EMPLOYMENT TRIBUNALS

Claimant:	**Mrs C Derosiare**
Respondent:	**Monmouthshire County Council**
Heard at:	**Cardiff** **On: 5-14 October 2020** **3 December 2020** **Chambers: 8-9 December 2020**
Before:	Employment Judge R Brace Members: Mrs L Owen Ms B Currie

Representation

Claimant:	Mr C Howells (Counsel)
Respondent:	Ms K Hosking (Counsel)

RESERVED JUDGMENT

1. The following claims are dismissed on withdrawal by the Claimant:

    a. In relation to s.47B Employment Rights Act 1996 ("ERA 1996") detriments
        i. First Claim: the detriments pleaded within the Rider to the ET1 at paragraphs 20.9, 20.13, 20.14, 20.15, 20.16, 20.19, 20.21, 20.24, 20.27
        ii. Second Claim: the detriments pleaded within the Rider to the ET1 at paragraphs 20.1 – 20.3, 20.7, 20.10

    b. In relation to s.20/21 Equality Act 2010 ("EqA") claims of failure to comply with the duty to make a reasonable adjustment:
        i. First Claim: the PCPs/reasonable adjustments pleaded within the Rider to the ET1 at paragraphs 32.4
        ii. Second Claim: the PCPs/reasonable adjustments pleaded within the Rider to the ET1 at paragraphs 35.4, 35.6, 35.7, 35.9 and 35.11

2. The remaining claims of detriment (s.47B ERA 1996) are not well founded are dismissed.

3. The claim of automatic unfair dismissal (s.103B ERA 1996) is not well founded and is dismissed.

4. The claim of unfair dismissal (s.98 ERA 1996) is not well founded and is dismissed.

5. The claims of failure to comply with the duty to make reasonable adjustments (s.20/21 EqA 2010) are not well founded and are dismissed.

6. The claim of discrimination arising from disability (s.15 EqA 2010) is not well founded and is dismissed.

7. The claim of victimization (s.27 EqA 2010) is not well founded and is dismissed

8. The claim of unlawful deduction from wages (s.13 ERA 1996) is not well founded and is dismissed.

WRITTEN REASONS

Preliminary Issues

1. This has been a partly remote hearing which has been consented to by the parties. The form of remote hearing was video by CVP [V]. Due to social distancing measures, a maximum of 10 individuals at any one time were permitted in the hearing room, this number including the Judge and the clerk. The non-legal members participated remotely via video due to the inability of all members of the Tribunal to sit 2 metres apart on the dais.

2. The Claimant and the Claimant's representative participated in person, as did the Respondent's representative. Save for Emma Marshall who participated remotely by video, each of the Respondent's witnesses participated in person when giving evidence, at other times, when they participated, they participated remotely by CVP.

The Claims and Early Conciliation

<u>First Claim</u>

3. There are two claims in this case, that have been consolidated. The Claimant has entered into three periods of early conciliation:

    a. On 21 December 2016, the Claimant contacted ACAS and on 4 February 2017, an Early Conciliation Certificate R210363/16/85 (the "First EC Certificate") was issued [30]; and
    b. On 4 March 2018, the Claimant again contacted ACAS and on 4 April 2018 a second EC Certificate R124873/18/85 ("Second EC Certificate") was issued [31].

2. On 29 April 2018, the Claimant's first claim (the "First Claim") was accepted by the Tribunal [3-29] and, in Box 2.3 of the ET1 Form [4], the Claimant had included the First EC Certificate– R210363/16/85.

3. In that First Claim, the Claimant relied upon her employment as a Road Safety Officer which, at the time of issue, was continuing with the Respondent. Whilst the Claimant's employment had only transferred to the Respondent in September 2014, the Claimant had continuous service since 1989 transferred from her previous employers, and was paid an annual salary of £35,000.

4. In the Rider to the ET3 [18-29], the Claimant brought claims as follows:

    a. 33 separate detriments contrary to s.47B(1) Employment Rights Act 1996 ("ERA 1996") (paragraph 20 ET1 Rider [21-25]), asserting that she had made a protected disclosure on 23rd of May 2015 to the Respondent's Chief Executive Officer, Paul Matthews, by way of email sent to Richard Garner, UNISON representative that had been copied to the Chief Executive (the "Protected Disclosure");

    b. Asserting that she had been 'suspended' from work since 29 July 2015, and that she was entitled to full pay from 16 October 2017, claiming unlawful deduction from wages contrary to section 13 ERA 1996 (paragraph 23-31 ET1 Rider [26-27]); and

    c. That she was a person with a disability since 6 August 2015 and that there had been a failure to make reasonable adjustments under s20 Equality Act 2010 ("EqA 2010"). The Claimant relied on four separate provision, criterion or practice" ("PCPs")(Paragraph 32 ET1 Rider [27-28]).

5. A request for further and better particulars of the claim were requested by the Respondent and, on 5 September 2018 at a preliminary hearing on case management, Employment Judge Ryan made orders by agreement that included an order that by 28 September 2018 the Claimant should send to the Respondent her replies to the Respondent's requests.

6. On 26 September 2018, the Claimant's 23-page response to the request for further and better particulars were provided ("Further and Better Particulars"). This document did not contain paragraph numbers, was drafted in a lengthy and detailed narrative format and was extremely difficult to follow as a result. A copy was provided and contained in the Bundle at pages [77-99].

7. On 16 November 2018, the Claimant was dismissed from the Respondent's employment summarily with pay in lieu of notice.

<u>Second Claim</u>

8. On 14 February 2019, the Claimant again contacted ACAS and a third Early Conciliation Certificate R118713/19/38 ("Third EC Certificate") was issued [148].

9. On 15 March 2019, the Claimant issued her second ET1 Claim form ("Second Claim") [118] referencing the Third EC Certificate number (R118715/19/38) and bringing further claims of:

    a. Automatic unfair dismissal contrary to s103A ERA 1996 (para 12-19 ET3);
    b. Eleven further detriments contrary to s.47B ERA 1996 (para 20 ET3);
    c. Unfair Dismissal contrary to s.98 ERA 1996 (para 27-207-29 ET3);
    d. Unlawful disability discrimination, contrary to s.13 EqA 2010 (dismissal (para 32 and 33 ET3)), s.15 EqA 2010 (dismissal (para 35.12 ET3)) and/or s.20 EqA 2010 (relying on a further 11 PCPCs (para 35 ET3));
    e. Victimisation contrary to s.27 EqA 2010 (dismissal (para 25 ET3) and a material cause of the detriments (para 26)); and
    f. Further unlawful deductions contrary to s.13 ERA 1996.

10. A Combined Grounds of Resistance was filed by the Respondent [158], covering both sets of proceedings.

Time - EC Jurisdictional Issues – Second Claim

11. A day was timetabled for reading, extended to a day and a half following receipt of the Bundle and issues with the automated electronic numbering in the Bundle. At the outset of the commencement of the hearing, on the afternoon of the second day, the Respondent raised a discrete preliminary jurisdictional issue in relation to early conciliation on the Second Claim brought by the Claimant, an issue which she had only realised that morning and had not been addressed at previous case management by the Respondent.

12. The parties were directed to provide written submissions in relation to the impact of early conciliation on jurisdiction of the Employment Tribunal in relation to the Second Claim, which the Employment Tribunal would consider the following morning.

13. On the morning of the third day, after considering further submissions from both Counsel, it was determined that the early conciliation provisions did not prevent the Tribunal having jurisdiction to consider the complaints within the Second Claim and the Second Claim had been brought in time. Oral reasons were provided at the hearing and written reasons are not provided within the body of these written reasons.

s.47B ERA 1996 Detriment Claim – Paragraph 20.1 First Claim

14. On receipt of the Further and Better Particulars in the First Claim, an amended Grounds of Resistance had been provided by the Respondent [100-115]. The Respondent had raised, at paragraph 23.1 of the Amended Grounds of Resistance [105], that the Claimant had raised new allegations and new detriments that did not form part of her current pleaded case in the Further and Better Particulars, and that no application to amend had been made.

15. This issue was not raised at any point during previous case management hearings or as a preliminary issue at the outset of this hearing. However, during the course of the first week of hearing, the parties were asked to provide interim written submissions to assist the Tribunal with the case, particularly as the Further and Better Particulars were difficult to follow and it was far from clear what matters the Claimant was relying on within those Further and Better Particulars, and for the Claimant to review and confirm whether she was proceeding with all of her claims once her evidence was completed. ("Interim Submissions")

16. The parties were directed to provide such submissions by the Monday morning, at the start of the second week of the hearing.

17. The Claimant's Counsel submitted his Interim Submissions to the Respondent's Counsel over that weekend, which led to the Respondent's Counsel on the first morning of the second week of the hearing, making representations regarding the detriment claims pleaded in the First Claim Rider to ET at paragraph 20.1, and the 14 separate allegations arising from that pleading set out in the Further and Better Particulars. The Respondent's position was, and we think right, that each allegation must be particulars of 'false representations' which could conceivably have caused reputational damage that was pleaded in paragraph 20. 1. She submitted that to the extent that they were not, they constituted new claims for which no application to amend had been made.

18. It was directed that parties were to deal with the evidence in respect of each of the 14 allegations referred to in the Further and Better Particulars (as clarified by the Claimant's Counsel in his interim submissions,) and that a determination would be made on final deliberation of the case.

19. By the date that the parties were directed to provide written submissions ("Written Submissions"), the Claimant accepted that only those matters contained within the Further and Better Particulars, that were capable of particularising paragraph 20.1 (Para 94-100 Claimant's Written Submissions, and were relevant to the claim at paragraph 20.1, were as follows:

    a. 31 July 2015: Paul Keeble unfairly criticised the Claimant's performance as manager [78]

b. 24 November 2015: Paul Keeble claimed that the Claimant demonstrated "a lack of people skills" [81]
c. 13 July 2017: Sue Caswell falsely claimed that the Claimant might have slandered colleagues [85]
d. 3 November 2017: Sue Caswell falsely claimed that the Claimant had submitted a grievance against JH [85]
e. 26 May 2016: Roger Hoggins falsely claimed to the WAO that the Claimant had previously advised him that she had not reported her concerns to any third party [93]
f. 26 July 2016: Roger Hoggins falsely claimed that he had investigated the Claimant's grievance [720]
g. 26 August 2016: Roger Hoggins claimed that the Claimant's was motivated by jealousy [95]

20. The Respondent only accepted that two of these outstanding seven matters above were capable of particularising paragraph 20.1, namely:

    c.. 13 July 2017: SC falsely claimed that the Claimant might have slandered colleagues [85] and

    d. 3 November 2016: SC falsely claimed that Claimant had submitted a grievance against JH [85]

Withdrawal of Claims

21. The Claimant has withdrawn a number of her detriment claims and reasonable adjustment claims as was reflected in the Claimant's Interim Submissions and this was reconfirmed by her Counsel on 3 December 2020 when, following receipt of Written Submissions, the hearing was re-convened to consider further oral submissions. It was confirmed that a Judgment dismissing these claims would be issued on withdrawal by the Claimant.

22. The specific detriment complaints (s.47B ERA 1996) that had been withdrawn were pleaded within both the First Claim and the Second Claim as follows:

    a. First Claim: Para 20.9, 20.13, 20.14, 20.15, 20.16, 20.19, 20.21, 20.24, 20.27
    b. Second Claim: Para 20.1 – 20.3, 20.7 and 20.10

23. The specific s.20/21 Equality Act 2010 claims of failure to comply with the duty to make a reasonable adjustment that had been withdrawn were as follows:

    a. First Claim: Para 32.4
    b. Second Claim: Paras 35.4, 35.6, 35.7, 35.9 and 35.11

Protected Disclosure

24. Following our determination on the early conciliation/jurisdictional issue, we sought to clarify with the Claimant's Counsel that the disclosure made by the Claimant by way of email to the Chief Executive, Mr Paul Matthews, on 23 May 2015 was the only protected disclosure relied upon. This was confirmed. The Claimant was not relying on any other disclosures to the employer, as discrete protected disclosure, in her complaints.

25. At that point in the proceedings, the Respondent's Counsel confirmed that the Respondent was conceding that the email to Richard Garner, her UNISON representative and copied to Paul Matthews, on 23 May 2015 was a protected disclosure under s.43B(1)(b) ERA 1996.

26. This is, as a result, no longer an issue for the Tribunal to determine.

Additional Evidence

27. Neither the Claimant nor the Respondent witnesses had dealt in detail in their witness statements with the reporting lines to the Claimant prior to the Claimant's transfer to the Respondent and the Claimant was asked to provide evidence to assist the Tribunal understand who reported to the Claimant and have some explanation of the TUPE transfers before the Claimant commencing work for the Respondent in September 2014 and what had happened since Sept 2104 when she transferred to the Respondent's employment.

Bundle

28. The Tribunal was referred selectively to the hearing bundle of relevant documentary evidence ("Bundle"). References to the hearing Bundle (pages 1-1884) appear in square brackets [ ] below. These are references to the hard copy bundle and not electronic PDF automated numbering.

29. The parties had been directed to provide an electronic bundle, prepared in accordance with the Presidential Guidance on remote and in-person hearings (paragraph 24.4). The electronic Bundle caused a considerable delay in reading time as the numbering of the pagination and the PDF numbering system did not correlate.

30. A number of documents in the Bundle had been redacted and in response to a query from the Employment Tribunal, the Respondent's representative confirmed that these documents had been disclosed in such a format to the Claimant as part of the Claimant's Subject Access Request under the GDPR. Whilst no formal direction was given, it was indicated to the Respondent's Counsel that an unredacted copy of two reports prepared by Mr Paul Beynon (the "Kerbcraft Report" [1372] and the "Beynon Grievance Report"

[1667]) that were contained in the Bundle might assist the Tribunal and unredacted copies were sent to the Tribunal and the Claimant on the following day. These were included in the Bundle using the same page numbers that had been allocated to the redacted copies within the Bundle.

31. Further documents were sought to be admitted by the Respondent during the course of the hearing. No objections to this were made by the Claimant's representative and these were included in the bundle as follows:

    a. Email from Mark Davies of 9 November 2015 [1860-1862];
    b. Job Description and Person Specification: Road Safety Officer Caerphilly County Borough Council [1863-1870];
    c. Job Description and Person Specification: Deputy Manager (Highways Traffic Engineer) [1871-1875]; and
    d. Role Advert, Profile and Person Specification: Highway Traffic and Road Safety Manager [1876-1884]

List of Issues

32. The parties had prepared a List of Issues which had been agreed between the parties as directed at an earlier preliminary hearing.

33. At the outset of the hearing, this was agreed with, and adopted by, the Tribunal as the issues to be determined save for:

    a. the discrete jurisdictional point on the impact of early conciliation, which was agreed to be dealt with, and was dealt with as a preliminary issue at the outset of the hearing, and

    b. the issue of whether the email of 23 May 2015 was a protected disclosure,.

34. The issue of jurisdiction/time limits on the detriment claims was not included identified or included in the List of Issues and was not raised at the outset of this hearing.

    a. It was however pleaded in the Respondent's combined defence at paragraph 43 [177]
    b. Whilst this discrete jurisdictional issue was raised within the Interim Submissions, it was not discussed with the parties at that stage when provided at the outset of the second week, the focus on the Interim submissions being to deal with actual clarification of the detriment claims.
    c. It was again dealt with by both Counsel very briefly in the Written Submissions and by Respondent's Counsel, again in brief in the oral submissions.

Whilst the list of issues, when agreed will as a general rule will limit the issues at the substantive hearing to those on the list, it is not to be construed as if they were a formal pleading. The Tribunal has also included the following as issues for determination:

d. Whether all or any of the detriment claims out of time by reference to the time limits in s.48(3) (a) ERA 1996 and if so, should time be extended in accordance with s.48(3)(b) ERA 1996.

The Evidence

35. The Tribunal heard evidence from the Claimant, Caroline Derosaire and for the Respondent:

a. Paul Keeble, Traffic and Network Manager;
b. Emma Marshall, HR Business Partner/HR Adviser (remotely by video (CVP));
c. Roger Hoggins, Head of Operations, now Chief Officer Operations (Stage 1 Grievance Manager);
d. Mark Hand, Head of Planning, Housing and Place Shaping (Stage 2 Grievance Manager)
e. Tracey Harry, Head of People Services and Information Governance (Dismissing Officer);
f. Julie Boothroyd, Chief Officer - Social Care, Safeguarding and Health (Final Stage Grievance Manager); and
g. Frances O'Brien (Dismissal Appeal Hearing Manager).

