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EMPLOYMENT TRIBUNALS

Claimant: **Ms L Vaughton**

Respondent: **(1) Southend University Hospital NHS Foundation Trust**
(2) Mr Eric Foggitt
(3) Dr Katherine Myler

Heard at: **East London Hearing Centre** **On: 22 & 23 March 2018**

Before: **Employment Judge Scott** **Members:** **Mr T Brown**
Mr N Turner

Representation

Claimant: **Mr Merry (Lay Representative)**

Respondent: **Ms Patterson (Counsel)**

JUDGMENT

It is the unanimous judgment of the Employment Tribunal that the Claimant's claim that she was subjected to detriment on the grounds that she made a protected disclosure pursuant to section 47B(1) of the Employment Rights Act 1996 is not well-founded and is dismissed.

REASONS

Introduction

1. The Tribunal convened on 22-23 March 2018 to hear the Claimant's claim. The matter was listed for a full merits hearing. The tribunal and the parties agreed to determine liability first and consider remedy, if appropriate, thereafter. On day 2 of hearing, at the conclusion of the evidence and submissions we informed the parties that judgment would be reserved. We sat in chambers that afternoon when we were able to reach this decision.

2. The complaint for this Tribunal to determine related to the Claimant's claim that she had been subjected to detriment by the Respondents on the ground that she made a protected disclosure.

The issues and preliminary matters

3. At the outset of the Hearing the Tribunal and the parties agreed that the list of issues confirmed by the parties at the Preliminary Hearing on 15 December 2017 was the final list of issues. The list of issues is appended below and also appears in the Bundle at [39-40].

4. The Respondents applied for leave to amend paragraph 4 of the ET3 to change the date from 1 July 2017 to 1 August 2017. Mr Merry objected, but the Tribunal granted permission as it was a minor amendment and it was clear that it had to be an error given paragraph 2 ET3. Mr Foggitt applied for leave to amend paragraph 4 of his witness statement. The Tribunal granted permission to amend. The first sentence now reads: 'The plan was for Ms Vaughton to begin working on the acute wards.' Mr Merry said that the Claimant would rely upon the fact of amendments to undermine the veracity of the Respondents' evidence. The Tribunal noted that the inconsistencies between the ET3 and witness statements and/or between the Mr Foggitt's witness statement that flowed from the amendment (e.g. at paragraph 4 of the ET3 the Respondents allege that the Claimant was moved to the stroke ward on or after an alleged incident that took place on 1 August 2017 but Mr Foggitt states at paragraph 4 of his WS that she was moved on or about 10 July (and indeed he appears to accept, having amended his statement that, whilst the plan was for her to work on the acute wards, that she in fact started on the stroke unit (and was not moved)). At paragraph 6 of his statement, Mr Foggitt states that the Claimant was moved to the stroke unit and by implication from paragraph 5, that this happened after the 17 July. Having heard the evidence, it is clear that the Claimant worked on the stroke ward from the outset (see paragraph 9 below).

5. The Claimant's request for the Respondent to provide the Tribunal with original medical records was refused on grounds of proportionality. The Respondent was ordered to provide better copies of [51-54] and they did so on day 2 of the hearing [246-9]. The Respondent also provided a copy of a stroke booklet requested by the Claimant (their original request was made on 19 March) during the morning of day 1 of the Hearing [50AC-AG].

The Evidence

6. There was one bundle of documents (a number of documents were added by agreement during the Hearing (see above)), which we have taken as evidence to the extent referred to by the parties during the hearing. We heard evidence from the Claimant and three witnesses for the Respondents - Mr E Foggitt (Clinical Manager for Speech & Language Therapy); Dr K Myler (Foundation Year 1 Doctor) and Ms V Rogers (Clinical Lead Speech & language Therapist). We read all of the witness statements and we have taken all of this evidence into account in reaching our decision, and we refer in our reasons to the evidence that is relevant to our specific findings. We also had regard to the parties' submissions. References to page numbers [x] are to pages in the bundle.

Findings of fact

7. We only make such findings as are necessary to reach our decision.

8. The Claimant was engaged by the Respondent through 'Your World Nursing' agency in July 2017, as a Band 7 Speech and Learning Therapist ('SLT'). The assignment

was for the period 3 July 2017-25 August 2017, although in July 2017 the Respondent had offered the Claimant a further 6 month contract.

