a relevant way by reason of them all being on the ground of a protected disclosure."

208 With reference to an act extending over a period, the Tribunal was referred to Hendricks v Metropolitan Police Comr [2003] IRLR 96 it which it was stated at para.52 "…the focus should be on the substance of the complaints that the Commissioner was responsible for an ongoing situation or a continuing state of affairs…as distinct from a succession of unconnected or isolated specific acts, from which time would begin to run from the date when each specific act was committed."

209 When calculating the correct date for the start of the limitation period in a detriment case on behalf of the respondent, it as submitted the Tribunal should focus on identifying the act or deliberate failure to act that caused the detriment, and not to see if the claimant continues to suffer detriment such as frustration or ill-health: Flynn v Warrior Square Recoveries Ltd [2014] EWCA Civ.68 at paras. 9 & 20. The Tribunal has done this. In Blackbay cited above, the EAT held that unless the date of a failure to act can be ascertained by direct evidence, it is deemed to take place when the period within which the employer might reasonably have been expected to do the failed act expires, in accordance with S.48(4) ERA.

210 The Claimant's complaint was presented to the Employment Tribunal on 6 May 2016; the ACAS ECC was dated 8 April 2016, the date of receipt being 8 March 2016. The claimant has alleged 25 detriments carried out by a number of different people, on the basis that they were so connected they formed part of a 'series of acts' that were 'similar' to one another and not isolated incidents or a discrete act. It is undisputed the majority occurred outside the 3-month period. The last act (or failure) within the 3 month may be treated as part of a series of similar acts (or failures) occurring outside the period. If it is, a complaint about the whole series of similar acts (or failures) will be treated as in time as being connected to the last detriment. There must exist some link between them, a relevant connection between the acts which makes it just and reasonable for them to be treated as in time and for the claimant to be able to rely on them under S.48(3) ERA.

211 In order to ascertain this Tribunal took into account all the circumstances surrounding the detriments alleged, including the personnel involved in them and explored the possibility of any connection between them i.e. were some or all of the managers listed by the claimant in her detriments not telling the truth when it was denied either the claimant had not made a protected disclosure or they were unaware that she had brought a complaint that was considered by the claimant to have been a protected disclosure.

Conclusion on time limits, applying the law to the facts – detriments 1&10

212 With reference to detriments 1 and 10 that involved Kate Fallon, the Tribunal found this was out of time, the detriments having occurred on the 3 June 2014 and 14 July 2014.

213 In respect of detriment 10, the claimant criticised Kate Fallon for urging employees to drop their grievances in a letter dated 1 December 2014. The claimant also raises this complaint against Christine Samosa, but confusingly, there is no reference to this in the agreed chronology.

214 The Tribunal found the alleged detriments did not form part of a series of acts as there was no link with any of the other detriments alleged, the Tribunal having found no satisfactory evidence to support the claimant's contention Kate Fallon

conspired with other managers to hide the fact a protected disclosure had been made. The alleged detriments have no connection with the acts by other managers, and it is a stand-alone disparate act, not an act in a series of acts or similar to other alleged detriments. The claimant, who made numerous references before the 3 June 2014 to having been constructively dismissed, had access to union advice and the Tribunal finds on the evidence before it; it was reasonably practicable for her to have issued proceedings within the statutory time limit and detriments number 1and 10 are dismissed for being lodged out-of-time as the Tribunal does not have the jurisdiction to consider that complaint.

Time limits – detriments 3, 7, 8, 9, 11

215 The claimant, despite the fact that she had not originally named Colin Scales and Christine Samosa, brought the third detriment against them. The Tribunal took the view that these claims were also out-of-time, the claimant relying on a lack of response to her 14 July 2014 email, and even when proceedings were issued there was no mention made of this complaint. She was also aware that no response had been given by either to the 7 November 2014 email during this period and further, that Christine Samosa had on 28 November 2014 confirmed the Donna Borg grievance had been investigated.

216 With reference to Colin Scales and Christine Samosa confirming the investigation would take 10-days on 6 November 2014, the claimant was aware they were “unrealistic” and “unachievable” at that time.