36. All witnesses relied upon witness statements, which were taken as read, and they were all subject to cross-examination, the Tribunal's questions and re-examination.

Assessment of the evidence

37. The Tribunal was satisfied that all witnesses gave their evidence honestly and to the best of their knowledge and belief. It is not necessary to reject a witness's evidence, in whole or in part, by regarding the witnesses as unreliable or as not telling the truth. The Tribunal naturally looks for the witness evidence to be internally consistent and consistent with the documentary evidence. It assesses a range of matters including:

a. whether the evidence is probable,
b. whether it is corroborated by other evidence from witnesses or contemporaneous records of documents,
c. how reliable is witness' recall; and
d. motive.

38. The Tribunal found that as many of the events under consideration, and in particular some critical events that had taken place as early as the Spring of 2015, were somewhat historic, and where that was the case particular scrutiny was given to the contemporaneous documentation.

Facts

Employment History

39. The Claimant's work history, as far as relevant to these proceedings, date back to 2002 when the Claimant was employed by Capita Gwent Consultancy ('Capita'), a joint venture of a number of local authorities, including the Respondent and Caerphilly County Borough Council ("Caerphilly Council"), as a Road Safety Officer. In that role, certainly in her later years at Capita, she was dedicated Road Safety Officer for the Respondent local authority. Whilst at Capita, the Claimant reported to its Principal Road Safety Officer.

40. A Jayne Haycock, who had been recruited by the Claimant for Capita, reported to the Claimant and was employed by Capita as Pedestrian Training Co-Ordinator for 'Kerbcraft' and she too was dedicated to the Respondent local authority [620a].

41. Kerbcraft was a road safety training scheme providing child pedestrian road safety training to primary school children aged 5-7. It was a scheme which was Welsh Government funded and which the Claimant had led whilst at Capita. It was an important part of the Claimant's work, though a small part of her remit as Road Safety Officer. It was a part of her job that she really enjoyed.

42. The Claimant's other duties, outside of Kerbcraft, included training and general management of a wider team including under 7s organisers, National Standards Cycle Training Instructors, Approved Driving Instructors and Motorcycle Instructors as well as the school Junior Road Safety Officer Co-ordinators and teachers who delivered off-road cycle training in schools [437].

43. At some point in 2012, the Claimant's employment transferred from Capita to Caerphilly Council, where she was directly employed by that authority, still as a Road Safety Officer and still dedicated to the Respondent' authority. Whilst the Claimant was line-managed by an officer employed by Caerphilly during this period, the Claimant had direct links with and reported on road safety matters for the Respondent to Mark Davies, Traffic and Development Manager for the Respondent.

44. The Claimant did not have any line management responsibility for Jayne Haycock during her period of employment at Caerphilly as, in 2012, Jayne Haycock's employment also transferred from Capita but not to Caerphilly. Her employment transferred instead at that time to the Respondent local authority, where she was employed directly by the

Respondent as Kerbcraft Co-ordinator, reporting to, and being line-managed by Mark Davies.

45. At all relevant times Mark Davies up to 2018 reported to Paul Keeble, Traffic and Network Manager for the Respondent, a position Paul Keeble had held since 2006. In terms of further line management, Paul Keeble reported to the Head of Operations ("Operations"), Roger Hoggins at the Respondent.

Period from September 2014 – February 2016

46. In September 2014, following a decision by the Respondent to take road safety back 'in-house', the Claimant's employment transferred from Caerphilly Council to the Respondent, and the Claimant from that point on was directly employed by the Respondent as Road Safety Officer reporting to Mark Davies. She was pleased with the move and after several months felt well supported by her managers. Her job title was reflected in the offer letter sent to her [3].

47. In the period from September 2014 to February 2015, the Claimant had no line management responsibility for those working within Kerbcraft, including Jayne Haycock and two Kerbcraft Assistants, who continued to report to Mark Davies. We heard little evidence in relation to the Kerbcraft Assistants' roles or involvement in the series of events that followed.

48. As Kerbcraft was a feature of road safety, and as the Claimant had informed the Respondent that she had managed the service up to 2012 whilst she was at Capita, Paul Keeble thought it appropriate that the Claimant should assume line management of Kerbcraft at the Respondent. This was confirmed at some point in February 2015.

49. From February 2015, the Claimant assumed line management responsibility for the Kerbcraft Team from Mark Davies, a team which included Jayne Haycock as Kerbcraft Co-Ordinator, and the two Kerbcraft Assistants.

50. Whilst the Claimant asserted in her witness statement evidence that she was concerned in the eight-month period leading up to May 2015, i.e. from September 2014, regarding '*inadequacies in the area of data protection and child safeguarding'* and that she had become '*increasingly concerned that these could have serious implications*' for the Respondent and herself, there was no evidence before us to find that she had brought these issues to the attention of Jayne Haycock and/or those managing the Kerbcraft scheme prior to May 2015.

51. The Claimant asserted that in February 2015, she had made '*enquiries'* of Jayne Haycock, although no evidence was provided as to what such enquiries related to. Further, no

documentary evidence was contained in the Bundle as to what specific issues were raised by the Claimant to Jayne Haycock at this time and we can make no findings on what these issues were[1].

52. We have been provided with no detailed evidence on what the Claimant's professional relationship with Jayne Haycock had been like for the 10 year period up to 2012 when the Claimant had managed Jayne Haycock at Capita. Whilst the Beynon Kerbcraft Report (para 3.11 [1376]) refers to Paul Keeble and Mark Davies feeling that issues between the Claimant and Jayne Haycock were '*long-standing and went back to the time that both worked for Capita'*, there is no evidence before us that there were any obvious difficulties, and we make no findings on how that relationship had been historically before February 2015, when the Claimant again took responsibility for line managing Jayne Haycock.

53. By late April 2015, Jayne Haycock was expressing her unhappiness at being line-managed by the Claimant to her managers [995] and at around the same time, Emma Marshall from Human Resources ("HR") was contacted by both Paul Keeble and the Claimant to attend a team meeting of the Road Safety Team [994] to answer questions from the team. It was unclear from the evidence from either the Claimant or the Respondent what those team concerns were at that time, save that by this point management (being Mark Davies and Paul Keeble,) considered there was a 'relationship issue' between the Claimant and Jayne Haycock and indeed the wider Kerbcraft team. It appeared to us that there may have been wider issues within the Kerbcraft team beyond the management issue between Jayne Haycock and the Claimant but we made no findings on that issue.

54. On 27 April 2015, at a Road Safety meeting, Jayne Haycock stated that the Claimant had never been her line manager. The Claimant considered Jayne Haycock's behaviour at that meeting obstructive and negative.

55. At a further meeting, a few days later, on 30 April 2015, Jayne Haycock again expressed to Paul Keeble and Mark Davies that she was unhappy at being managed by the Claimant [601/995].

<u>14 May 2015 Meeting / Events to 20 May 2015 Meeting</u>

[1]The chronology prepared by the Claimant (in August 2017 for the independent investigator Paul Beynon [992-1171 @994]) contained no reference to evidence of the Claimant asking Jayne Haycock for information held regarding volunteers used in the Kerbcraft scheme. The Claimant also accepted in that document (at point 37) that 17 May 2015 is her first written notification 'of children at risk and no paperwork in place'.

56. On 14 May 2015, a meeting took place attended by the Claimant, Jayne Haycock, Paul Keeble and Mark Davies. Whilst no notes were taken of the discussions that had taken place at the 14 May meeting, it is accepted by Paul Keeble that at that meeting the Claimant told of her concern that Jayne Haycock was not providing her with 'information' on the Kerbcraft's volunteers. The specific information that was not being provided however, was far from clear to us and not articulated in the cross-examination or within the witness statements.

57. This was not the only issue discussed at that meeting however. A further issue was the management of Jayne Haycock by the Claimant. Jayne Haycock again raised objections to being line managed by the Claimant to the extent that she stated that she was looking for another job.

58. Paul Keeble reaffirmed to Jayne Haycock that the Claimant was her line manager and that this line management would not change. At some point in the meeting, Mark Davies told both the Claimant and Jayne Haycock to go into a room and '*fight it out*', or words that such effect. The Claimant was shocked at such words. Whilst the Claimant was unaware of it, Paul Keeble subsequently informed Mark Davies his response was unacceptable. Paul Keeble did not apologise to the Claimant at the time about the comment which has clearly impacted on the Claimant for some years.

59. On the following day, 15 May 2015, at 11:45am the Claimant sent an email to both Paul Keeble and Mark Davies [357] thanking them for the '*equitable way in which [they] tried to resolve current difficulties'*. The Claimant also referred to the fact that *'despite repeated requests for information, I still do not have the Kerbcraft data I have asked for'*, pointing out that as manager of the scheme she needed this information to be accessible to her at all times.

60. From the content of the contemporaneous email, the Claimant's issue at that point was that she had not been provided with information she had requested from Jayne Haycock and that she required Jayne Haycock to provide her with that information. There is no suggestion in the email, that the Claimant held the view at that time, that the information did not exist or that she held safeguarding concerns as a result.

61. This was in contrast and, as it is a contemporaneous document, preferred as more reliable to the evidence provided at paragraph 16 of the Claimant's statement in which the Claimant stafes that she held a concern at that time that the Respondent did not have the records for volunteers at all. This was not a concern that the Claimant communicated to the Respondent at that meeting. We also concluded that as a result it was more likely than not, not the Claimant's primary concern at that time.

62. The Claimant's email of 15 May 2015 also referred generally to dissatisfaction within the team and highlighted that there were more general communication problems in the team. The email focussed on what she had done to support the team

63. By 20:20 on Sunday 17 May 2015, the Claimant's position appears to have shifted as she sent a further email after she has had, as she put it, '*time to reflect and take advice'* [111]. The focus of the content of the email and primary concern of the Claimant was the impact of Jayne Haycock's behaviour on her own position as line manager for Kerbcraft. She expressed concerns at not being able to '*produce any paperwork relating to the scheme'*, not that she held any concern that there was no paperwork in place and/or safeguarding checks had not been done. She raised concern regarding Jayne Haycock's wellbeing and ability to discharge her role which was of high risk, working with vulnerable children. She expressed concerns about placing Hayne Haycock in a situation which involves risk and not being able to produce paperwork relating to the scheme if an audit were to be carried out.

64. Paul Keeble responded confirming that the meeting had not resulted in a positive outcome and asked that if the Claimant required any information from Jayne Haycock that she could copy in both he and Mark Davies [110]. This email was intended to support the Claimant in her request for the information regarding volunteers from Jayne Haycock.

65. This response appears not to have appeased the Claimant as, at 18:01 on Monday 18 May 2015, the Claimant again emailed Paul Keeble [359]. The focus of that email was on the Claimant's concerns that her personal and professional integrity, her position and her reputation had been impacted and that that there had been a refusal to recognise her line management. That her own integrity was being '*impugned'*, was a significant part of what was at the heart of the matter for the Claimant - this was accepted by the Claimant on cross-examination.

66. The failure by Jayne Haycock to accept line management by the Claimant was the main issue for the Claimant in the period leading up to the meeting on 20 May 2015.

<u>Meeting on 20 May 2015</u>

67. A meeting was arranged between the Claimant, Jayne Haycock, Paul Keeble and Mark Davies for 12:30 on 20 May 2015 at Usk.

68. Emma Marshall, Business Partner/HR Adviser also attended. No notes are available for that meeting but, in cross-examination of Paul Keeble it was put to him that the meeting was a 'pointless meeting', suggesting that the only issue for resolution at any further meeting at that point was the Claimant's request for documents from Jayne Haycock.

69. We do not find that this was the case. Rather than being a pointless meeting, we found that it was held to try to resolve Jayne Haycock's refusal to acknowledge the Claimant as her line manager and in turn, to resolve the Claimant's specific concerns that the information that she had requested from Jayne Haycock was still not being provided by her.

70. From our review of the contemporaneous emails, we found that both the Claimant's and Paul Keeble's focus at that time was on the lack of a working relationship between the Claimant and Jayne Haycock, and in particular Jayne Haycock's negative reaction to being line-managed by the Claimant.

71. This was further supported by the fact that later that day the Claimant also emailed her UNISON representative, Richard Garner, to reiterate her concerns. Whilst we were not taken to that email, a copy of that email exchange could be found within the Appendix to the Beynon Report [1407-1409], in which she complained that a member of staff had '*refused to acknowledge'* her as line manager. It was also referred to in the chronology prepared by the Claimant for the Beynon Kerbcraft investigation [996]. No reference is made in that email to the Claimant's concerns regarding Jayne Haycock's refusal to provide her with volunteer paperwork, lack of paperwork relating to volunteers or any safeguarding issues.

72. In the email exchange between the Claimant and Richard Garner, we also could find no evidence to support that at that meeting she had raised with Mr Keeble and Ms Marshall that the Kerbcraft scheme was 'illegal' and effectively a '*paedophiles charter'* as had been alleged by the Claimant in her witness statement (para 20). Both Paul Keeble and Emma Marshall had denied that the Claimant had said such words. Emma Marshall was questioned on this issue and was emphatic that such words had not been said.

73. We concluded that had the Claimant used such words or terminology in her meeting on 20 May 2015, not only would the Respondent's witnesses have recollected such language but, due to the strength of the language, we would have expected to see that reflected in or referenced the Claimant's email to Mr Garner later that day. We did not and we concluded that more likely than not, the Claimant did not use such emotive language or convey the strength of any concern regarding safeguarding.

74. We did not find from the content of the Claimant's emails that it could be said that the Claimant's concern, or only concern was about lack of paperwork.

75. Rather we found that the Claimant's focus and concern at this meeting was again was on Jayne Haycock's behaviour and refusal to accept the Claimant as her line manager which was evidenced by her recalcitrance to respond to the Claimant's requests for paperwork relating to volunteers. There was no suggestion from the email evidence provided that the paperwork did not exist.

76. This was further supported in the email from Emma Marshall to the Claimant of 27 May 2015 [156] which confirmed the outcome of their meeting with Jayne Haycock and that expectations in terms of her behaviour towards the Claimant had been outlined, what the Claimant's role was on terms of manager her and that it was important to maintain a professional working relationship. Whilst the Claimant did respond a few days later, contradicting the position that problems arose due to working relations but that working relations had been '*fragmented as a result of identifying and raising relating to Child Safeguarding and Data Protection'* which she had been addressing [155].

Protected Disclosure 23 May 2015

77. On Saturday 23 May 2015, the Claimant sent an email to her UNISON trade union representative, Richard Garner, entitled 'Employee Protection (UNISON)'. It was marked as 'High' Importance and 'Confidential' Sensitivity. [139]. A one page document was attached in which she stated that she has some serious concerns regarding Kerbcraft, and that she was copying in the Chief Executive.

78. In the document, the Claimant indicated that she had tried to raise concerns regarding data protection and child protection at two meetings on 14 and 20 May 2015 which had not been acknowledged or actioned and that she recommended that '*statutory and legal documentation be available to [her] or that the scheme be put on hold until these matters could be properly put in place'*. She stated that not only had she had been denied access to paperwork, she was not able to say who or how many volunteers were employed on the scheme, whether they were DBS checked or whether the scheme was running according to Welsh Government guidelines.

79. Whilst references were made in that email to 'data protection', we make no findings on what, if any, data protection issues were of concern to the Claimant at that time and these do not appear to be a relevant consideration in any event for the issues for determination by this Tribunal. It appears that they related to issues regarding mobile phones and use of personal email addresses[2].

80. The Chief Executive responded within 40 minutes asking the Claimant to find him for a brief 'chat' [142] the following week and indicated that he was sufficiently concerned by reference to matters of safeguarding to want to know more.

81. Richard Garner, Jane Rodgers (Head of Children's Services) and Heather Heaney (Designated Lead Officer for Safeguarding in Education) were also copied into his

[2] para 3.15 Kerbcraft Report [1377]

response. As such, those responsible in the Respondent organisation for safeguarding children were told promptly of the Claimant's concerns by the Chief Executive.