9. There is a dispute about where the Claimant worked when she began her assignment with the Respondent Trust. It is not material to the issues but Mr Merry seeks to rely upon 'inconsistencies' in Mr Foggitt's evidence to undermine the veracity of his evidence. Paragraphs 4 & 6 of Mr Foggitt's witness statement are based upon Mr Foggitt's unamended evidence that the Claimant began work on the acute wards. That was not so. Mr Foggitt amended paragraph 4 of his witness statement with permission on day 1 of the Hearing to make it clear that whilst the plan had been for the Claimant to start on the acute wards, she did not do so. However, the amendment was not followed through. For example, Mr Foggitt alleges in paragraph 4 of his statement that there were concerns about the Claimant's work on the acute wards and that was why she was moved to the stroke ward. He then refers to the 17 July incident as taking place on the acute wards but we know from the evidence that the incident took place on the stroke ward. We concluded that Mr Foggitt's evidence, whilst confused, was not dishonest and that there were concerns raised about the Claimant's work (rightly or wrongly) and whether these incidents took place on the acute or the stroke wards, crucially, there was no dispute that the Claimant made an entry in the patient's records on 7 August 2017 (the Claimant does dispute crossing words out or adding 'TIA'). We think that the Mr Foggitt should, however, have taken more care to ensure the accuracy of his statement.

10. On 7 August 2017, the claimant made an entry in a patient's records. She does not dispute making the entry. She accepts that she wrote 'L-TACI↑on frontsheet - SLT [signed by the Claimant]' [51/246] (TACI is shorthand for total anterior circulation infarct). The Claimant does not accept that the words that follow the symbol ▲ (diagnosis) were crossed out by her (looks like 'L-PACI' (partial infarct)) and/or that 'TIA' (transient ischemic attack) was recorded by her. Before completing the above entry the Claimant raised the issue with Dr Myler in person. Dr Myler checked the notes later and saw that an original record (L-PACI, we think) had been crossed out and TIA added, then the entry that the Claimant accepts she made added too. No changes were made by the Claimant to the treatment plan. Dr Myler subsequently made an entry in the records to query the diagnosis and confirmed L-PACI as the diagnosis later [53/249]. Dr Myler spoke to a nurse about the amendment, because she was surprised by what Ms Vaughton had done and wanted to check Trust rules. The nurse told her that her notes should not have been edited and that she might take the matter to the matron. It appears that happened.

11. Mr Foggitt was told by Ms Oddy, Matron, that she had been advised by Jill, a nurse (Dr Myler says she spoke to Jess) that the Claimant had amended someone else's entry in a patient's notes by crossing out one part and then amending the entry. Mr Foggitt was told by his line manager that if the Claimant had 'overwritten' the notes, her assignment should be terminated.

12. The Claimant denies crossing out the words following the diagnosis symbol (▲) at [51/246] or adding 'TIA' to the record. The Claimant accepts (see above) that she wrote 'L-TACI↑on frontsheet - SLT' and signed the record. The Claimant told us that she told Dr Myler about the conflict between the 'frontsheet' and the record and that she amended the record as an 'aide-memoire' for Dr Myler to check the frontsheet (admission sheet) which recorded the different diagnosis (L-TACI) to that in the records at [51].

13. On 17 August 2017, Mr Foggitt asked the Claimant to meet with him later that day. Mr Foggitt told the Claimant that he wanted to discuss three issues (a gift, the notes and

something else). Mr Foggitt told the Claimant the patient's name later that morning (concerning the notes issue). The meeting was at 2pm. Ms Rogers and Ms Phillips (Band 8a PT) were present. Mr Foggitt did not keep notes of the meeting. The Claimant wrote notes after the meeting [66-69], which she later amended [70-74]. The Claimant says that the information in the two sets is essentially the same, but we note that there are some differences (where relevant, we comment below). We think it is concerning that Mr Foggitt did not keep notes or set out the allegations relied upon to the Claimant in writing prior to the meeting but, in the end, there is no dispute that the Claimant had written 'L-TACI↑on frontsheet - SLT [signed by the Claimant]' in the records. What there is a factual dispute about is why the Claimant's contract was terminated (because she made a protected qualifying disclosure or because she had 'over-written' a colleagues note). We deal with that below and in our conclusion.