217 Detriment 11 is similar to detriment 9; the claimant alleging Christine Samosa in a letter dated 28 April 2015 confirmed the outcome of the complaint by Donna Borg had been upheld, 6 months after the 28 November 2014 letter. It is notable that prior to the 28 April 2015 letter the claimant’s union representative wrote to Christine Samosa indicating he was advising her she had a potential claim for constructive dismissal.

218 The Tribunal found the alleged detriments did not form part of a series of acts as there was no link with any of the other detriments alleged, the Tribunal having found no satisfactory evidence to support the claimant’s belief that managers conspired to keep the whistle-blowing hidden. The alleged detriments have no connection with the acts by other managers, they are not acts in a series of acts or similar to other alleged detriments. As the Tribunal found above, the claimant, had access to union advice and it was reasonably practicable for her to have issued proceedings within the statutory time limit. Detriments 3, 7, 8, 9, and 11 are dismissed for being received out-of-time as the Tribunal does not have the jurisdiction to consider the complaint.

Time limits – detriment 2

219 For the same reasons as set out above, the detriment claimed against Michael Smith was presented after the end of the period of 3 months beginning with the acts relied upon, which occurred on 11 July 2014. The email from Michael Smith was given its clear and common sense meaning, namely, that the claimant was not required to come into the workplace and attend a meeting when she was absent from work and covered by a sick note. There was no satisfactory evidence Michael Smith conspired with other managers to keep the claimant away from the workplace;

she was absent with work-related stress, and the email constitutes a stand-alone act unconnected with any other. The Tribunal was satisfied that it was reasonably practicable for the complaint to be presented before the end of that period of 3 months and it does not have the jurisdiction to consider the complaint, which is dismissed.

Time Limits – detriments 4, 5 & 6

220 It is undisputed Christine Samosa categorised the protected disclosure as a grievance and not a whistle-blowing complaint, and the claimant was denied the right to chose the Policy under which to bring her complaint. The claimant was aware of the stance taken by Christine Samosa following an email sent 8 October 2014, that remained Christine Samosa's position throughout and the claimant did not issue proceedings until 2016, when it was reasonably practicable for her to do so within the statutory time limit. The Tribunal scrutinised Christine Samosa's actions towards the claimant after she had reached this view, and it concluded there was no evidence of a conspiracy as alleged by the claimant.

221 There was no satisfactory evidence Christine Samosa and Colin Scales had conspired in an attempt to "extract" themselves from the Whistleblowing Policy. The decision was that of Christine Samosa, made in her capacity as head of HR. It is a difficult area of the law and she got it wrong when she insisted the disclosures should be dealt with as a grievance and not protected disclosures.

222 The report presented to the Board on 6 November 2014 reflected Christine Samosa's views, and her understanding that the claimant was continuing in her quest that she had whistle-blown, when Dr Brough was not. It is notable the reference to "paper records" within the report was not dissimilar to the incident report made on 8 April 2014 which referred to "missing or illegible notes" and the claimant's reference in the 28 April 2014 email to "results."

223 The Tribunal found the alleged detriments did not form part of a series of acts as there was no link with any of the other detriments alleged, the Tribunal having found no satisfactory evidence to support the claimant's belief that Christine Samosa and Colin Scales conspired to keep the whistle-blowing hidden. The alleged detriments have no connection with the acts by other managers, they are not acts in a series of acts or similar to other alleged detriments. As the Tribunal found above, the claimant, had access to union advice and it was reasonably practicable for her to have issued proceedings within the statutory time limit. Detriments 4, 5 & 6 are dismissed for being received out-of-time as the Tribunal does not have the jurisdiction to consider the complaint.

Time limits – detriments 12 ,17, 18, 19 and 23

224 This is a discrete claim against Pauline Hoskins alleging that her investigation was flawed from the outset, and it clear from the contemporaneous documentation the claimant took this view as soon as she received notification of the outcome, and a copy of the report. Detriment 12 was presented outside the 3-month limit, detriment 17, 18, 19 & 23 in time. The Tribunal found there was no link with each other, or any of the other detriments alleged, the Tribunal having found no satisfactory evidence to support the claimant's belief that Pauline Hoskins conspired with other managers to keep the whistle-blowing hidden. The alleged detriments have no connection with the

acts by other managers, it is not an act in a series of acts or similar to other alleged detriments. As set out below, it did not accept Pauline Hoskins failed to interview Dr Brough, or call Donna Borg on the grounds that the claimant had made a protected disclosure, and nor was the claimant caused a detriment by this. Detriment 12 is out of time, for the reasons already stated above, it was reasonably practicable to bring the complaint within the statutory time limit, there is no connection between 12,17,18, 19 and 23 so as to bring that complaint within time, and it is dismissed for being out of time.