82. Whilst we accepted that the likely purpose of the Chief Executive informing Ms Rodgers and Ms Heaney was for them to gain further information about the matters raised by the Claimant, it did not follow that they would need to speak to those involved in Kerbcraft beyond the Claimant. Rather the subsequent email exchanges between Jane Rodgers and Heather Heaney [@164 and again at 173/174, 217] indicate that these issues were kept within the purview of those responsible for safeguarding and not disseminated to or discussed with operational managers such as Mark Davies, Paul Keeble or Roger Hoggins. We concluded that this was not surprising or unreasonable considering their safeguarding and child protection roles in the Respondent organisation.

83. On 26 May 2015, the Claimant met with the Chief Executive and discussed her concerns. The detail of that discussion is not part of the evidence before us.

84. At some point by the end of May 2015, and more likely than not on or around 27 May 2018, Paul Keeble met Jayne Haycock at the Raglan Depot and reviewed the Kerbcraft documentation that was in her possession that day. Whilst this was the a focus of the evidence at this hearing, this was reflected in the Kerbcraft Report and was not challenged. By this point Mark Davies had also reviewed what records were held by Jayne Haycock[3].

Claimant's email 28 May 2015

85. On 28 May 2015, the Claimant sent out an email to the Kerbcraft Team, copying in Paul Keeble and Mark Davies [396]. Her email was headed 'Statutory Requirements & Good Practice' and attached a two-page document [146/147]. The email commenced with the Claimant reiterating to Jayne Haycock that she was their line manager and manager of Kerbcraft, and that she was not '*able to take responsibility for sending people into schools'* unless she was satisfied that all protocols had been met, especially those concerning child safeguarding and data protection.

86. She stated the following:

> *'Indeed, there are other matters that need to be addressed and which I am looking into, before I can envisage the scheme continuing and I therefore require the following:*
>
> *Child Safeguarding Information.*

[3] Kerbcraft report – para 4.3-4.6 and Beynon Grievance Report - 2.17 [1524]

1. All DBS checks for those involved in the scheme. These include all DBS checks dating back to September 2014.

2. Names and contact details of all those involved in the scheme.

3. All parent consent forms. Any official communications in writing from schools in which the scheme operates.

5. Numbers of children involved in scheme.

87. The document also contained:

a. instructions that lines of communication should be established for dissemination of sensitive information;
b. that as Road Safety Officer she required constant access to all fully up to date information regarding the scheme and that it was imperative as line that she was fully informed of the whereabouts of team members; and
c. that any changes to work practice should be communicated to her before any discussion being raised elsewhere.

88. The Claimant considered this an express instruction to suspend the Kerbcraft operation.

1 June 2015 email exchanges

89. Jayne Haycock responded to that email on Monday 1 June 2015 at 7:30am [159/160], copying in what appears to be the Kerbcraft Team as well as Paul Keeble and Mark Davies, asking the Claimant the following:

> *'Carolyn, you state you cannot envisage the scheme continuing without the information you have asked for you in email.*
> *Do you mean imminently or September?*

90. The Claimant responded by 10am that day [159]. The email really needs to be reproduced in full to do it justice and the Tribunal incorporates it by reference, but it included the following statement from the Claimant:

> *'I cannot sanction people going into such high-risk situations without evidence of statutory requirements being in place*'.

91. Her email concluded *'I would really appreciate your cooperation in order that the scheme continues as normal.'*

92. Jayne Haycock emailed the Claimant again at 11:17 (copying in Mark Davies and Paul Keeble) [161], stating

> '*As I haven't had a response to my earlier email, I will continue to work as I have been since September 2012 until I hear differently'.*

93. The Claimant has suggested that Jayne Haycock's response was 'defiant' and that she was insistent that she would continue the work. We did not find this. Rather, we found that Jayne Haycock had not in fact seen the Claimant's response as reflected in her opening '*As I haven't had a response to my earlier email…'*

94. Paul Keeble did not read the Claimant's document as recommending that the Kerbcraft Scheme be suspended, rather that she was raising issues that needed to be resolved and, at 13:43 that day he sent from his mobile phone an emailed response [161] saying:

> '*Yes, please do so Jane until I have chance to look in to this further.'*

95. We accepted Paul Keeble's evidence that he had only been copied into the email and did not have had the time to read the detail of all emails he was copied in on. It was of note that his email had been sent from his mobile phone and we accepted this evidence that he would not have identified any assertiveness in Jayne Haycock's email. Taking into account the ambiguous language used by the Claimant in her email, we do not consider that response to be unreasonable particularly taking into account the significance to schools of suspending such an operation.

96. The Claimant felt undermined by this response and at 15:00 emailed Paul Keeble [162/163] asking him why he had disregarded her professional advice. She further stated '*You need to know at this stage that I have already raised these matters to a higher level'.*

97. Paul Keeble responded at 16:05 [162] confirming that he had sent out his reply by iphone before he had read her email, confirming that he had spoken to Mark Davies the previous Friday who had confirmed to him that the '*documents'* had been completed and that it was '*just an issue of making them available which is something that we need to address urgently'*.

98. He acknowledged that he should have spoken to the Claimant before responding but stated that he had not realised that she wished for the service to be withdrawn and apologised. He confirmed that if they were unable to view the documents before the end of the week, that they review the implications of continuing the service. He stated that he was conscious that the Kerbcraft team were unclear about what to do and confirmed that he would catch up with the Claimant later in the week.

99. Whilst Paul Keeble was questioned why, in his statement (paragraph 7), he had used the expression that he did '*not recall being aware'* that the Claimant had raised these issues prior to the meeting on 29 July 2015, we accepted his candid response, which was that whilst the events were some time ago, he was 99% certain that he was not aware prior to 29 July 2015.

100. We have been asked to infer, from Paul Keeble's lack of query in this reply to the Claimant's comment in her earlier email that she had already '*raised these matters at a higher* level', that he did not ask, because he already knew, that the Claimant had already made a disclosure to the Chief Executive.

101. We did not infer this for the following reasons:

a. There is no express confirmation in that email that the Claimant had specifically raised any issues with the Chief Executive;
b. By that stage, the Claimant had also engaged Mike Trigg, Performance Monitoring Officer [158]. It is equally possible that references to 'higher level' may have been taken to be referencing Mike Trigg. That was not put to the Claimant nor to Mr Keeble and this Tribunal cannot speculate to that extent;
c. Paul Keeble already knew that Heather Heaney was involved with and assisting Jayne Haycock on general volunteering and safeguarding matters outside of this specific issue in any event.
d. There is no documentary evidence which supports that Heather Heaney and/or Jayne Rodgers had involved anyone else in that one working week period from Saturday 23 May 2015 to Monday 1 June 2015. Further it appeared that they had not even spoken to each other by 1 June 2015, as reflected in the email exchange between them sent that evening [164][4]
e. if Mr Davies, Mr Keeble and/or Mr Hoggins had been made aware of the disclosure at this time, we would have expected to see that reflected in some or any email documentation. It was not.

102. Paul Keeble also confirmed to the Claimant that he had spoken to Mark Davies on the previous week, and had confirmed to him that the documents had been completed and that it was just an issue of making them available which was something that they needed to address urgently. He further stated: '*If we are unable to view these documents before the end of the week then I would suggest that we review the implications of continuing the service.'*

[4] Jayne Rodgers emails Heather Heaney at 18:52 if she knew what the Claimant was referring to in her exchange with the Chief Executive and Heather Heaney responding confirming that she had asked the Chief Executive if he wanted them to meet the Claimant and asking if they could speak to the Claimant informally.

103. In the meantime, at 15:41, the Claimant had again contacted the Chief Executive by email [166/167] seeking his '*advice and guidance'* and raising concerns regarding Paul Keeble's management of her concerns and referencing the email exchange that had taken place earlier that day. There is no reference in that email by the Claimant to the Chief Executive that she had 'suspended' Kerbcraft.

104. Paul Matthews, in turn and later that evening at 18:48, forwarded the Claimant's email to Jane Rodgers [166] and queried if the Claimant's line manager should be included as there '*appears to be some relationship aspects to the email and am happy to be advised by you as to the best way forward – and whether Carolyn's line manager needs to be included'*.

105. Again, there was no indication of either Mark Davies or Paul Keeble being informed about the Claimant's disclosure to the Chief Executive.

106. The Claimant has asserted that her email of 28 May 2015 was her instruction to suspend Kerbcraft until she had seen evidence that DBS checks were in place for all Kerbcraft volunteers. She has further asserted that her instruction was overruled by Paul Keeble.

107. Paul Keeble confirmed in evidence that at the time he sent his email, he had not read Claimant's email and documentation of 28 May 2015 as recommending that the Kerbcraft scheme should be suspended. Rather that she had raised issues that needed to be resolved but not that she was explicitly recommending the suspension of the scheme.

108. We concluded that the Claimant's email of 28 May 2015 could reasonably have been construed in a number of ways, as the language used in the email was not clear and unequivocal that the Claimant was suspending the scheme immediately - there is no clear express instruction to suspend. Rather the Claimant chose to use language that was open to interpretation, setting out what was required to ensure that the scheme could continue as normal. Suspension was not mentioned.

Meeting on 2 June 2015

109. The Claimant and Heather Heaney arranged to meet early on 2 June 2015, as reflected in the email from Heather Heaney to Jane Rodgers [169].

110. It is also implicit from that email that by this stage Sarah McGuiness, Chief Officer for Children and Young People, had been informed of some issue regarding Kerbcraft as Heather Heaney indicates in that email that *'if the issue of DBS is not resolved I will update*[5] *Sarah McGuiness as MCC cannot evidence that volunteers have completed DBS'*.

[5] Our emphasis

111. Heather Heaney further engaged Owen Wilce, Lead Strategy for Volunteering regarding DBS checks [174]. The Claimant was informed and was appreciative, confirming that it was beneficial to talk to someone who had 'an understanding of the importance following procedure'. Again, there is no indication that Heather Heaney or Jane Rodgers were speaking to either Paul Keeble or Mark Davies regarding their discussions with the Chief Executive at that time.

112. At the end of that day, at 23:20 the Claimant sent a short email to Paul Keeble attaching a two-page document [179/181], in which the Claimant criticised Paul Keeble for his response to her concerns and complained that despite having been informed that Mark Davies has seen the paperwork relating to the volunteers, she had not. She expressed concern that there was a breakdown in communications and a '*blurring and confusion of who's doing what'*.

113. Early the next morning Paul Keeble forwarded that email to Emma Marshall and Mark Davies suggesting a discussion [186].

114. Over the course of the following few days, Mark Davies continued to correspond with Jayne Haycock regarding 'paperwork'. There was no indication that the Claimant had taken any steps to review the paperwork with Jayne Haycock herself.

Suspension of Kerbcraft / School incident – 5 June 2015

115. On 4 June 2015 at 21:59 the Claimant again emailed Heather Heaney thanking her for her assistance and confirming that she still had no data regarding the safeguarding information she required for Kerbcraft, referencing the email exchanges of 28 May 2015 and Paul Keeble's instruction to Jayne Haycock of 1 June 2015 to continue. She expressed concern that '*no-one seems to be taking the matter seriously'* [189].

116. At some point on 4 or 5 June 2015, Paul Keeble and Mark Davies met with Roger Hoggins to discuss Kerbcraft and whether the scheme should be suspended. There was some confusion on Paul Keeble's evidence on cross -examination on whether this meeting had taken place on 4 June 2015 or 5 June 2015. In his witness statement Paul Keeble had stated that a meeting had been arranged for 4 June 2015 for him to meet with Roger Hoggins to discuss the Claimant's email of 2 June (para 14 Keeble Witness Statement) and that they had agreed at that meeting that in the absence of paperwork showing that DBS checks were in place for all volunteers, the Kerbcraft scheme should be suspended and that Roger Hoggins had wanted to check with the child safeguarding team that they were in agreement with this decision. Roger Hoggins does not address whether he had spoken to Paul Keeble on the 4 June as well as 5 June 2015.

117. We did not consider anything turned on whether Paul Keeble and Roger Hoggins had met on both 4 and 5 June 2015 as either way, by around 11:30 on 5 June 2015, Roger Hoggins had spoken to Heather Heaney [217] and by that time he had also spoken to Sarah McGuinness - the email of 11:36 from Cath Sheen (Client Liaison Officer for Children and Young People) confirmed as much. Her position was that unless the Respondent could evidence that the volunteers had DBS checks in place the scheme must stop immediately and not commence until the Respondent could evidence that all the necessary checks were in place [also 217].

118. Whether Paul Keeble and Roger Hoggins had discussed Kerbcraft on 4 June 2015, as well as 5 June 2015, was not a relevant consideration for us, as they had also spoken at some point on the morning of 5 June 2015 and, by 12:13 at the latest, the decision to suspend Kerbcraft had been made as, at that time, Paul Keeble emailed the Claimant and Jayne Haycock, as well as the Kerbcraft Team and Mark Davies, instructing them to suspend Kerbcraft with immediate effect and until he could verify that until the necessary DBS checks for all Kerbcraft volunteers were in place [207].

119. At that point in time, whilst Mark Davies had confirmed to him that he had seen the paperwork, Paul Keeble was not satisfied that any information relating to the DBS checks that had been undertaken were accessible. His view was that as one person having personal possession of paper records was not an appropriate method of keeping records secure for data protection purposes. He was uncomfortable with that information not being held in electronic form.

120. Shortly afterwards, at 12:27, Roger Hoggins also emailed Sarah McGuinness and Cath Sheen, Paul Keeble and Mark Davies [208] confirming that until they were satisfied that the necessary checks were in place, Kerbcraft had been suspended. He confirmed that it appeared that many (if not all) volunteers had been DBS checked through the schools.

121. By this point, Paul Keeble was aware that the Claimant had been speaking to Heather Heaney and Owen Wilce regarding her concerns (as confirmed in the email of 5 June 20215 from Claimant to Paul Keeble [206],) as was Roger Hoggins, as confirmed in the email of 5 June 2015 (from Heather Heaney to Roger Hoggins [215]). He and Roger Hoggins was also aware that Sarah Mc Guinness and Cath Sheen were involved in addressing the Claimant's concerns regarding volunteers that she had raised directly with him.

122. Heather Heaney also informed the Claimant that she had spoken to Roger Hoggins and that he would be seeking to clarify the concerns raised and would be liaising with Cath Sheen regarding any decision about continuing the scheme in the interim [211].

123. None of those emails refer to the Chief Executive, or that the Claimant had sent her email to the Chief Executive on 23 May 2015.

124. The fact that it was known at this point by Paul Keeble, Mark Davies and/or Roger Hoggins, that others in the Respondent responsible for safeguarding and volunteering, were aware of and were assisting the Claimant in resolving her concerns, did not lead to us to infer or find as a result that Mr Paul Keeble, Mark Davies and/or Roger Hoggins knew that the Claimant had made disclosure to the Chief Executive. Rather, we viewed the position that the Claimant's concerns were not in any way hidden within the Operations and/or Traffic and Development Team, but was an issue that was being addressed by the Claimant with the assistance of others outside the team, particularly those with responsibility for safeguarding, to the knowledge of those within the team.

125. At some point on the morning of 5 June 2015, an incident occurred at a school within the Respondent' authority during a Kerbcraft session. It was suggested in the pleadings that this incident had formed part of the decision-making to suspend the Kerbcraft scheme. If that had been the case, we would expect to have seen it reflected in the numerous email exchanges between those responsible for safeguarding sent on that day. It was not. The only contemporaneous communication relating to that incident that we were taken to was:

    a. an email that was sent at 16:11 on 5 June 2015 from Mark Davies to Lawrence Dawkins (Health and Wellbeing Lead), copying in the Claimant and Jayne Haycock, referencing the incident [219]; and
    b. an email exchange between Roger Hoggins to Cath Sheen of 8 June 2015 in which he states that the '*incident comes as a surprise',* in response to her informing him of the incident [242/241].

126. The incident at the school in question did not form part of the decision to suspend the Kerbcraft scheme. Rather the decision to suspend the Kerbcraft scheme was taken by Roger Hoggins on the morning of 5 June 2015, in conjunction with the safeguarding leads at the Respondent due to the concerns raised by the Claimant directly to them regarding the DBS paperwork relating to volunteers in the Kerbcraft scheme and pending verification that until the necessary DBS checks for all Kerbcraft volunteers were in place [207].