14. There is no dispute that three matters were raised with the Claimant during the meeting. We accept Mr Foggitt's evidence that two of the matters were minor, in comparison to the notes issue.

15. As to the notes issue, Mr Foggitt told us that his concern was not that the Claimant had sought to question the diagnosis, given the front-sheet, but rather that she had 'over-written' an entry in the notes (added her note to the Doctor's note) confusing matters, rather than make a fresh entry in the medical records. The Claimant's notes at [66-69] (at the paragraph by the first hole punch on [68]) support that ('*He looked at the next page in (the copy) of the medical notes, and stated "why didn't you write something like this where you have written……".)*) The Claimant's amended notes at [70-74] omit that sentence. We find that Mr Foggitt did say something like 'why didn't you write something like this where you have written….' We accept Mr Foggitt's evidence that his concern was not that the Claimant had written in the notes or what she had written but rather that she had 'overwritten' the Doctor's note, instead of making a fresh entry in the records. We also accept Mr Foggitt's evidence that if a colleague judges a note incorrect, they should make a separate entry in the records and not 'over-write' a colleague's notes. Mr Foggitt did not reach a conclusion as to who had scribbled out part of the entry.

16. The Claimant asserts that she made the note in the patient's records because it was 'in the best interests for the health and safety of the patient/individual and she was aiming to reduce the risk of harm which may result' [para 57 C WS]. The Claimant also gave evidence that she made the note as a 'reminder for Dr Myler to check the front admission sheet which had a different diagnosis to hers.' [Para 46 C's WS]/ as an 'aide-memoire'. The Claimant's evidence was that the treatment plan would change but she did not explain how and she has never explained how she alleged the patient's health and safety had been, was or might be endangered by a different diagnosis. Dr Myler told us, and we accept her evidence, that the treatment would not change as a result of the different diagnoses. Dr Myler's evidence is supported by the fact that the treatment plan at [51/246] was not changed. The Claimant did not report the issue to anybody other than to Dr Myler, who had recorded the initial entry. The Claimant did not escalate the matter. She gave evidence, which we accept, that it would only be necessary to escalate the issue if the original concern was not addressed and that it would be unprofessional to go behind the Doctor's back.

17. Mr Foggitt raised two other issues at the meeting with the Claimant, in addition to the records issue. Those two issues (not documenting a change in a feeding regime and providing a patient with a bottle of schloer as a birthday gift) were, as far as Mr Foggitt was concerned, much less serious in comparison to the notes issue. The Claimant does

not deny these events, but she asserts that she did nothing wrong. The Claimant's case is that what she did was in line with her professional duties. We accept that the Claimant did not and does not consider that she did anything wrong. We also think that it is unfortunate that the waters were muddied by these other issues. However, we accept Mr Foggitt's evidence that 'over-writing' a colleague's notes was the most serious issue. He considered (and we accept his evidence) that amending another professional's record in the way that the Claimant had done is a 'never' event and that alone, with or without the other events, was serious enough to terminate the Claimant's assignment and that the reason her assignment was terminated was because the Claimant had 'overwritten' another professional's note. We accept Mr Foggitt's evidence that if the Claimant had recorded the alternative frontsheet diagnosis as a fresh entry [see, for example, [52/247], that her assignment would not have been terminated because the other issues were minor in comparison with the notes issue.

18. Mr Foggitt told the Claimant that her assignment would be terminated and that he would report the matter to the HCPC and the agency. The Claimant worked on the general wards on 18 August because the team was short staffed. Mr Foggitt considered that it could monitor the Claimant for a day. The Claimant took issue with there not being any record of her being monitored but we accepted the Respondent's explanation and thought that monitor meant 'keep an eye on'. The Claimant's assignment with the Respondent was terminated on 18 August and a report filed to HR [79].

19. Mr Foggitt says that he reported the matter to the HCPC [81-86]. The Claimant asserts that he did not do so, although she relies upon the reporting as a detriment. Given the report at [81-86] we find on the balance of probabilities that Mr Foggitt intended and attempted to refer the matter but that the submission was not successful, given that there is no record of the HCPC ever receiving the complaint. Mr Foggitt also referred the notes matter to the Trust's HR department [79]. The agency was also advised [87-89].