Time limits – detriment 13

225 The claimant's allegations concerning her job description and role being taken away from her were an issue well before the protected disclosures were made, in response to which the claimant had repeatedly maintain she considered herself to have been constructively dismissed. As indicated above, the claimant's allegation that she was told for the next 6-months she would work on clinical competencies was not the case; the claimant offered up this proposal and it was agreed to by managers.

226 The Tribunal found the alleged detriment did not form part of a series of acts as there was no link with any of the other detriments alleged, the Tribunal having found no satisfactory evidence to support the claimant's belief that Karen Armstrong and Christine Samosa conspired with each other, or with other managers such as Donna McManus to punish the claimant on the grounds that she had made a protected disclosure and to keep the whistle-blowing hidden. The alleged detriment has no connection with the acts by other managers, it is not an act in a series of acts or similar to other alleged detriments. As the Tribunal found above, the claimant, had access to union advice and it was reasonably practicable for her to have issued proceedings within the statutory time limit. Detriment 13 is dismissed for being received out-of-time as the Tribunal does not have the jurisdiction to consider the complaint.

Time limits – detriment 14

227 The claimant was aware of the position concerning her training involving Sharon Lindley in September 2014, her removal from the IUT in September/October 2014 and Karen Armstrong's alleged failure to address the "need to access midwifery elements" to support the claimant's clinical registration.

228 The Tribunal found the alleged detriment did not form part of a series of acts as there was no link with any of the other detriments alleged, the Tribunal having found no satisfactory evidence to support the claimant's belief that Sharon Lindley, and Karen Armstrong conspired either together or with other managers to cause detriment to the claimant and keep the whistle-blowing hidden. The alleged detriment has no connection with the acts by other managers, it was not and act in a series of acts or similar to other alleged detriments. As the Tribunal found above, the claimant, had access to union advice and it was reasonably practicable for her to have issued proceedings within the statutory time limit. Detriment 14 is dismissed for being received out-of-time as the Tribunal does not have the jurisdiction to consider the complaint.

229 With references to detriments 15 to 25, the Tribunal considered whether they were linked in any way with each other, and/or with the detriments found to have been lodged out-of-time, and held there was not. There was no evidence the claimant's welfare had not been taken seriously, or occupational reports were ignored and the evidence before the Tribunal was the claimant was offered adjustments, agreements were reached with the claimant's long-term absence in mind, including her concentrating for 6-months on clinical work to reduce the effect of work-related stress. The Tribunal having found no satisfactory evidence to support the claimant's belief that Karen Armstrong, Christine Samosa conspired with each other, or other managers such as Donna McManus to punish the claimant on the grounds that she had made a protected disclosure and to keep the whistle-blowing hidden. The alleged detriment has no connection with the acts by other managers, it is not an act in a series of acts or similar to other alleged detriments.

230 Despite finding detriments 1 to 14 were presented substantially outside the statutory time limit, in the alternative, the Tribunal has below considered in relation to all detriments, including 1 to 14, whether or not the claimant was subjected to the detriments alleged on the ground of the protected disclosures, taking into account the mental processes (conscious and unconscious) of the managers which caused them to act in the way they did in accordance with the case law cited above.

231 The in-time complaints brought in relation to Christine Samosa and/or Colin Scales, namely, alleged detriments 18, 19, 22, 24 and 25 were not made out on the balance of probabilities as set out below. The Tribunal found the alleged detriments did not form part of a series of acts and there was no link with any of the earlier detriments alleged, the Tribunal having found no conspiracy between managers had not taken place. The alleged detriments have no connection with the acts by other managers, they are not acts in a series of acts or similar to other alleged detriments.

232 In conclusion on time limits and jurisdiction, the Tribunal found detriments 1 to 14 were not presented before the end of the period of 3 months beginning with the date of the act or the failure to act which the complaint relates in accordance with S.48(3)(a) ERA, it was reasonably practicable for the claimant to have presented her complaints in time, and the complaints are dismissed.