Events post 5 June 2015 Suspension of Kerbcraft

127. The relationship issue between the Claimant and Jayne Haycock was, over this period, still an unresolved issue as reflected in:

    a. The hand-written notes of a meeting between Jayne Haycock, Paul Keeble and Mark Davies of 5 June 2015 which suggest that Jayne Haycock had indicated that she would not work with the Claimant and had left '*very upset'* [194];

    b. The email from Heather Heaney to Roger Hoggins (sent on or around 7 June 2015) [231] in which Heather Heaney raised concern that Jayne Haycock '*does not*

appear to recognise that Caroline Derosaire has a line management role in relation to herself of the Kerbcraft Scheme. I have never come across something like this previously and I thought you would wish to see. Either Caroline or Jayne are confused re their roles which has contributed to the scheme being suspended last week'

128. On 8 June 2015, the Claimant met with Paul Keeble, Mark Davies, Jayne Haycock together with Jayne Haycock's union representative, to discuss the paperwork for the volunteers [227 and 235]. Action points were discussed (as reflected in Paul Keeble's email of 10 June sent at 8:21[267]).

129. Later that day, Paul Keeble emailed Jayne Haycock asking for information relating to the volunteers that were not recruited via the schools but directly by the Respondent, and where the relevant records were held, confirming their DBS checks [230]. He also asked for further information relating to Kerbcraft and arranged to meet with her the following day at Raglan to view any records that were not currently available electronically, and in particular the DBS details for the 7 volunteers who were not engaged at schools.

130. Some of that information appears to have been provided to Paul Keeble by her within the hour by email [229] although that email response is heavily redacted. No witness was taken to that email and we can make no findings on what specific information was provided at that point to Paul Keeble.

131. On 9 June 2015, the Claimant emailed Roger Hoggins directly [247], attaching a document essentially setting out what she considered was necessary to be put in place before the scheme could be relaunched (the "Kerbcraft Document") [248-251], confirming that until recently she had been unaware that as Chief Officer, he had known nothing regarding concerns about Kerbcraft. She stated that she had that morning received a call advising her that she needed to '*inform the Welsh Government who fund the project and who are ultimately responsible and to inform my Chief Officer of the fact'*. Again, the email needs to be reproduced in full to do it justice and the Tribunal incorporates its contents by reference. It might be summarised as follows:

a. The Claimant stated that she had been refused access to information that she required;
b. That she was suspicious and on investigation discovered that there were serious deficiencies in that there was no evidence of any statutory paperwork in place;
c. She had reported this to her managers who had treated the matter as one of two members of staff not being able to get on together.

<u>10 June 2015</u>

132. On 10 June 2015, Paul Keeble sent out an email, confirming the points arising out of that meeting that had taken place on 8 June, and which included his proposal that, subject to confirmation that certain steps had been completed and any feedback (including feedback from the Claimant,) Kerbcraft be reinstated on Monday 16 June 2015. One of the steps was confirmation that a full list of volunteers with DBS and contact details would be created and stored securely in electronic format [258].

133. The email was detailed and proactively addressed what steps need to be undertaken, including that they were to comply with safeguarding protocols being developed by Owen Wilce (Lead on Strategy for Volunteering).

134. At some point on 10 June 2015, a meeting took place between Paul Keeble, Emma Marshall and the Claimant at which she provided them with a copy of her 'Kerbcraft Document', effectively the Claimant's strategy for how best to relaunch the scheme.

135. It is contended by the Claimant that at that meeting, she told Paul Keeble and Emma Marshall that she had made a disclosure to Paul Matthews, that Paul Keeble was annoyed when he heard this and told her that she should not have spoken to the CEO [CWS para 45]. This is disputed by both Paul Keeble and Emma Marshall. Their evidence was that the Claimant informed them of this at the later meeting on 29 July 2015.

136. We preferred the evidence of the Respondent's witnesses in this regard on balance of probabilities. Witness recollection can be flawed particularly after such a length of time elapsing and we considered the contemporaneous documentation available:

a. The email correspondence on and after this date, from both Paul Keeble and the Claimant, makes no reference to such an issue;
b. The email from Emma Marshall to Paul Matthews of 29 July 2015 [497], refers to the issue being conveyed by the Claimant for the first time that day i.e. on 29 July 2015; and
c. The email sent by the Claimant to Paul Keeble on the evening of 29 July 2015, after the meeting earlier that day, referenced that Mr Keeble had at the meeting '*objected to [the Claimant] having any communication with the Chief Executive*' [500].

137. We found that it was more likely than not that it was the Claimant's recall was mistaken and not Paul Keeble and Emma Marshall. The Claimant did not tell Paul Keeble and/or Emma Marshall on 10 June 2015 that she had made a disclosure to Paul Matthews.

138. Later that day Paul Keeble emailed the Claimant (at 15:21 [257]), as the Claimant had indicated to him at the earlier meeting, that she was not in agreement with the reinstatement of the Kerbcraft Scheme on the following Monday. He states:

> Further to our earlier meeting and my email below, I note that you are not in agreement with reinstating the kerbcraft service next Monday. On this basis, and as discussed, I would be grateful if you could use your previous experience to review and set up an improved and accessible systems which you believe will meet the statutory requirements for the service. Other improvements to kerbcraft can then be listed and prioritised as part of a future development plan and I anticipate that some of these will be covered by the toolkit which Owen Wilce is currently developing.

139. He indicated that it would be helpful if the Claimant could identify training that would be beneficial and ended the email by indicating that he had spoken to Mark Davies and both were in agreement that they should '*aim'* to reinstate Kerbcraft on 22 June and requested this task be given a high priority and that Mark Davies would be available should she require any further assistance.

140. There is no indication in that email that at any point the Claimant was required to relaunch the scheme on 22 June 2015 at all. At best, this was a 'target date', as Paul Keeble had phrased it in his evidence, and there was nothing in the documentation that indicated that Paul Keeble was fixed on that recommencement date. Indeed, the Tribunal could not see how anyone could reasonably put such an interpretation on the words used in the email from Paul Keeble. Further Paul Keeble makes it very clear in both of his emails of 10 June 2015, that the relaunch would only happen provided the paperwork was in place and that there was an electronic file recording such information.

141. Despite this, the Claimant took the position with others in the Respondent (Cath Sheen [262] and Heather Heaney [264]), that there was an insistence from Paul Keeble that the scheme was to be relaunched on 22 June 2020. We fail to understand why the Claimant misinterpreted the instruction from Paul Keeble in such a way. There was no insistence from Paul Keeble that the scheme was to be relaunched on 22 June 2020.

142. In the same email, Paul Keeble asked the Claimant to forward him a list of duties that she undertook as Road Safety Officer and also those which she believed should be included for the Kerbcraft Co-Ordinator in order to assist him in preparing a draft job descript for her and help better define the Claimant's role and how it interacted with the wider service

143. At some point that day, Paul Keeble also spoke to Roger Hoggins and updated him on the recent communications and, later that day, forwarded to him the email exchange that had taken place earlier that day with the Claimant [269].

Events after 10 June 2015

144. Over the course of the next few days, the Claimant continued to update Cath Sheen and Heather Heaney, as did Roger Hoggins. There was also evidence within the Bundle, which we were not taken to but did read as part of our deliberation, that indicated that Mark Davies also continued to provide support to the Claimant over this time [277]. He

encouraged the Claimant to set up improved and accessible systems as a top priority, that she was to employ all necessary and available resources so that it could commence by 22 June 2015. He confirmed that he was available to provide support and assistance and asked the Claimant to advise him of what issues remained outstanding.

145. Despite this, we saw no evidence of the Claimant's actions in putting those steps in place and/or contacting Jayne Haycock to ensure that this was undertaken. Whilst Mark Davies and Paul Keeble did at certain points take it upon themselves to meet with Jayne Haycock, and to review the volunteer paperwork, there was no evidence that the Claimant had done so and we failed to understand why not.

146. By 12 June 2015, Paul Keeble was concerned that the relaunch of Kerbcraft would need to be delayed, with a view to reinstate in September, although it was unclear on the evidence before us what caused that change of heart [297]. This was actioned by Mark Davies by way of email sent on that day [298].

147. On 14 June 2015, Jayne Haycock sent a draft letter to the Claimant that she intended to send to the Head Teachers of schools and volunteers regarding the suspension of Kerbcraft [311-313] and liaised with Owen Wilce and Heather Haycock regarding health questionnaires and DBS checks for volunteers. The Claimant responded on the following day informing Jayne Haycock that further communications with schools should go through her. The email did not reference the DBS checks or information.

148. On 17 June 2015, the Claimant sent Jayne Haycock a draft spreadsheet [334-339] for her to populate with volunteers. This document became referred to as "Kerbcraft at a Glance" document. It is in essence a basic table containing what could be considered the essential information relating to each volunteer.

149. There has been a dispute as to the creator of that document. Paul Keeble has claimed throughout that he prepared the first draft, the Claimant claims it as her own. There appears to be no dispute that the Claimant created that particular document although Paul Keeble's position as confirmed later during the Paul Beynon investigation into the Kerbcraft scheme was that he had produced an earlier version as a starting point.[6] He maintained that position on cross-examination in this hearing. We found that it was more likely than not that Paul Keeble did provide, or did feel that he had provided, at least some form of draft template for this spreadsheet, but that the Claimant was equally of the view, honestly held, that he did not.

150. Jayne Haycock responded '*Not a problem for core volunteers'* [344]. The Claimant was unhappy with that response. She responded and copied in Paul Keeble, Mark Davies,

[6] Kerbcraft Report para 5.4

Heather Heaney, Owen Wilce, Cath Sheen, Roger Hoggins, Emma Marshall and Richard Garner stating:

> *'I'm trying my best to help you as I have always done and would have expected a more fulsome response. The term 'core volunteer' has no meaning in our vocabulary as all volunteers require the same level of attention'*

151. It was submitted by the Claimant's Counsel, that despite being copied into this email exchange, Paul Keeble took no action to support the Claimant nor was Jayne Haycock instructed to comply with the requests from her manager.

152. We did not find this to be a fair reflection of the events. Cath Sheen and Roger Hoggins responded [342-343];

a. Cath Sheen confirmed that all volunteers had to have an up to date DBS check. There would therefore have been no need for any other manager to reiterate this point, if that were needed.
b. From the response from Roger Hoggins also sent later that day [@342], at that time both Paul Keeble and Emma Marshall were on leave. Roger Hoggins suggested that they should await their return to gain a complete briefing.

153. At this time, Jayne Haycock was also being supported and liaising with Owen Wilce, and the Claimant continued to email and involve others within the Respondent, responsible for safeguarding. The Claimant asked to meet Roger Hoggins privately. We can make no findings on whether that meeting took place or what was discussed.

154. On 22 June 2015, on Paul Keeble's returned from leave. The Claimant sent to him her Kerbcraft at a Glance Document [360]. Over the following days Jayne Haycock corresponded by email with Mark Davies, Heather Heaney and the Claimant regarding completion of that document and DBS checks and the Claimant sought to clarify what Jayne Haycock meant by 'core' volunteers. Steps were taken to clarify the insurance position of the Respondent [396].

155. Jayne Haycock was by this stage updating the Kerbcraft at a Glance spreadsheet and had added additional columns in relation to additional information. She reported as much to the Claimant and copied in both Mark Davies and Paul Keeble [392]. The email exchange continued over the following day, with Jayne Haycock clarifying her opinion of the definition of a 'core' and 'relief' volunteer.[7]

[7] Email sent at 8:29 [391]. Her opinion was as follows:

- Core – ' *a volunteer that [the Council] provide the DBS, Health Check, Safeguarding and ask for the reference for. They work in a number of schools where needed'*

156. On 25 June 2015, the Claimant emailed Paul Keeble [389], complaining of Jayne Haycock's inappropriate response to her emails and lack of co-operation. At that point, Paul Keeble suggested to the Claimant that she meet up with the Claimant and that she pencil something in the outlook diary. He offered to help arrange this if necessary. She thanked him for his reply and reiterated that Jayne was 'supposed to be compliant'. She suggested that Roger Hoggins defer the meeting arranged. The relationship issue with Jayne Haycock was still an issue.

157. The Claimant's Counsel submitted that Paul Keeble took no action to support the Claimant in response. We found the contrary to be true. Paul Keeble had offered to assist in arranging a meeting between the two. The Claimant did not take up on that offer.

158. On 26 June 2015, Roger Hoggins and the Claimant met. Roger Hoggins agreed to personally assisted the Claimant and prepared for her a basic procedure for the arrangement, organisation and management of Kerbcraft, dealing with issues such as training, recruitment, parental approval, risk assessment and record keeping [409-410].

159. Roger Hoggins was cross examined as to whether at that stage he should have checked the Kerbcraft at a Glance Spreadsheet. He did not. We did not consider this unreasonable. We found it wholly unrealistic to expect a Head of Service to check the work of the Claimant and her subordinates. The fact that he did not, was unsurprising.

160. On 30 June 2015, Paul Keeble emailed the Claimant [419], referencing his email of 10 June 2015 and asking again for information relating to her duties and those of the Kerbcraft coordinator**,** that he had still not received from her.

161. By the 1 July 2015, Paul Keeble had reached a point whereby he had determined to remove line management responsibilities for Kerbcraft from the Claimant and wished to meet the Claimant that day to inform her that she would no longer be line managing Kerbcraft. This was reflected in the email to Emma Marshall [425/424] in which he stated that he was awaiting the information on job roles from the Claimant and that it was his '*intention to revise the role to focus on delivering road safety and not for the position to be tied up with management issues*'. He asked Emma Marshall if she had any concerns regarding such an approach.

162. Emma Marshall responded, advising that she would look to do this as part of revisiting the job descriptions rather than simply removing line-management without discussion or consultation. In particular, she recommended explaining to the Claimant that he had

- Relief – *' volunteers who have been a School recommended volunteer when their children took part in the scheme. They have said that they will help out if the current volunteers become available at short notice. They volunteer in other areas of the school'*

considered the impact of the Claimant's working relationship with Jayne Haycock on the service.

163. Over this time, Jayne Haycock continued to liaise with Heather Heaney regarding her progress confirming that she had contacted 90% of the school-based volunteers and had their DBS numbers and issue dates from them [430]. Again, this email was copied into the Claimant, Paul Keeble, Mark Davies and Owen Wilce, as was Heather Heaney's response expressing pleasure at the progress.

164. On 2 and 3 July 2015, as had been requested, the Claimant emailed Paul Keeble her Capita CV [437] together with a three page job description that she had prepared for the Job Title of 'Road Safety Manager' [438]. Separately, she sent copies of job descriptions that she had prepared of members of the Road Safety Team including the Under 7s organisers, and Kerbcraft Co-Ordinators and Assistants and [441-446].

165. Over the course of the following weeks, Jayne Haycock continued to populate the Kerbcraft at a Glance spreadsheet and update the Claimant, Mr Keeble and Mr Davies regarding her progress [459/462].

166. The Claimant arranged a meeting for 23 July 2020, and asked the Kerbcraft team, Mark Davies and Paul Keeble to attend. She subsequently agreed with Mark Davies that neither he nor Paul Keeble attend [725] and it also transpired that the Kerbcraft Assistants were on annual leave and could not attend. The Claimant therefore met with alone with Jayne Haycock.

167. Following the meeting, she emailed Paul Keeble and Roger Hoggins [479/1130]], complaining of Jayne Haycock's behaviour;

a. that that Jayne Haycock had informed her that volunteers would need to give permission for their details to be electronically stored, and that she would not share information with the Claimant as she did not have permission
b. that there was only minimal information added to the spreadsheets; and
c. no assurances could be given on a timetable for a possible start date and that the 'were no further forward'.

168. The meeting had concluded with Jayne Haycock asking for a third party to be present

<u>Meeting 29 July 2015</u>

169. At some point around this time, and we found that it was more likely than not after he had received that email, Paul Keeble arranged to meet with the Claimant. It was arranged that both Emma Marshall and Mark Davies would also be present. There was no formal invite to the meeting.

170. On 28 July 2015, the Claimant emailed Emma Marshall confirming that she had asked Paul Keeble if she should prepare anything, and that he had not indicated that she should. She asked Emma Marshall if she should provide anything and whether she needed representation [487].

171. Emma Marshall responded a few hours later [487], confirming her understanding of the purpose which was to:

a. To discuss the Kerbcraft scheme;
b. To also discuss updating her job description;
c. For Paul to explain what he felt were the key priority areas.