Submissions

20. We had regard to Ms Patterson's and Mr Merry's oral submissions in reaching our decision. We do not repeat them. Ms Patterson had also prepared written submissions and handed up a copy of *Bolton School v Evans* [2006] EWCA Civ 1653 (referring the Tribunal to page 6, para 68 extract from the EAT's judgment).

The Law

21. The Public Interest Disclosure Act 1998 protects a broad range of workers (s43K(1)) Employment Rights Act 1996 ('ERA 1996')), including agency workers. There is no dispute that the Claimant was a worker within the meaning of s43K. A worker (who is not an employee) is entitled to complain that the termination of her employment by reason of her having made a protected disclosure constitutes a 'detriment' (s47B ERA 1996).

22. A qualifying disclosure requires a '*disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show …that the health or safety of any individual has been, is being or is likely to be endangered,….*' (s43B(1)(d) ERA 1996). Breaking that down, we must determine:

- Did the Claimant disclose any information?
- If so, did she believe, at the time she made the disclosure, that that the information disclosed was in the public interest and tended to show that the

health or safety of any individual had been, was being or was likely to be endangered?

- If so, was that belief reasonable?

23. The disclosure must, according to the EAT in *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] IRLR 38, convey information in the form of facts and not simply make an allegation or state a position. However, the distinction between giving information and making an allegation may be a fine one. The two concepts are often tied together and the statutory provision does not draw the distinction (*Kilraine v London Borough of Wandsworth* [2016] IRLR 422, EAT). In *Kilraine*, the EAT warned Tribunals to take care when deciding whether the alleged disclosure provided information. Information can be disclosed within an allegation and tribunals are warned not to be seduced by a false dichotomy between an allegation and information. We should focus on the wording of the statute at section 43B, 'the disclosure of information which …tends to show….' The assessment as to whether there has been a disclosure of information which tends to show a relevant failure is fact-sensitive.

24. The requirement for reasonable belief was considered in *Babula v Waltham Forest College* [2007] UCR 1026 (the decision precedes the public interest test but was applied in *Chesterton Global Ltd & anor v Nurmohamed & anor* [2017] IRLR 837, CA (a case on the meaning of public interest)). The Court in *Babula* held that provided the whistleblower's belief, which is subjective, is found by a Tribunal to be objectively reasonable that is sufficient, whether the belief in the relevant wrongdoing is wrong or the information disclosed does not amount to a relevant wrongdoing. In *Koreshi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4, EAT, the EAT said that deciding whether the whistleblower's belief was reasonable involves an objective standard by reference to the circumstances of the discloser (i.e. the belief must be subject to what a person in their position would reasonably believe to be wrong-doing, taking into account, for example, qualifications, knowledge of the workplace and experience). Reasonable belief must be decided upon the facts as understood by the worker at the relevant time and not on the facts subsequently found *(Darnton v Surrey University* [2002] UKEAT 882).

25. A protected disclosure must (per section 43A) be made to one of a number of specified persons set out at sections 43C to 43H. Section 43C provides for disclosure to the whistleblower's employer.

26. Workers have the right not to be subjected to any detriment on the ground that they have made a "protected disclosure" (s47B(1) ERA). In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 it was held that a worker suffers a detriment if a reasonable worker might take the view that they have been disadvantaged.

27. There is no requirement that the protected disclosure be the sole or principal cause for the detriment in a section 47B claim. Rather, the test is whether the disclosure was a material influence, in the sense of being more than a trivial influence (*Fecitt & others v NHS Manchester* [2012] ICR 372, CA). It is the mental processes of the decision maker that must be considered when determining whether the necessary causative link between the detriment and the protected disclosure has been established. The Court of Appeal upheld the EAT's decision in *Bolton School v Evans* [2006] EWCA Civ 1653 that hacking into the employer's computer system to show it is insecure was separable from the otherwise protected disclosure. The EAT held in *Panayiotou v Kernaghan & Anor* UKEAT/0436/13 that '*in certain circumstances, it will be permissible to separate out factors or consequences following from the making of a protected disclosure from the*

making of the protected disclosure itself. The employment tribunal will, however, need to ensure that the factors relied upon are genuinely separable from the fact of making the protected disclosure and are in fact the reasons why the employer acted as it did.'