Conclusions – applying the law to the facts

233 With reference to the agreed issue one, namely, did the claimant make a protected disclosure at the meeting of 23 April 2014 and in the email of 28 April 2014, the Tribunal found that she did. On the facts set out above, the Tribunal accepted the claimant's belief was reasonable and objectively based on those perceived facts, there was a reasonable belief in the truth of the complaints. Taking into account the test set out in Babula above, the Tribunal took the view the claimant held a genuine and reasonable belief that the disclosure was in the public interest, and the fact that she made a raft of other allegations personal to her contract of employment, does not undermine this.

234 The Tribunal accepts on balance that the disclosures set out in 28 April 2014 email reflected what was said at the meeting. The claimant has conveyed facts, albeit information known to the respondent at the time; the laboratory report has gone missing, positive clinical results had been delivered by non-clinical staff, and the commissioning service was delayed into schoolchildren having access to one of

the respondent's clinics within a college due to safeguarding issues. The Tribunal on the balance of probabilities found the claimant held a subjective belief that three disclosures tended to show that the health and safety of any individual has been is being or is likely to be endangered in relation to the missing laboratory results and patient safeguarding issues. The Tribunal, on the balance of probabilities, found no satisfactory evidence the claimant held a subjective belief the respondent had failed, is failing or likely to fail to comply with any legal obligation when Chlamydia results were delivered by a non-clinical person and the trust was legally obliged to inform commissioners of accurate data on target Key Performance indicators ("KPI")'s. The claimant's complaint to the respondent at the time makes no reference to the target KPI's or to the respondent being unable to meet them as a result of Chlamydia results being delivered by a non-clinical person as she now maintains, and the Tribunal took the view the claimant did not held a subjective belief the respondent was in breach of this alleged legal obligation, and she made this disclosure in an attempt to bolster further her view that non-clinical personal should not be delivering results in the department, much in the same way that all mangers should be clinical trained. The claimant did not convey any facts to the effect the respondent was in breach of its legal obligation to inform the commissioner of accurate data and it had not met the KPI's in this respect.

235 The Tribunal was of the view Ms Percival held a reasonable belief that the information she disclosed tends to show one of the state of affairs listed in S.43B and that the disclosure is in the public interest. On behalf of the respondent that Tribunal was referred to Darnton v University of Surrey [2003] IRLR 133 in which it was held is was not necessary to show that the information was true. On behalf of the respondent the guidance set out in Blackbay Ventures Ltd v Gahir [2015] was set out, and has been considered by the Tribunal in its analysis, including the requirement to identify the detriment relied upon.

236 With reference to agreed issue two, namely, was the claimant subjected to detriment on the grounds that she had made one or more protected disclosures contrary to section 47B ERA, the Tribunal found that she had on the balance of probabilities, but only in connection with detriment number 1 and 4, the latter only in relation to the claimant being denied the right to raise disclosures under the Whistle-blowing Policy. It found the claimant held a reasonable belief that her disclosures were in the public interest, and they related to an alleged breach by respondent of a relevant failure; a breach of a legal obligation and health and safety. Christine Samosa incorrectly took the view the claimant had not made a protected disclosure, and accordingly, her disclosures were not acted on under the respondent's Whistle-blowing Procedure but they were still acted upon and resolved, as evidenced by the subsequent communications from Dr Brough and the claimant highlighted above.

237 With reference to agreed issue three, namely, the remaining 22 alleged detriments, the Tribunal found on the balance of probabilities, the respondent had not treated the claimant detrimentally contrary to section 47B of the ERA, and a reasonable person would not have considered themselves disadvantaged. For example, in relation to the second detriment the Tribunal's view is that the claimant has misinterpreted the comment, and in any event if we are wrong on that, there was no causation. The Tribunal concluded there was no nexus between Michael Smith's comment and the claimant's alleged whistle-blowing. Another employee with a more positive mind frame towards her employers may have considered the comment to be well intentioned. There was no need for the claimant to attend a meeting given that