172. Emma Marshall confirmed that whilst the meeting was informal, it was intended to commence discussion regarding the Claimant's job description and that if she would prefer to have representation at that meeting, could she let her know. Whilst the email would have flagged up to the Claimant the general purpose of the meeting was to discuss Kerbcraft, no advance notice was given to the Claimant that at this meeting, she would be informed that line management responsibility for Kerbcraft would be removed from her.

173. No notes were taken of that meeting but, on the evening of 29 July 2015, the Claimant emailed the Chief Executive, seeking advice [1274]. He forwarded her email to Emma Marshall, asking her '*What is going on with this please'* [1272-1274] and Emma Marshall responded to him just before midnight. The late timing of the email was due to the fact that as a part-time worker, she would be on non-working days the following day, she did not want to wait until the following Monday to respond.

174. In cross-examination, the Tribunal's attention was taken not to that email, but rather a file note of that meeting [497]. The file note was by and large a 'cut and paste' copy of Emma Marshall's email. The veracity of that note was not challenged by the Claimant and, from our review of that file note/email, we found that Emma Marshall reported to the Chief Executive that:

a. She was not sure if he was aware but that there had been a breakdown in working relationships within the team;
b. That there was an issue regarding information regarding volunteers and ensuring safeguarding checks; and
c. That Paul Keeble had expressed disappointment that the Claimant had felt the need to contact the Chief Executive rather than go to him direct.

175. This supported, in our view, not just our finding that Paul Keeble was not aware that the Claimant had reported matters to the Chief Executive until he was informed of this at

the meeting earlier that day i.e. on 29 July 2015, but also our finding that Emma Marshall was not aware of such a disclosure until that same meeting either.

176. Emma Marshall also confirmed to the Chief Executive that:

a. Roger Hoggins had met the Claimant and Paul Keeble and had put together a draft procedure for the Claimant; and
b. Paul Keeble and Mark Davies were of the view that:
    i. the Claimant had not undertaken any work to complete this or inform her staff of the procedure; and that
    ii. whilst the Claimant had highlighted her concerns, it was her responsibility as manager to address the issues and resolve them and they did not believe that she had done this; and
    iii. there was very little evidence that she had actually line-managed the team since February;
    iv. that the current breakdown in the working relationship was such that without intervention it would be '*extremely difficult to progress this matter and get the whole team on board'.*

177. Paul Keeble had also emailed himself a file note the following day [510], which it appeared that he used to form the basis of his email to the Claimant of 31 July 2015 [543] and again we found that note supported the reflection of the meeting as captured in Emma Marshall's email. Essentially his concerns were:

a. The Claimant had given no clear instructions to colleagues on actions to provide the appropriate information
b. He was not confident that the Claimant had a clear understanding of what needed to be done to address the shortcomings
c. He had seen no evidence that Jayne Haycock's co-operation had not been forthcoming.

178. He referred to the help that he, Mark Davies and Roger Hoggins had provided to her in terms of:

a. Providing her with a spreadsheet to record the details of the volunteers; and
b. A draft process to assist in the understanding of the key activities
c. Assistance on what her priorities should be

179. The Claimant's Counsel has submitted that the performance concerns advanced by Paul Keeble to justify the decision to remove the Claimant's line management of Kerbraft were not substantiated. We did not accept this. We found those emails reflected the reasons why Paul Keeble removed the Kerbcraft duties from the Claimant at that point in time. These related to his concerns regarding the Claimant's ability to address and resolve

the concerns she herself had raised to him, and her line management ability to resolve those concerns, caused largely as a result of the breakdown in the working relationship between the Claimant and the Kerbcraft Team.

180. We found that this was very much the focus of the management by Paul Keeble at that time and, whilst there is no doubt that the failure to undertake proper safeguarding checks and/or retain accessible records of those safeguarding checks was of serious concern, and, some would argue was of such seriousness that Paul Keeble should have taken a more proactive role in resolving the situation himself, he did not. We did not find that this related to any concern held by Paul Keeble that the Claimant had reported such concerns to the Chief Executive but rather a management failing on his part.

181. Counsel for the Claimant also invites us to find that it was probable that Paul Keeble '*and others associated with Kerbcraft'* knew about the Claimant's disclosure by 1 June 2015 and at the very latest that they knew about it on 10 June 2015. He approached this in seeking to highlight to us a change in the way that the Claimant was treated before and after 23 May 2015.

182. We didn't find that Paul Keeble and Mark Davies would have been informed about the Claimant's disclosure to Paul Matthews either at the point that the Chief Executive had ben informed (i.e. immediately after 23 May 2015 or even in the weeks later).

183. There is no evidence of Roger Hoggins, Paul Keeble or Mark Davies being involved by any of those individuals at that stage. Indeed, there is no evidence that the Chief Executive, or indeed Jane Rodgers or Heather Heaney informed anyone of this email exchange, or the issues raised by the Claimant.

184. Whilst Paul Keeble and Mark Davies knew and were fully aware of the Claimant's concerns, the Claimant having raised them directly with them personally, we found that it was more likely than not that neither Paul Keeble nor Mark Davies would not have been informed or advised about the email to Paul Matthews of 23 May 2015.

185. We reviewed our findings against the analysis of how the Claimant had been treated before and after 23 May 2015 to assess whether that altered our initial findings. We concluded that they did not. We did not consider that the evidence led us to conclude that Paul Keeble and/or Mark Davies had been any more or less supportive of the Claimant after 23 May than before:

    a. With regard to the 'support' prior to 23 May, the Claimant's Counsel submits that '…..*she was at least provided with some support'* in the form of the meetings of 14 and 20 May and the email of 18 May 2015 when Paul Keeble advised the Claimant to copy himself and Mark Davies into any emails that requested in information.

b. We did not find that to be the case. Indeed at the time, and in relation to specific complaints in these proceedings, the Claimant complained about the behaviour of Paul Keeble and/or Mark Davies at those meetings. We found that the Claimant did not consider them to be supportive of her or of her concerns regarding Kerbcraft.
c. Claimant's Counsel also submits that the evidence demonstrated that from 23 May there was '…*at best a lack of support provided to C'*.I
d. We did not find that to be the case. In contrast, we found that after 23 May a number of steps were taken by Paul Keeble, Mark Davies and/or Roger Hoggins that could reasonably reviewed as being in 'support' of the Claimant.
e. In brief we found the following to be relevant:

    i. Both Paul Keeble and Mark Davies took steps to physically inspect the documents;
    ii. Email correspondence shows Mark Davies to be in contact with and showing support to the Claimant from 2 June 2015;
    iii. Meetings took place on 5, 8 and 10 June 2015 and thereafter Paul Keeble contacted Jayne Haycock direct. The email of 10 June 2015 sets out the steps he considered needed to be undertaken. He also asked the Claimant to identify the training she considered would be beneficial;
    iv. Paul Keeble asked the Claimant to set out a list of her duties so that her role could be defined and also offered to assist in arranging a meeting with the Claimant and Jayne Haycock (in response to the Claimant's complaint regarding Jayne Haycock's responses to her);
    v. Roger Hoggins also assisted, both in Paul Keeble's absence on leave and in providing a basic procedure for arranging, organisation and the management of Kerbcraft.

186. Rather than see Paul Keeble as a manager that was taking no action to support the Claimant in herself managing others after 23 May, we found him to be a manager who expected the Claimant to resolve the problems she herself had identified. He saw the Claimant as failing in that regard. We found that this was not an unreasonable position for him to take. We saw no evidence of the Claimant proactively looking at the paperwork herself (which is something that it appeared Mark Davies and/or Keeble had undertaken,) or taking proactive steps to manage Jayne Haycock either on the basis of performance, if for example she held a concern that Jayne Haycock did not understand that there was no distinction in the obligations for core and school volunteers, or on the basis of conduct, if she considered that Jayne Haycock was deliberately refusing to comply with a reasonable instruction.

187. Whilst Paul Keeble could have and should have been clearer to the Claimant, in the lead up to the 29 July 2015 meeting, of the purposes of that meeting, the fact that he was not did not lead us to infer from that that it was more likely than not that he knew of the

disclosure to Paul Matthews at that point. Rather it was just poor judgement and poor management of the Claimant on his part.

188. We did also consider it relevant that the Claimant had only been managing Kerbcraft since the February and that it was only a small part of her remit. At that point in time, the issues surrounding Kerbcraft were well known within the Respondent organisation: there had been an incident on 5 June involving a volunteer and Paul Keeble was aware that those responsible for safeguarding in the authority were wanting to see change and immediate change in the way that the department managed safeguarding. We found that Paul Keeble concluded that this was not happening under the management of the Claimant and that this was the reason that line management was removed from her by him.

189. We did not conclude that this approach was because she had informed the Chief Executive of her concerns, but rather because the concerns were well-known and needed resolution which he considered was not happening under the Claimant's management.

190. Later that evening, the Claimant also emailed both Roger Hoggins [504] and Paul Keeble [500], complaining that she considered that the meeting was arranged in a deliberate attempt to allow her access to representation. She considered her treatment to be unfair.

191. Paul Keeble and Emma Marshall were questioned on whether the Claimant would cease to have management of Kerbcraft until such time that it was offered to her again. Both repeated that it was an interim arrangement to September 2015, when it was envisaged that Kerbcraft would be 'up and running again'. This too was reflected in Emma Marshall's email. As their verbal evidence, relating to matters arising some 5 years previously, was supported by that contemporaneous email, we found that it was more likely than not that the Claimant had been told that this was an interim, and not a permanent arrangement, until Kerbcraft was up and running again.

192. It was accepted by the Respondent witnesses that the Claimant was upset at this meeting. Paul Keeble and Emma Marshall were questioned on whether the Claimant was instructed by Mark Davies to leave and go home. Neither were able to recall such an instruction. Emma Marshall added that she would have remembered if such an instruction had been given but that even if the Claimant had been offered to leave early as a supportive gesture due to her upset, there would have been an expectation that she would return the following day.

Events after meeting 29 July 2015

193. By 31 July 2015, the Claimant had reported in on sick leave. Paul Keeble sought to contact her, asking her to call him. The Claimant did not but confirmed by email that she would not be in work owing to a '*stress-related illness'* [516].

194. She contacted the Chief Executive of the fact and he recommended that she speak to Roger Hoggins, the Chief Officer, on her return [517].

195. On 6 August 2015, the Claimant attended her GP [1840]. The notes reflect that she was seeking assistance for a stress-related problem '*Stress in work – getting busier, has more pressure'*, that she '*would like time off work'* . The Claimant was showing '*signs of depression*' was also noted. The Claimant was provided with a FIT note to 20 August 2015 for a 'stress-related problem' [521]. The GP records do not refer to 'suspension' or that the Claimant had been told to go home or words to that effect.

196. On 7 August 2015, the Claimant sent a detailed and lengthy email to Roger Hoggins [531], which she subsequently forwarded to Paul Matthews [522]).

197. On 18 August 2015, Emma Marshall wrote to the Claimant [527] asking if there was anything that could be done to support her, confirming that there was access to Occupational Health Services and that she had arranged for them to contact the Claimant in the next few weeks to discuss additional support. Confirmation that the Claimant had access to independent external counselling service was made and that it was important that regular contact was maintained with line-management. The Claimant was told that if she felt that she could not do this with Mark Davies or Paul Keeble, she should contact Roger Hoggins to update him on her absence.

198. At some point, the Claimant submitted a further FIT note dated 20 August 2015 (stress related problems), for a further four weeks [528] and Paul Keeble asked Emma Marshall to discuss how they could support the Claimant's return to work. A few weeks later, he expressed concern regarding her health to the Respondent's Occupational Health Adviser and asked if she would pay the Claimant a visit [538].

199. In the meantime, and on 27 August 2015, as the Claimant had not received any response from Roger Hoggins to her email of 7 August 2015, she resent him a further copy [531]. Roger Hoggins did not reply. He either did not receive that email or had over-looked it. We drew no adverse inference from this.

200. During this period of absence (and indeed later), various individuals sought to contact the Claimant to discuss work-related matters:

    a. Dulce Price (Under 7s co-ordinator)– when Paul Keeble confirmed simply that the Claimant wasn't '*currently at work'* and that until she returned, she should contact Mark Davies [536];

b. A third party (name redacted) – commenting that the Claimant was '*still away from the office unwell'* [547];
c. In January 2016 – in response to a School Administrator confirming that she had been unable to contact the Claimant, Paul Keeble responded that he was '*unable to confirm when Carolyn will be returning to work'* [626].
d. On 27 January 2017 a third party Road Safety Officer had asked of Mark Davies if he knew if the Claimant would be coming back to work.. He responded that he had *'no update on Carolyn'* [662].

Occupational Health report – 28 September 2015

201. On 28 September 2015, the Claimant attended an occupational health assessment. A report was subsequently provided [552]. The report indicated that in essence:

a. The Claimant had been absent from work since 6 August 2015 with stress related illness, because of perceived work-related stressors in relation to risks identified in work and reported to management;
b. This eventually impacted on her health and she became unable to continue in work;
c. She was under the care of her GP and whilst she had discussed medication and counselling, these had been declined;
d. She was unfit for work at present but the OHA was unable to advise any adjustments which may result in an earlier return to work at that time;
e. The Claimant was unlikely to return until the perceived work-related issues had been resolved; and
f. She recommended that a further discussions in relation to this, initially with the HR Advisor, took place as soon as possible.

202. No other adjustments were recommended.

First Grievance – 21 September 2015

203. The week prior, on 21 September 2015, the Claimant had submitted her first grievance to Roger Hoggins ("First Grievance") [569]. It was lengthy and detailed, setting out the Claimant's background complaining, in particular, that:

a. Kerbcraft was being re-launched without issues having been resolved;
b. As a result of her exposure of the scheme's shortcomings and refusal to address these *'and other serious issues'*, she was *'denigrated, humiliated, victimised and summarily removed*' from her line management responsibilities without advance warning or access to representation;

c. She considered that the removal of her line management responsibilities, or 'displacement' as she referred to it, was unfair dismissal and a 'serious slander' and compromised her professional integrity.

204. Roger Hoggins responded on 27 September 2015, confirming that they would need to meet to discuss her complaint and that this would constitute the first 'informal' stage of the grievance. She was told that if she was dissatisfied with the outcome, she could appeal. He asked her if she wished to meet whilst she was on sickness absence and confirmed that she could be accompanied by a trade union officer or colleague [569].

205. The Claimant responded on 5 October 2015 [568], confirming that her union representative informed her that the grievance procedure would necessitate an informal meeting and that she agreed to the procedure whilst on sick leave.

206. On 5 November 2015, the Claimant provided further information to Roger Hoggins relating to her grievance [593]. The further information makes no reference to the Claimant having informed the Chief Executive of her concerns regarding Kerbcraft on 23 May 2015 and/or that she considered that she had 'blown the whistle' or words to that effect to demonstrate to that she had made a protected disclosure.

207. She made reference to the following:

> *"It is my belief that the open aggression and hostility **I** have been subjected to both by my line managers and the Kerbcraft co-ordinator is due to some background matter or matters to which I have not been made privy and may well go some way to addressing present issues. However, as I have been excluded from these matters I cannot answer to them. It is my belief that these things will not come to light until they are forced into the light by proper examination*.

208. Neither the Claimant nor Roger Hoggins dealt with this issue nor were cross-examined on the point and we decline to make any findings as to what the Claimant was or may have been referring to her save to say that it was not immediately clear and obvious to us that the Claimant was referring to or implying that this related to the disclosure she had made to the Chief Executive. It may be that it related to Richard Garner's perceived involvement. It may have had nothing to do with that issue. We did not make any finding in relation to this reference. We did not infer that the reference could be related to her disclosure to the Chief Executive.

209. A meeting was arranged that took place on 9 November 2015, attended by Roger Hoggins and the Claimant. Roger Hoggins was accompanied by Julie Anthony, HR Support Officer and the Claimant was accompanied by her union representative from UNISON. Following the meeting, Roger Hoggins commenced an investigation which

involved meeting the various relevant managers throughout November and December including Paul Keeble, Mark Davies, Emma Marshall, Cath Sheen and Heather Heaney [612].