28. The Claimant has to prove that there was a protected qualifying disclosure and that she suffered a detriment. If so, the Respondent must prove on the balance of probabilities that the detriment was not on the grounds that the claimant had made a qualifying disclosure i.e. that the disclosure did not materially influence, (was not more than a trivial influence on) the Respondent's treatment of the Claimant, see *Fecitt*, (above) in particular paragraph 41.

29. Section 48(3) of the ERA requires that any complaint of detriment for having made a protected disclosure must be brought within 3 months of the detriment complained of, or if there was a series of similar acts or failure to act, the last of them. If it was not reasonably practicable to bring the claim within that period, it may be allowed, if brought within such further period as the Tribunal considers reasonable. In the end, Counsel for the Respondent did not seek to argue that any of the acts relied upon by the Claimant were out of time. We concluded that the acts (detriments) relied upon by the Claimant were part of a series of similar acts (i.e. that there was a relevant connection between the acts) and that therefore time ran from the date of the last act (detriment) relied upon by the Claimant. The claim was therefore presented in time and the Tribunal therefore has jurisdiction to consider all of the acts (detriments) relied upon by the Claimant. We say no more on jurisdiction in our conclusion below, for this reason.

Conclusion

i. Did the Claimant disclose information?
ii. If so, did she believe, at the time she made the disclosure, that that the information disclosed was in the public interest and tended to show that the health or safety of any individual had been, was being or was likely to be endangered?
iii. If so, was that belief reasonable?

30. The Claimant relies upon the entry that she made in the patient's notes on 7 August 2017. The entry was: *L-TACI↑on frontsheet-SLT [signed by the Claimant]*. We concluded, not without some hesitation, that the entry disclosed information because of the word 'frontsheet'. Had that word been absent, we would not have found that the Claimant disclosed information but rather had stated a mere opinion as to the patient's diagnosis. We discussed whether this was a mere allegation but concluded that the reference to the frontsheet meant that there had been a disclosure of information, namely that the original diagnosis differed from the one on the frontsheet.

31. However, that is not sufficient. The Claimant must prove that she had a belief that the disclosure was made in the public interest and tended to show that the health or safety of any individual had been, was being or was likely to be endangered and that the belief was reasonable.

32. We concluded that the Claimant did not have a subjective belief at the relevant time that her note tended to show that the health or safety of the patient had been, was being or was likely to be endangered. Whilst the Claimant's evidence was that she believed 'that she was making the disclosure to the medical team in the best interests for the health and safety of the patient…and she was aiming to reduce the risk of harm which may result' [para 57 C's WS], the Claimant's also gave evidence that she made the note as a

'reminder for Dr Myler to check the front admission sheet which had a different diagnosis to hers.' [Para 46 C's WS]/ as an 'aide-memoire'. We appreciate that the reasons are not mutually exclusive but, importantly, the Claimant does not and never has said how the patient's health and safety had been, was being or was likely to be endangered. Nor did she escalate her concerns to anybody (save she spoke to Dr Myler). Dr Myler's evidence that there was no change to the patient's treatment plan [246] and that the plan was based on clinical findings and the patient's history/risk factors [para 5 Dr Myler's WS]. We remind ourselves that reasonable belief must be decided upon the facts as understood by the worker at the relevant time and not on the facts subsequently found. Given that the Claimant has never explained how she considered that the patient's health and safety had been, was or was likely to be endangered; that she also says that she made the note as an aide-memoire for the doctor and didn't escalate the matter, we have reached the conclusion that, at the relevant time, the Claimant did not have a subjective belief that her note tended to show that the health or safety of the patient had been, was being or was likely to be endangered.

33. In case we are wrong as to the Claimant's subjective belief, we also considered whether, if the Claimant did subjectively believe at the relevant time that the disclosure tended to show that the health or safety of the patient had been, was being or was likely to be endangered, the Claimant's belief at the relevant time was reasonable. We considered whether, by reference to the circumstances of the Claimant, taking into account her experience and qualifications, a subjective belief at the relevant time that the disclosure tended to show that the health or safety of the patient had been, was being or was likely to be endangered, was reasonable. We unanimously and without hesitation concluded that it was not reasonable. Whilst the Claimant's conclusion that the patient's health and safety had, was or might be endangered does not have to be correct, the fact that the Claimant has never explained how she considered that the patient's health and safety had been, was or was likely to be endangered and that the treatment plan did not change, nor did the Claimant suggest to anybody at the time that it should change, lead us to conclude that, given the Claimant's experience and qualifications, her belief was not reasonable.