she was on long-term sickness absence. With reference to the third alleged detriment, the Tribunal accepts the email from Kate Fallon sent 14 July 2014 concerned the claimant. It was clear to the claimant whilst the actual complaints were not being ignored, the respondent did not accept she had made a protected disclosure and the claimant's perception was that she was not treated with respect was understandable, because the respondent did not accept she had the right to raise disclosures under the Whistle-blowing Policy. The claimant was aware of the complexities and the background of transfers and procurements, and the Tribunal finds at the time the claimant was concerned about her employment situation, one small element was the whistle-blowing. The claimant thought she was being side-lined, she was not present at work meetings and whilst absent had little say over the direction in which the respondent was being taken. In the Tribunal's view these feelings are not unusual in employees who have out of the workplace for a substantial amount of time, and do not necessarily amount to a detriment.

238 The Tribunal has dealt with its findings in relation to each detriment above having applied the burden of proof in establishing a detriment, which lies with the claimant, and she has failed to discharge this burden in relation to the remaining detriments. The Tribunal also considered, for good measure, within the factual matrix as set out above, the respondent's reasons before concluding on the balance of probabilities, there was a protected disclosure, there was a detriment in respect only to the respondent's failure to accept from the outset the claimant and Dr Brough had raised 3 protected disclosures, a detriment which it found issued was out of time. In respect of those alleged detriments found to have been within time, the Tribunal went on to consider (despite the claimant failing to establish she was caused a detriment on the balance of probabilities) causal nexus, and it concluded on the evidence before it the respondent's treatment of the claimant was not on the ground she had made the protected disclosures for the reasons already stated.

239 In Chesterton Global cited above, the Tribunal was remined that the objective of the protected disclosure provisions is to protect employees from unfair treatment for reasonably raising in a reasonable way genuine concerns about wrongdoing in the workplace. Put simply, Ms Percival had raised genuine concerns, they had not been dealt with under the Whistle-blowing Policy but they had been dealt with nevertheless, and the Tribunal found on the facts before it, she was not subjected to any unfair treatment on the grounds of having raised those concerns.

240 The Tribunal found, taking into account the test set out by the Court of Appeal cited above in Fecitt v NHS Manchester the protected disclosures did not materially influence (in the sense of being more than a trivial influence) the respondent's treatment of the claimant, the mental processes (conscious or unconscious) which caused the individual managers to act as they did having been analysed as set out above. There was no causative link between the protected disclosure and the reason for the treatment, in the sense of the disclosure being the "real" or "core" reason for the treatment, the Tribunal having considered critically the explanation given as indicated earlier and taking into account the whole of the circumstances: Horlorku set out above. The Tribunal took the view that that the respondent's explanation was genuine, having explored the possibility of this not being the case, and the possibility its denial that Ms Percival had raised protected disclosures activating the Whistle-blowing procedure was but a smokescreen to hide away illegal acts causing the claimant detriment. For the avoidance of doubt, the Tribunal did not accept this was the case on the balance of probabilities; the respondent's managers genuinely

believed in the heat of battle, the claimant had raised grievances and not protected disclosures. It was only when the dust of battle had settled, and the Tribunal considered the matter in the cold light of day, with reference to case law and the factual matrix clarified by contemporaneous documentation and witness evidence, did it became apparent protected disclosures had been made and the claimant had not been caused a detriment on the ground of those protected disclosures. In particular, the Tribunal found there was no causal nexus between the treatment of the claimant and the length of time it took the respondent to deal with the various complaints and grievances she brought, and the whistle-blowing.

241 In conclusion, the claimant made a protected disclosure and her claim for detriment 15 to 25 on the grounds that she has made a protected disclosure contrary to section 47B of the Employment Rights Act 1996 is not well-founded and is dismissed. The claim in relation to detriment 16 is dismissed on withdrawal. Detriments 1 to 14 were not presented before the end of the period of 3 months beginning with the date of the act or the failure to act which the complaint relates in accordance with S.48(3)(a) ERA, it was reasonably practicable for the claimant to have presented her complaints in time, the Tribunal did not have the jurisdiction to consider the detriments 1 to 14 and the complaints are dismissed.

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23.10.17
Employment Judge Shotter

JUDGMENT SENT TO THE PARTIES ON
31 October 2017

FOR THE TRIBUNAL OFFICE