210. On 23 October 2015, the Claimant presented a further Fit note (stress related problem) for a further month [566].

211. 11 December 2015, Roger Hoggins wrote to the Claimant confirming that he needed more time to complete his investigations [614]. Notwithstanding that, he set out some interim observations that included his perception that there were other underlying matters that caused the Claimant concern – her relationship with her colleagues and clarity on her role and that he wished to understand these better.

212. The Claimant responded on 17 December 2015 [618], complaining about the delay and challenging any concerns regarding management on her part.

213. At the conclusion of her email she referenced 'whistleblowing' and that she had met with the 'Audit Office'. This is the first time that the Claimant referenced whistleblowing to Roger Hoggins and would have put him on some form of notice that the Claimant was asserting that she had made some form of disclosure.

214. On 23 December 2015, the Claimant submitted a further FIT note (stress related problems) for a further month [624].

215. From January 2016, the Claimant was represented by Mr Peter Short of UNISON having been represented by UNISON since the middle of 2015. The Claimant confirmed on cross examination that around this time she had discussions with her union regarding bringing a claim to the Employment Tribunal at that time.

First Grievance Outcome

216. On 18 January 2016, Roger Hoggins wrote to the Claimant with the outcome to his informal investigation. It runs to some 7 pages and again really needs to be reproduced to do it justice and the Tribunal incorporates its contents by reference [629].

217. It set out in detail Mr Hoggins' decision on her grievance. He concluded that whilst he recognised that she had been aggrieved by the events and had suggested that a return to work was impossible, he was happy to reconvene to discuss his report and what actions were necessary to allow the Claimant to return to work. In the alternative, she had the right to pursue her grievance to the formal stage or accept the findings and return to work (when he acknowledged that meetings may still be required to facilitate that). Whilst the Grievance response could and arguably should have been more specific in dealing with

the three main concerns, he did deal with each element and did deal with the specific complaint that when she raised these concerns she was '*further excluded'.*

a. He allayed concerns that she may have had regarding being criminally liable for failures and confirmed that responsibility lay with Paul Keeble and Mark Davies
b. He confirmed that Paul Keeble and Mark Davies and had satisfied themselves that the necessary information was in place sufficient to allow Kerbcraft to continue, but acknowledged that 'all involved should have been confident that the information was in place' and should have been managed better
c. He commented on the relationship between the Claimant and Jayne Haycock that he indicated had 'exacerbated' the situation.
d. He acknowledged that the outcome of the meeting of 29 July was of '*major significance'* and that she had interpreted the decision to temporarily place Mark Davies as directly responsible for Kerbcraft as unfair dismissal, destroying her reputation and making any future with the authority or any other authority impossible but told her that he considered such meetings could be difficult and cause resentment and upset for staff.
e. His position was that it was senior manager's prerogative and responsibility to hold such meetings and take unpalatable decisions such as temporarily changing roles and responsibilities
f. He also acknowledged that the removal from line management of a service was emotive and frustrating but concluded that it was the manager's right and responsibility to do so.

218. He did not conclude on whether she had been *excluded* because she had raised concerns but equally the Claimant's grievance was not predicated on that basis.

219. On 31 January 2016, the Claimant responded in relation to the informal response [637] and made enquiries as to whether she should be on full pay until the grievance procedure had completed [644].

220. On 2 February 2016, the Claimant emailed Roger Hoggins separately raising a concern that she had '*reason to suspect that whatever it is that schools, organisations, colleagues etc*' had been told may be to her disadvantage and she sought copies of such correspondence [647]. She warned that should there be anything she considered libellous, she would pursue matters. Whilst this does not appear to have been treated as a Subject Access Request' by the Respondent when it was originally sent in ("SAR"), the Claimant intended it to be one and the Respondent subsequently accepted that it should be treated as one.

221. On 3 February 2016 Roger Hoggins responded to the Claimant's appeal [649] confirming his belief that there were three options:

a. Notwithstanding the Claimant's wish to have another investigation, that they reconvene to discuss his findings and whatever was necessary to facilitate her return to work
b. That her grievance be progressed to the 3rd stage of the formal grievance
c. That whilst the Respondent's grievance procedure did not provide for an investigation by an independent person, he was nevertheless willing to commission and independent investigation but that such an approach would remove any internal appeal process and the findings would be heard by another chief officer at the respondent.

222. On 8 February 2016, the Claimant presented a further FIT noted (stress related problem) for a further month from 23 January 2016 i.e. to expire on 22 February 2016 [648].

223. She also responded to Roger Hoggins' letter [655-658]. She confirmed she was taking advice and would be taking out a second grievance. The tone of the email indicated clear unhappiness from the Claimant that Roger Hoggins had not dealt with her grievance on an informal basis and considered that the response was inadequate.

224. She rejected his first two options and indicated that she was taking advice and would contact him when she was '*clear as to the best way forward'*.

225. She concluded by confirming that she had not shared '*this matter with Councillors, Politicians, police or any of the other agencies who could be properly involved'.*

226. When put to her on cross examination that she was well enough to bring a claim at that time, the Claimant responded simply that she '*didn't bring a claim'*.

<u>WAO Investigation – February 2016</u>

227. On 29 February 2016, Roger Hoggins was contacted by Welsh Audit Office and informed that it had received information related to processes and record keeping regarding individuals involved in the Kerbcraft scheme, a safeguarding matter, that they were treating as a 'whistleblowing matter' . Information and documents were requested and on 2 March 2016 Roger Hoggins communicated this to Paul Keeble and other managers, confirming that he was acting as their contact point requesting that they provide him with the relevant information [666]. The Chief Executive was not included within that email.

228. On around 16 March 2016, Claimant and Roger Hoggins met to discuss her return to work and Roger Hoggins followed that meeting up with an email on 1 April 2016, as confirmation of what had been discussed and to provide the Claimant with confirmation

that the Respondent had been contacted by the Welsh Audit Office and was undertaking an whistleblowing investigation [671]. He also confirmed that:

a. With budget reductions within the Respondent, he would shortly be circulating a new staff structure for Highways, but that he did not anticipate her post being at risk; and
b. He was considering alternative line management of road safety under a manager other than the Traffic and Development Manager.

229. He also noted that the Claimant's sickness absence had ended, and she had exhausted her sick pay. He confirmed that whilst the Respondent had no policy to make pay payments, that the Claimant should be making herself available for work or clarify her absence, he had also considered whether it was '*reasonable to expect'* the Claimant to return to work '*in the present circumstances*'. He stated that:

> '*On balance, I do not think it is feasible for you to return to your substantive post. Therefore I do not require you to attend work until we have resolved a plan for your return to the workplace. I am allowing until the end of May to achieve this but as a long stop I will seek temporary alternative duties for your return on 23 May 2016 if we have not resolved your return to the road safety service'.*

230. He confirmed that the Claimant would receive full pay, backdated to 23 January 2016, when her sick pay had exhausted, to 23 May 2016. He concluded the letter by confirming that he was progressing a review of why the Claimant had been denied access to information she had requested (in relation to her SAR) and invited the Claimant to call him if she wished to discuss any aspect of his response or, if she preferred, meet with her union representative.

231. At that point, Roger Hoggins believed that the Claimant's return to work would be difficult for working relationships. He knew staff were aware that WAO were undertaking an investigation into Kerbcraft and formed the view that the WAO investigation could only have been the result of a whistleblowing by a colleague. He considered that the best way to proceed and determined that when the WAO report became available, he would reconvene the team and make a fresh start [929 and 930]. It was a difficult decision for him.

232. On 4 April 2016, the Claimant emailed Roger Hoggins stating that she would appreciate a response to her SAR [@647] and on 11 April 2016, after having confirmed to the Claimant that her request sent on 2 February 2016 was being treated as a SAR, the Claimant was sent copies of emails relating to her absence that had been sent out, including emails that had been sent to third parties [676-677]. These included those emails referred to at paragraph 200 (above).

233. On 14 April 2016, the Claimant was sent details of the proposed departmental restructure which she in turn, forwarded to her union representative [680] and over the course of April and into early May further information was sent to her regarding the proposed restructure.

234. On 5 May 2016, Roger Hoggins, emailed several individuals within the Respondent regarding the WAO investigation [688]. He indicated that in his correspondence with the Claimant, she had *'explicitly stated that she has not been in touch with any 3rd party organisations about her allegations*'. He acknowledged that she may have indicated something different to others and that he suspected that she had, as officers had been contacted by Welsh Government. He indicated that it would be helpful if they could check if the Claimant had explicitly raised this matter as a 'whistleblowing' as it would help with his response to the WAO. An hour or so earlier that day, the Chief Executive had also sent Roger Hoggins a copy of the Claimant's disclosure of 23 May 2015 with confirmation that he had asked Jane Rodgers and Heather Heaney to '*become active in bottoming out any issues*' [687].

235. By the end of May, the Respondent was in contact with the Claimant's representative regarding a return to work with the Claimant confirming that the Claimant wished to return and asking Mr Hoggins if he was confident that '*all reasonable measures'* were in place to ensure a successful reintegration [693].

236. On 26 May 2016, Roger Hoggins emailed the Claimant's union representative and confirmed that until the WAO was completed and the Respondent was aware of the WAO findings, it was not feasible for the Claimant to return to her substantive role and that he was investigating what other work would be available for the Claimant elsewhere in the Respondent. He raised that the Claimant had informed him that she had not raised her concerns with any bodies outside of the Respondent [694].

237. The Claimant emailed the Respondent's support and HR advisers later that day stating that Roger Hoggins had accused her of lying regarding when she was supposed to contact him to discuss a return to work and contact with third parties, highlighting that in December 2015 she had confirmed in email that she had been in discussions with the WAO [696-697 referring also to 620].

238. On 6 June 2016, Roger Hoggins replied to the Claimant [699] confirming that since her email of 23 May 2016, he had checked on previous correspondence and whilst he had received conflicting statements from her, and he accepted that he had overlooked her correspondence of 18 December 2015 and that he would now advise the WAO to provide a full picture. He ended the letter by confirming that he was finalising the structure of Highways by the end of the following week and that it would be useful to meet.

239. In evidence, Roger Hoggins confirmed that his oversight was a genuine mistake and that he had not deliberately attempted to mislead anyone. We found Mr Hoggins to be candid and open in his recall and explanation. Considering the conflicting statements that the Claimant had made in her emails of 17 December 2015 [618] and 8 February 2016 [655], and lapse of time since receiving those emails of some months, we acknowledge that this was more than possible and found that it was in fact more than likely.

240. We found that Roger Hoggins genuinely had overlooked the reference made by the Claimant in her email of 18 December 20015; that it was a genuine oversight on his part.

14 June 2016 Meeting

241. A meeting took place on 14 June 2016 attended by Roger Hoggins, the Claimant and her UNISON representative, Peter Short [701]. At that meeting Roger Hoggins proposed a return to work reporting directly to Roger Hoggins other than where technical input would be required from Paul Keeble. He proposed that she would not be required to undertake Kerbcraft but would concentrate on other aspects of road safety. He suggested that she could work from home or a different office from where the rest of the team were based.

242. The Claimant responded on 16 June 2016 [703-707] making it clear that she was *'mistrustful of both management systems and proposals'* and believed that no equitable way forward can be addressed or found without proper consideration of her grievance. Again, full reference to that email is needed to do it full justice and the Tribunal incorporates its contents by reference. In summary the Claimant:

a. Confirmed that she was suspicious and had no confidence in the proposals.
b. Any decision regarding her future with the Respondent depended on two aspects of her grievance being considered and answered:
    i. Whether or not she was bound to raise her concerns regarding safeguarding
    ii. Whether she was 'victimised, bullied, excluded and removed from her post' for Whistleblowing.
c. She sought reinstatement 'with no detriment' and did not believe that there could be serious consideration of her return until she was assured that nothing detrimental had been circulated by way of explanation for her absence.
d. She referred to her 'unfair dismissal'
e. In essence queried how she could return to work reporting to Paul Keeble when he had 'bullied' and 'slandered' her.
f. That no attempt had been made to address her concerns
g. That a return to the workplace would constitute a new contract which would be detrimental to any legal or other challenge that she may wish to make

243. On 21 July 2016 she was prescribed by her GP the anti-depressant Sertraline – 50mg [1847].

244. Roger Hoggins responded on 28 July 2016 [720-722], which again is incorporated by way of reference. In essence Roger Hoggins:

a. Expressed that he was keen to facilitate a return to work
b. Reminded the Claimant that she had not responded to his email of 11 February 2016 in which he asked how she wished to progress her grievance
c. Confirmed that he would ask for an investigation into her concerns that she was denied information
d. Suggested a return to work on 24 August 2016 reporting to him other than where technical input was required from Paul Keeble. He suggested that he could be present at any meetings with Paul Keeble
e. Confirmed that that a return to work would not constitute a new contract but that an up to date job description and person specification was being prepared and that the job would be evaluated

245. He proposed that he and Sue Caswell (HR Adviser) meet with her on 18 August 2016 at Abergavenny Town Hall to discuss and finalise the return to work arrangements and advised her that she could be accompanied by her union representative or other companion. He asked if either she or her union representative could confirm by 15 August 2016 that she would be able to attend the meeting.

246. The Claimant responded on 15 August 2016 confirming that she was unable to confirm attendance at that time and referred to her union representative being on leave and, after further email exchange, on 22 August 2016 [723] confirmed that she would be attending the meeting re-arranged for 24 August 2016 but expressing concern that Roger Hoggins had not '*addressed my professional and personal exoneration and complete restoration and reinstatement as a starting point for our discussion'*

<u>Email exchange of 30 August 2016</u>

247. The meeting took place on 24 August 2016 although no notes were provided within the Bundle relating to this meeting or its content.

248. On 30 August 2016, the Claimant emailed Roger Hoggins indicating that she wished to 'flag up' two issues 'which may need clarification'. She invited him to correct her if she was wrong but that he seemed to suggest at the meeting that there was some animosity or resentment on her part regarding the relationship between Jayne Haycock and Mark Davies [728]. She reiterated that she did not consider that the problem was one of relationships but of management concern '*in the face of non-compliance; one that if not addressed, would be in breach of child safeguarding and damage to reputation*' of the

Respondent. We found that the tone of the email indicated that the Claimant was far from certain that she was right in her interpretation of any comment made.

249. Roger Hoggins immediately responded seeking to disabuse the Claimant of any view that his comments should construe that a special relationship existed between Mark Davies and Jayne Haycock but confirming that positive working relationships were important in a team and that he was working to re-establish the service and the Claimant's return to the full range of duties as soon as practicable.

250. He then emailed to her his prepared letter confirming the discussions that at taken place [726-727] providing a 6 point summary that:

a. There would be an investigation into the concerns that there had been withholding of information
b. The Claimant did not consider the WAO report as a barrier to returning
c. That he was requiring the Claimant to return to work to undertake the duties of her post in relation to road safety reporting to him
d. He required her confirmation by 5 September whether she was prepared to return to work with an intended return date of 15 September
e. That she resume full responsibilities of her role as soon as her outstanding concerns regarding withholding of information had been fully investigated and the new management structure had been out in place
f. A new job description and person specification would be prepared

251. On 2 September 2016, the Claimant responded to Roger Hoggins letter by way of a three-page letter [732 – 734] referring to the meeting on 29 July 2015 as a disciplinary hearing and reiterating that she had been dismissed. She complained that she had been 'forced out of the workplace' for over a year and her ability to function in the role had been compromised. She also reminded the Respondent that she should not be subjected to a detriment due to whistleblowing. The letter was lengthy with the Claimant expressing concern regarding the impact on her reputation of what she termed was her dismissal for incompetency, indicating that a return to her previous role would be impossible [@733].

<u>Letter from Roger hoggins of 30 September 2016</u>

252. On 30 September 2016, Roger Hoggins replied [738] responding to the Claimant's references to being dismissed, reminding the Claimant that he had repeatedly reassured her that she had not been dismissed, but that in light of any constructive suggestions from her as to when or how a return to work could be facilitated, he could not see that a return to work was reasonably likely .

253. He stated that considering her repeatedly stated view that she was dismissed, he was confirming that the Respondent was proposing to treat her employment as having been

terminated on 29 July 2015. He restated that for the avoidance of doubt the Respondent did not accept that the Claimant had been dismissed. He added that in that event he asked the Claimant to confirm her proposals for repayment of the salary that she had received since July; a sum of £42,071.72.