34. If we had concluded that the Claimant had a reasonable belief that the patient's health and safety had been, was being or was likely to be endangered, we would have had no hesitation in concluding that the Claimant had a reasonable belief that disclosure was in the public interest.

Was the disclosure a protected disclosure?

35. Given that our conclusion is that the Claimant did not have a belief/reasonable belief that the patient's health and safety had been, was being or was likely to be endangered, there is no need to consider causation. However, in case we were wrong as to those conclusions, we also considered causation, on the assumption that, if there had been a qualifying disclosure, it was made to the Claimant's employer via the medical records (although we wondered whether anyone else, apart from Dr Myler, would read the entry and whether making a disclosure to the person you allege has risked the patient's health and safety is to the 'employer').

Causation – was the Claimant subjected to detrimental treatment on the ground that she made a protected disclosure?

36. The claimant relies upon three detriments:

i. the Claimant was called to a meeting with the Respondent on 17 August 2017.

ii. the Claimant's assignment was terminated with effect from 18 August 2017.
iii. the Respondent referred the Claimant's practice to the HCPC.

37. We concluded that each of the above acts amounted to detrimental treatment and that detriments 1 & 2 happened. As to detriment 3, we found as a fact that Mr Foggitt did not successfully refer the matter to the HCPC. Notwithstanding that finding of fact, we considered the referral as a detriment, given that Mr Foggitt intended to refer the matter, even if the HCPC did not receive the referral. Nothing further turns on the issue, in any event. There are two other detriments and our conclusion would have been the same if there had been two, not three, detriments.

38. We reminded ourselves that the Respondents must prove on the balance of probabilities that the detriments were not meted out on the ground that the Claimant had made a qualifying disclosure i.e. that the disclosure did not materially influence (was not more than a trivial influence) the Respondents' treatment of the Claimant. We are unanimously satisfied that the Respondents have proved that the detriments had nothing whatsoever to do with the protected disclosure (assuming there was one). We cautioned ourselves that we had to be satisfied that the Respondents' reason or reasons for the detrimental treatment were genuinely separable from the fact of making the protected disclosure and were in fact the reasons why they acted as they did. We had no hesitation in concluding that the Respondents had demonstrated on the evidence that was the case. We were satisfied that the Respondents had proven that the reason for the detrimental treatment (each detriment was linked to the records issue) was because the Claimant had 'overwritten' another professional's record, something that the Respondent considered a 'never event'/a governance issue because it could lead to confusion and risk patient health and safety. We were satisfied that the Claimant's own records supported this conclusion [68], together with the evidence we heard from the Respondents' witnesses. Furthermore, no criticism was ever made by reason of the Claimant raising the issue with Dr Myler orally. We do think that the Respondent Trust can be criticised for failing to set out the allegations to the Claimant in writing prior to the meeting on 17 August and for failing to keep notes of the meeting, but those criticisms do not alter our conclusion.

39. Given our conclusion as to liability, there is no need to list the matter for a remedy hearing.

Employment Judge Scott

19 April 2018

7. Has the Claimant made a qualifying disclosure?

   a. The Claimant relies on an entry she made in a patient's notes on 7 August 2017 as a protected disclosure.

8. Did the Claimant have a reasonable belief that the disclosure tends to show one or more of the following within in section 43b(1)(a)-(f)?

   a. That a criminal offence has been committed, is being committed or is likely to be committed,
   b. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
   c. That a miscarriage of justice has occurred, is occurring or is likely to occur,
   d. That the health or safety of any individual has been, is being or is likely to be endangered,
   e. That the environment has been, is being or is likely to be damaged, or
   f. That information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

9. Has the Claimant made a protected disclosure?

   a. Was the qualifying disclosure made in accordance with sections 43C to 43H ERA 1996?

10. Has the Claimant been subjected to a detriment? The claimant relies on the following acts and/or failures to act:
    a. The Claimant was called to a meeting on 17 August 2017 with the Second Respondent and two of his colleagues;
    b. The termination of the Claimant's assignment with effect from 18 August 2017
    c. Referral of the Claimant's practice to the Health and Care Professionals Council.

Remedy (If appropriate)

11. Was the disclosure made in bad faith?