254. A few days later, on 3 October 2016 [741] the Claimant wrote to Roger Hoggins in reply. Rather than clarify, it appears that his letter raised more questions for the Claimant. In brief:

a. She clarified that she had been dismissed '*as manager of Kerbcraft'* and questioned whether she had been dismissed as Road Safety Officer
b. She confirmed that her appeals for exoneration and full reinstatement was in effect the constructive suggestion form her on how her return to work could be facilitated
c. She stated that if the Respondent intended to terminate her contract, she required notice and a legitimate reason for dismissal.

255. On 19 October 2016, Roger Hoggins replied [743a]. He stated that he was confused by her position as to date she had been adamant that she had been dismissed and had not drawn any distinction between her kerbside duties and her employment as Road Safety Officer.

256. He re-confirmed that he wished to meet particularly in light of comments in her letter of 2 September 2016 regarding return to her previous role would be impossible and arranged a further meeting at Abergavenny on 3 November 2016 to discuss

a. Whether her employment had terminated in July
b. Whether a return to work within a reasonable timeframe was realistic
c. If a return to work was not a realistic prospect, to consider alternative options including;

i. Paying the Claimant in full to remain from the workplace
ii. Stopping pay whilst the Claimant was not in work; and
iii. Terminating her employment for some other substantial reason if it appeared that a return to work was not a realistic and reasonable prospect

257. On around 5 November 2016, the Claimant's sick pay was reduced to half pay in accordance with the Respondent's sick pay arrangements [757].

258. After some email exchange in which the Claimant complained that since her grievance there had been no discussion regarding her complaint and that she felt that Roger Hoggins was endorsing the actions of her manager [744], the Claimant met with Roger Hoggins with her UNISON representative. Again Sue Caswell of HR attended.

Letter from Roger Hoggins of 10 November 20216

259. Roger Hoggins sent out a four-page letter to the Claimant on 10 November 2016, detailing the proposals that had been discussed at the meeting on 3 November 2016 that could facilitate the Claimant's return to work [749 – 752].

260. He also attached a job description and person specification for the post of Traffic and Road Safety Manager which was available for application but confirmed that she anticipated the Claimant being slotted into the position of Road Safety and Kerbcraft Officer [755].

261. At that point in time, the Claimant:

a. Wished to return to work to the full range of duties including Kerbcraft
b. The Claimant had confirmed that she did not consider herself to have been dismissed and that although the meeting of 29 July 2015 had been 'significant' for the Claimant, it did not constitute a dismissal

262. At that point in time, Roger Hoggins had also:

a. informed Claimant of his concerns that a return to work would have on relationships. He did not consider it likely that a complete return to all duties could be achieved without causing anxiety and concern for work colleagues and believed a phased return with support was the most suitable approach. He informed the Claimant how he considered that this would operate in practice, but considered that a return to full time duties should take no longer than three months or sooner subject to satisfactory working relationships being established.
b. Confirmed that during the phased return, he intended that the Claimant would report to him and that he would meet weekly with her and Kerbcraft colleagues to discuss the service and any matters of concern.

263. He also confirmed to the Claimant that she would take responsibility for Kerbcraft upon her return to work and that he would be overseeing the scheme. He expressed willingness to work with the Claimant to establish good working relationships. He was optimistic that this could form the basis of the Claimant's return to work ideally before the end of November. The relationship issues between the Claimant and the Kerbcraft team was an issue to be resolved still at this stage.

264. He set up arrangements to meet the Claimant with her trade union representative at County Hall in Usk at 12.30 on 16 November 2016 to discuss the detail of her return but that she should contact him to discuss any aspects in detail in the meantime.

265. The Claimant did not respond to that letter before 16 November 2016 and the meeting did not take place.

266. The Claimant was however in discussion with her union representative as reflected in the email exchange that took place between Peter Short (UNISON) and the Claimant on 10 November 2016 in which she was advised to issue an EC form 'which would avoid any time issues in the future'.

267. At that point in time the Claimant felt that a claim to the Employment Tribunal was an option that she could use to get herself back into work. She considered that it was the 'next logical progression' as she put it on cross-examination, given that she felt that Roger Hoggins had not addressed her grievance in November 2015.

268. The Claimant emailed Roger Hoggins on 21 November 2016 [753-755] confirming that she had prepared a 'comprehensive and annotated reply' to his proposals but in the meantime:

a. She denied that she had said that it was impossible to return to the workplace
b. Reiterated that she had been subjected to detriments because of having acted as a whistleblower
c. That she was still awaiting clarification of how her employment would be terminated for some other substantial reason
d. She confirmed that she was taking legal advice and asked that all meetings should be official and documents.

269. She followed this email with a much more extensive document on 27 November 2016 [760-776]. This document was in essence a copy of Roger Hoggins' letter with the Claimant's detailed comments, challenging Roger Hoggins' proposals, inserted into the document in response. The document is lengthy, and the Tribunal does not attempt to summarise in any detail but incorporates it contents by reference.

270. The content and detail of that document led Roger Hoggins to conclude that there was a lack of trust by the Claimant in the Respondent. He doubted whether a return to work for the Claimant would ever be possible. Of particular concern was that the Claimant had indicated that a return to work would be best facilitated once outstanding grievances had been addressed at an Employment Tribunal. He concluded that the Claimant was seeking to delay a return to work and 'putting barriers' to her proactive suggestions to return to work. We accepted this evidence. Given the tenor and content of the Claimant's emails and the language that she continued to use, this was not an unreasonable conclusion to have reached.

271. On 21 December 2016, the Claimant contacted ACAS and a period of early conciliation commenced. The Claimant was aware of the time limits for bringing a claim in the Employment Tribunal. The Claimant did not bring a complaint at that time.

Letter of 16 January 2017 from Roger Hoggins

272. On 16 January 2017, Roger Hoggins replied to the Claimant's 27 November 2017, apologising for the delay [780-783]. He disputed that the Claimant had not said previously that a return to work was impossible or that the Claimant's grievance was outstanding.

273. He reminded the Claimant that he had provided a written response on 18 January 2016 and in his email of 3 February 2016 he had identified three options; that the Claimant had provided her views on those three options but had confirmed that she was taking advice as to the way forward. He pointed out that he had reminded her on 11 February 2016 that he awaited her decision, and that despite having had a number of meetings with her and her union representative and engaged in correspondence, she had not pursued her grievance

274. He also reminded her that the focus of his meetings had been on getting the Claimant back to work and challenged the Claimant's argument (raised in her earlier document) that he had suggested a probationary period. He found it unreasonable of the Claimant to delay consideration of a return to work and repeated that he was keen to facilitate such a return.

275. A return to work date of 6 February 2017 was proposed and the Claimant was informed that if she did not return on this date that she would no longer be on paid additional leave. He confirmed he was happy to meet to discuss any specific points but that such a meeting should take place no later than 30 January 2017 to allow sufficient time to consider any points raised before a return to work on 6 February 2017. He warned the Claimant that if she did not return on that date then a return to work may not be practicable within a reasonable period and they would need to meet to discuss alternative options.

276. The Claimant did not respond to this letter or to email from Roger Hoggins suggesting that they meet on 6 February 2017 to discuss her return to work [801]. Instead:

a. On 4 February 2017, the early conciliation ended and the First EC Certificate was issued; and
b. on 10 February on 5 February 2017 the Claimant submitted a FIT note (with what appears to state 'anxiety with depression') for a period of 3 months [804].

WAO Report

277. At some point in February 2017, the Respondent received the WAO investigation report ("WAO Report") [785-800] that concluded that children were being put at risk

because of continuing weaknesses in safeguarding arrangements for the Kerbcraft scheme that the Council had not adequately addressed. They came to the conclusions that:

a. there were continuing weaknesses in the Respondent's safeguarding arrangements for the Kerbcraft scheme; and
b. the Respondent had failed to act in a timely and responsible manner to improve safeguarding arrangements for the Kerbcraft scheme, and had provided inconsistent, partial and misleading information to auditors.

278. The WAO were also concerned that the Respondent had been unable to provide any records relating to the specific actions that it said had been undertaken, that were no formal meeting notes or records of these decisions being taken and that Kerbcraft had restarted in September 2015, earlier than the Council had claimed to WAO and prior to any corporate clearance to do so by either the Chief Officer for Children and Young People, or the Head of Operations.

279. WAO were also concerned that they had been told that the Respondent's safeguarding and volunteering officer had endorsed the current record keeping arrangements for its Kerbcraft scheme after dialogue with relevant officers and a review of the new arrangements. However, at the time of their review in May 2016, fundamental weaknesses were evident to them in the Respondent's recordkeeping of the volunteers involved. An example was given of the spreadsheet used to record details of Kerbcraft volunteers, which did not contain complete information for all of the volunteers. They asserted that the Respondent had provided them with different versions of the spreadsheet that contained gaps in the information recorded.

280. A copy of the WAO Report was provided to the Claimant by Claire Marchant, Director of Social Care and Health by way of letter dated 14 March 2017 [807]. The Claimant was asked to meet to enable Ms Marchant to provide the Claimant with an update and a meeting was arranged for 17 March 2017.

<u>March 2017 OHA Report</u>

281. In the meantime, Sue Caswell also wrote to the Claimant confirming that she was arranging a referral to Occupational Health in order to understand the up to date medical position, future prognosis, any support or assistance that could be provided and the prospects of a return to work. The Claimant replied confirming her willingness to attend Occupational Health but also confirmed that she had provided Roger Hoggins with a '*fulsome refusal of all of his proposals*' [805 and 814].

282. The Claimant attended an appointment with Occupational Health on 27 March 2017 and a report was provided on the same date by Dr Crosbie [836-838] ("March 2017 OHA

Report"). The Report confirmed that the Claimant as presenting with anxiety and depressive symptoms with stress related issues which related to work related events.

283. The March 2017 OHA Report concluded that the Claimant was unfit for work in any capacity until further clinical improvement and that there were work related matters that would need to be mutually addressed to facilitate a return to work. The Claimant was considered fit to attend meetings to discuss work related matters and a mutual resolution would facilitate a return to work.

284. On 8 March 2017, the Claimant submitted a further FIT note for a further 3 months (Anxiety with depression) [841].

Internal Investigation

285. Over the course of March 2017, Claire Marchant, Chief Officer for Social and Health Services at the Respondent commissioned an internal investigation into the Kerbcraft Scheme following the publication of the WAO Report, and confirmed the same to the Claimant [842-843]. The internal report was completed by May 2017 [853-860]. The Claimant was not interviewed as part of that investigation as a result of her sick absence. The investigation focussed on

a. A review of the circumstances leading to the reinstatment of Kerbcraft in September 2015 prior to Chief Officer approval for its reinstatement in October 2015; and
b. A review of how information considered by WAO to be 'misleading' was shared with WAO

286. In respect of both elements the internal investigation found no evidence that any officer deliberately sought to mislead WAO. Its conclusions highlighted a number of factors including the culture of the department and that the work in Operations was very different from other parts of the Council that routinely dealt with safeguarding matters – the staff were 'mainly engineers' and the emphasis of their work 'may have led to a difference in understanding an understanding about the importance of safeguarding'. The investigation found that no officers deliberately sought to mislead the WAO. The report indicated the following:

> **'The Council clearly does need to satisfy Itself** that **Kerbcraft Is safe for children. The lack of adequate recording was of justifiable concern; however there were other factors that need to be considered In assessing the safety of the scheme. These are:**
>
> > **6.1 – Whilst the recording of safeguarding checks was chaotic. the scheme staff believed that they had carried out the required checks**

when recruiting volunteers but could not evidence this.

6.2 – When the scheme was prematurely started in *2* schools It was done so only with Kerbcraft paid staff without volunteers.

6.3 – The scheme has been running since 2002 with only one recorded incident that concerned the health of a volunteer.

6.4 – Volunteers are mainly parents of the school's children.

6.5 – Volunteers only ever work under the supervision of the paid Kerbcraft staff. although they may be out of the sight of the paid staff In carrying out their duties.

6.6 – All volunteers are approved by the head teacher of the school where they will be working.

287. Over May and June 2017, following dialogue with WAO, the Respondent also put in place a full independent investigation into the Kerbcraft Scheme and appointed Paul Beynon to undertake the role of investigator.

Meeting with Tracey Harry – 20 June 2017

288. On 8 May 2017 the Claimant attended her GP (Dr Simkins) [1839] and was issued with a further FIT note for 3 months [841].

289. On 9 June 2017 Dr Crosbie, the Occupational Health Adviser, having received a written report from the Claimant's GP, wrote to Sue Caswell confirming that his recommendations from 27 March 2017 remain unchanged [896]. Whilst the letter from Dr Crosbie was received and in the Respondent's knowledge, there is no indication that the Claimant's GP's report of 15 May 2016 [867] had been received by anyone other than the Respondent's Occupational Health Adviser .

290. On 11 May 2017, Sue Caswell wrote to the Claimant [866] asking her to attend a meeting on 24 May 2017, to be conducted by Tracey Harry, Head of People Services and Information Governance, to discuss:

a. her sickness absence,
b. the content of Dr Crosbie's March 2017 OHA Report, and
c. 'work related issues preventing [her] return to work.

291. That meeting did not take place as the Claimant at that point in time had no union representation and asked for the meeting be postponed until she could obtain support.

292. The meeting was as a result reconvened to 20 June 2017 [895]. The Respondent also agreed that the Claimant could be accompanied by her husband and proposed that the meeting was recorded as the Claimant had previously requested accurate minutes of meetings.

Tracey Harry letter of 3 July 2017

293. Following the meeting, by way of letter dated 3 July 2017 [957-959], Tracey Harry wrote to the Claimant, confirming discussions and summarising key issues as she understood them. The letter is lengthy and needs to be reproduced to do it justice. The Tribunal incorporates it contents by way of reference. It sets out in some detail the discussions and that the Claimant's concerns regarding Roger Hoggins involvement and management of her grievance. At the meeting, the Claimant was also informed that the Respondent was proposing moving Kerbcraft to Children and Young People Directorate. The Claimant confirmed that she thought this appropriate.

294. The letter concluded with a summary by way of 12 discrete points of what was understood the Claimant sought, for her to return to work as follows:

a. Restoration of her complete role without detriment
b. Reinstatement of her job title
c. To return to a comfortable environment
d. Knowing where her role fitted within the authority
e. An apology for the way the meeting on 29 July 2015 was handled
f. Transfer of Line management for her post from Operations to another Directorate i.e. Children and Young People
g. Her grievance to be re-investigated by an external investigator
h. To return not in a demoted role but 'as was'
i. Assurances that the necessary changes to the scheme would be made i.e. relevant accountabilities, checks and assurances were in place
j. The current Kerbcraft team, Co-Ordinator and two assistants be dismissed and replaced with a new team the Claimant could trust
k. Vindication that what she did was right
l. She did not want a settlement but that her priority was to return to work

295. The Claimant responded to that letter on 5 July 2017 with clarification on some of the 12 pre-conditions [960-962]. In the letter and on cross examination the Claimant accepted that the 12 points accurately reflected her concerns.

296. Again, the Tribunal incorporates its contents by reference, but in particular the Claimant stated that she:

a. *'sought a fresh investigation into my Grievance to extend to a thorough investigation of the detriment I have suffered as a whistleblower'*.
b. that a new team was appropriate

297. Tracey Harry responded and informed the Claimant that the Respondent had commissioned an external audit into the findings, made and contained in WAO Report and that she was a key witness that would need to be interviewed.

298. The Claimant's response was also shared by Tracey Harry with Sue Caswell. Sue Caswell commented and raised concern that she would expect to see the Claimant's references to slander and libel and slander to be evidenced and stated her belief that some officers may have a claim against her in relation to some of the things that she had been saying about them [968].

Letter from Tracey Harry of 21 July 2017

299. On 14 July 2017, the Claimant was informed that she was due to exhaust her entitlement to statutory sick pay. The Claimant objected and complained that this action was exacerbating her detriment. She stated that she was ready to return to work and that the only matter preventing the return were the detriments that she considered she had suffered as a result of her whistleblowing [972].

300. A response was sent on 21 July 2017 [974]. At that point it appeared to Tracey Harry, that a starting point to try to facilitate a return to work for the Claimant, was for her grievance to be addressed by someone external and suggested widening the scope of Paul Beynon's investigation into Kerbcraft to investigate and report on the Claimant's grievance that had been submitted in September 2015. Tracey Harry also decided that whilst the Claimant had also indicated that other steps would need to be put in place in order for he Claimant to return, that would be premature and proposed that they meet up again once the external grievance report was available and when they had the change to consider its findings .

301. The Claimant was told that:

a. her entitlement to sick pay would end at the beginning of August and at which point she would reduce to half pay for 6 months; but that
b. the Respondent would increase the Claimant's half pay sick entitlement to full pay for two months – August and September 2017, to allow for the external investigation and discussion to finalise the Claimant's return to work.

302. It was clearly stated that if the Claimant were still signed off for work at the end of September, her salary would reduce to half pay for the maximum of the remaining 4 months' half pay entitlement.

303. The Claimant responded on 28 July 2018 rejecting the notion that she had been offered the opportunity of an independent investigation [986] and indicated that she wished the independent investigation to encompass matters arising since her September 2015 grievance. She concluded the letter by reference to the fact that she could not return and matters, such as reinstatement and adjustments to facilitate her return to her role, were not possible until her grievance and all relevant evidence was investigated. She expressed concerns that Paul Beynon would be able to complete the investigation within the suggested timeframe taking into account the information and the length of time that it taken the WAO to investigate, but she did not object.

304. Paul Beynon contacted the Claimant in late July and arranged to meet her as part of his investigation into the Kerbcraft scheme and into the Claimant's grievance.

305. In anticipation, the Claimant prepared a statement, a chronology and compiled supporting documents. The Claimant's chronology was some 24 pages long and the supporting documents, referred to by the Claimant as a 'Reference Document', which included numerous extracts from work emails and correspondence, was some 152 pages long [992-1171].

306. On 10 August 2017, the Claimant provided a FIT note (Anxiety with depression) for 6 months i.e. to 9 February 2018 [1179].

Advert for Road Safety and Kerbcraft Officer

307. On 21 August 2017, the Claimant contacted Tracey Harry regarding what she considered was an advert for her job, telling her that she was being contacted by third parties asking if she had been sacked. The Claimant was upset and complained that she should have been informed [1233]. An advert had in fact been issued the previous month, on 21 July 2017, for the role of Road Safety and Kerbcraft Officer (Traffic and Road Safety) on a temporary basis and to cover the Claimant's long term sickness [1201-1208].

308. Paul Beynon's investigation continued throughout August and September 2018 and during his investigations the Claimant had informed him that whilst she had been off work, her role had been given to a less qualified officer and that she could not apply for the role as it had been ringfenced to another officer at risk of redundancy. He queried with Roger Hoggins if that was the case and if so was this a temporary arrangement to cover for the Claimant's benefit [1256]. Roger Hoggins responded that, with the exception of Kerbcraft, her role had not been undertaken at all in her absence but in the last month a temporary Road Safety Officer had been appointed.

309. Tracey Harry wrote in response to both the Claimant's emails of 28 July 2017 and 21 August 2017 [1236]. She repeated that the Respondent was keen to facilitate a return to

work and that reminded the Claimant that it was agreed that an external investigation to include her grievance was the first stage of a return to work process and that Paul Beynon will address the further concerns that the Claimant had raised. She confirmed again that the Claimant had not been dismissed.

310. This was further discussed at a welfare meeting on 11 September 2018 and the Claimant was informed that the advert was for a temporary replacement cover for her long term sickness absence (and confirmed by way of email of 12 October [1300]).

Meeting on 16 October 2017

311. On 1 October 2018, the Claimant's pay reduced to half pay and a further welfare meeting was arranged for 16 October 2016. The Claimant was asked if she would be able to attend [1295].

312. As no response was received, a follow up email was sent on 9 October 2018, and the Claimant was reminded that her pay had been reduced from 1 October 2018 [1296-1297]. The Claimant responded indicating that she was taking advice from her solicitor before responding or arrangements.

313. At 8:22am on 16 October 2016, prior to the time arranged for the meeting, Slater Legal, solicitors engaged by the Claimant wrote to Tracey Harry confirming that they had been instructed [1301-1303].

314. They referenced the Claimant having been 'suspended' since 29 July 2019 and that the Claimant's Fit note of 10 August 2016 for 6 months had been triggered by the news that she was going onto half pay. They stated that despite that FIT note, the Claimant was now fit for work and the only reason for her continued absence was the Respondent's delay in implementing adjustments and the other pre-conditions for her return to work. They asked for the Respondent to reinstate full pay with immediate effect and failure to do so would amount to a 'detriment' on the grounds that she made the protected disclosure on 22 May 2017.

315. The Claimant attended the meeting later that day and was accompanied by her husband.

316. Tracey Harry's letter sent a few days later on 20 October 2017 [1211], set out the matters discussed which included that the Respondent were not prepared to extend sick pay and that the appointment of the temporary Road Safety Officer had no bearing on the Claimant's return to work.

Second Grievance – 27 October 2017

317. On 27 October 2017, the Claimant submitted a second Subject Access Request [1329] and a further grievance raising additional concerns [1334] ("Second Grievance"), sent to Paul Davies, Chief Officer for Resources. In turn, he forwarded it to Tracey Harry within a few days asking her to determine who she would pass the grievance onto to progress the investigation and asked her to keep him informed of progress.

318. This Second Grievance was again detailed and raised a number of issues, some dating back to May 2015 (at paragraph 3). The Claimant also complained that the Respondent had made false reports to the WAO that had been damaging to her reputation as WAO had been informed that the Claimant had never made a disclosure and that Roger Hoggins had not communicated her concerns to third parties. She also complained about HR and specifically Tracey Harry [@1335 (para 9) and 1337 (para 18)].

319. The Second Grievance was passed by Tracey Harry to Paul Beynon and it was agreed that he would investigate both her original grievance and this second grievance [1343]. He met her on 17 November 2017.

320. On 1 November 2017, solicitors for the Respondent, responded to the Claimant's solicitor's letter sent on 16 October 2017 [1338-134] asking for further information regarding the disclosure referred to and responding to the complaints that had been raised by Slate Legal that the Claimant had been subjected to detriments in relation to her pay. In particular, they responded to the claim that the Claimant was now fit for work notwithstanding the FIT note from her GP signing her off and asked for an updated FIT note confirming that she was fit for work. They stated the following:

> *'We do not accept, at present, that your client was disabled within the meaning of the Equality Act 2010 since August 2016. We would need to see medical evidence on which your client intends to rely together with a statement from her of the effects on her normal day to day activities in order to consider further whether your client was disabled and if so at what times. As your client has now declared herself fit for work it is not clear whether any disability continues'.*

321. They also dealt with the 12 pre-conditions that were needed for the Claimant to return and suggested that the Claimant meet with Tracey Harry to finalise return to work arrangements.

322. On 17 November 2017, the Claimant attended a further meeting with Paul Beynon under Stage 2 of the Respondent's Grievance Policy and reference was made to a new Grievance policy that had been introduced.

323. On 25 November 2017, Paul Beynon completed and issued his report into the Kerbcraft Scheme [1372 – 1403]. The Terms of Reference for the investigation was attached as an Appendix [1404]. The Kerbcraft Report did not deal with the First

Grievance submitted by the Claimant in September 2015. This was dealt with by way of separate report covering both the September 2015 First Grievance and October 2017 Second Grievance.

324. On 6 December 2017, Slate Legal responded to the Respondent's letter of 17 November 2017, complaining that the Claimant was not aware of a new grievance procedure, objected to the Paul Beynon investigating the Claimant's grievances under that new policy and that the failure to communicate the new grievance policy to be a further failure to make a reasonable adjustment [1411]. The letter set out their client's position on the protected disclosure and detriments she asserted she had suffered and attached a 50-page document entitled 'Chronology of Whistleblowing'.

325. On 8 December 2017, the Claimant wrote to Tracey Harry confirming that she considered that it would be helpful to await a substantive response to her solicitor's letter of 6 December 2017 before arranging any further meetings.

326. On 21 December 2017, the Respondent's solicitors responded confirming that the investigation was being conducted under the old grievance procedure and dealt with other matters arising in the correspondence [1478].

327. On 11 January 2018, Tracey Harry contacted the Claimant and asked the Claimant to attend a meeting on 16 January 2018. The letter did not request confirmation of attendance. Rather, it told the Claimant to attend to discuss her 'ongoing welfare and fitness to return to the workplace' [1481]. The Claimant did not attend and did not respond to that letter.

328. As a result, a further letter was sent on 19 January 2018 [1482]. In that letter the Claimant was told that with effect from 9 February 2018 she would be on no pay. She was asked to attend a meeting on 6 February 2018 and was advised that she had the right to be accompanied. She was informed that the Respondent was keen to progress the grievance and that she understood that Paul Beynon had tried to contact the Claimant on 3 and 10 January to gather information from her. The Claimant was asked to contact him.

329. The Claimant responded later that day confirming that she had to consider a large volume of material (having received a response to her SAR in late December) but that '*having conferred with my solicitor, I am in a position to meet with you to discuss my salary adjustments and necessary adjustments to facilitate my reinstatement to my job and title, as was, without detriment'*. She confirmed that she was available the following week.

Third Grievance – 20 January 2018

330. On 20 January 2018 the Claimant submitted a third grievance ("Third Grievance")[1486-1488] following her review of the documents provided to her by the Respondent in response to her second SAR.

331. The Third Grievance set out some chronology going back to 2015, referring to the events of 5 June 2018 and the removal of management responsibility for Kerbcraft. She spoke of the workplace as becoming 'dangerous and threatening environment' where she was being 'terrorized'. She complained of not being allowed to return to work despite being fit to do so since October 2017.

332. Over the three grievances the Claimant brought over 70 separate complaints. Whilst this was not a finding as such, this was confirmed to us by Claimant's Counsel.

333. The Third Grievance was also provided to Paul Beynon to incorporate into his investigation into the Claimant's Grievances. This in turn delayed his report.

334. On 28 January 2018, the Claimant emailed asking that all further communications be sent to her solicitor, explaining that the documentation received through the SAR was taking her some time to provide to Paul Beynon and confirming that she had been informed by her GP that if the Respondent required confirmation that she was fit for work, they could apply to him in writing and that there was no requirement for her GP to 'sign her off' [1491].

Letter of 12 February 2018

335. On 12 February 2018, Tracey Harry wrote to the Claimant [1495] setting out her chronology of the attempts she had made to meet the Claimant since the Claimant's solicitors had indicated that the Claimant was fit to return to work on 16 October 2017.

336. Her view that any delay to the Claimant's return was down to the Claimant's refusal to meet with her to discuss and agree a return to work. She referenced the Claimant's refusal to meet with her unless she was paid in full from 16 October 2017 and set out what she considered was the basis of a return to work for the Claimant. She commented that she would have preferred to have met, but proposed a return to work for the Claimant of 20 February 2018 subject to the Respondent's occupational health service receiving confirmation form the Claimant's GP that she was fit to return to the workplace.

337. She also commented on the 12 pre-conditions that the Claimant had set out in the meeting in June 2017 and the Respondent's position on those pre-conditions without the outcome of the Claimant's grievances having been obtained, it included:

a. Confirmation that the Road Safety Officer post continued to exist at her existing grade and that at present there were no proposals for any changes.
b. Confirmation of her title of Road Safety Manager.

c. Assurances that the Claimant would return to 'an appropriate and supportive working environment'.
d. Confirmation that the Respondent would ensure the Claimant's role within Respondent would be clarified on return to work and service updates provided
e. An acknowledgement that the 29 July 2015 meeting may have caused unintended anxiety to the Claimant for which the Council apologised.
f. Confirmation that the Claimant's direct line manager would be Graham Kinseller, and not Mark Davies
g. Confirmation that it had already been agreed that the Claimant's grievance was being investigated by an external investigator, Paul Beynon and that he had been waiting for further information from the Claimant to progress his report
h. That the Claimant was effectively not returning to a demoted role but to her existing role as Road Safety Manager
i. Confirmation that the Kerbcraft scheme has been reviewed and all relevant checks and assurances plus clarity of accountabilities and responsibilities were now in place.
j. Encouragement to the Claimant to raise any future concerns in accordance with the Council's whistle blowing policy.
k. Acknowledgement that the Claimant did not want a settlement but a return to work

338. With regard to the Claimant's pre-condition that the current KerbCraft team, coordinator and two assistants be dismissed and be replaced with a new team that the Claimant could trust, she confirmed that the Respondent did not consider that this was a reasonable pre-condition at that time. She stated that to take any action before the independent investigation report was completed would mean prejudging the outcome of the report. It was confirmed to the Claimant that once the report was completed, it would take any appropriate action as may be needed but that any such action would be confidential between the Respondent and the other employees and that they would ensure that the team was supported so that trust could be re-established on all sides.

339. With regard to the transfer of line-management from Operations to another directorate i.e. Children and Young Peoples, she confirmed that whilst consideration had been given, this did not happen and that line management would stay within Highways although her direct line manager would now be Graham Kinseller and not Mark Davies

340. She confirmed a meeting on 20 February 2018 between the Claimant and Graham Kinseller and Paul Keeble, and that she and Julie Anthony would also be there to provide additional welfare support for her on her first day and asked the Claimant to confirm by 18th February 2018 that she would be returning to work.

341. Tracey Harry concluded the letter by informing that Claimant that if she was not prepared to return to work on 20 February 2018, she would wish to meet the Claimant to discuss matters further and to consider whether a return to her current role within a

reasonable timescale was likely and if not to consider the options which could include returning to an alternative role within the Council or termination of her employment.

342. She confirmed the Claimant that she had the right to be accompanied at that meeting by a Trade Union representative or work colleague but that she would be willing to allow the Claimant's husband to accompany her. She warned her that if she did not attend that meeting then a decision may be made in her absence based on the information available at that time.

343. Onn 14 February 2018, the Claimant responded [1499 - 1503]:

a. raising concerns that the letter from Tracey Harry had in fact been authored by Richard Garner, trade union representative from UNISON that had been representing both the Claimant and Jayne Haycock back in 2015;
b. refusing to meet Graeme Kinseller who she considered had been given her job, and Paul Keeble, as '*out of the question'*
c. disagreeing that she had refused to meet Tracey Harry and/or that this had delayed a return; and
d. commenting on the 12 pre-conditions

344. The response challenged all but confirmation that her priority was to return. She accepted a phased return to her full role and responsibilities but also refused to meet Tracey Harry as '*out of the question'* and that a further meeting would be a further detriment. She again requested that her full salary be reinstated having been '*unlawfully suspended'*, that failure was further detriment as was some of the content of Tracey Harry's letter.

<u>Letter of 28 February 2018</u>

345. On 28 February 2018, Tracey Harry responded reassuring the Claimant that nothing confidential had been shared with Richard Garner, explaining that a standard template had been used as a basis for the letter that had originally been authored by Richard Garner in his capacity as an employee of the Respondent [1506a]. She indicated that due to the Claimant's response, she did not consider that a return to work was reasonably likely particularly as the Claimant had indicated that meeting with the people that she would be working with was out of the question. She noted that alternative employment was also rejected. She informed the Claimant that before she decided on her employment, which could include a decision to terminate, that she wished to meet. She asked the Claimant to meet her on 12 March 2018 and told her that she could be accompanied by her husband.

346. Tracey Hoggins was cross-examined on the issue of Mr Garner's involvement in the drafting of the letter. We accepted her explanation as a truthful and reasonable explanation for the 'author' of the document being shown to be Richard Garner and did not

find that he had any involvement in the content or drafting of the letter sent to the Claimant on 12 February 2018. Indeed, there was no evidence that he had any involvement in the Claimant's case or employment at this point.

347. On 4 March 2018, the Claimant again contacted ACAS and a second early conciliation period commenced.

348. The Claimant contends that she did not receive Tracey Hoggins letter of 28 February 2018 until it was received by her in the post on 8 March 2018. She said as much in her email of 13 March 2019 [1511]. It had not been copied to her solicitor and there was no email in the Bundle indicating that the Respondent had emailed a copy to the Claimant. We were asked to find, on the basis of balance of probabilities, that the Claimant had been sent a copy by way of email, and in turn would have been aware of the contents of the letter earlier, as the Respondent conducted all its correspondence with the Claimant by way of email.

349. We accepted the Claimant's evidence on this issue. The Claimant had not at any other time suggested that other correspondence had not been received, no copy of a covering email from Tracey Harry was in the Bundle, nor indeed a response to the Claimant's email of 13 March 2018 contradicting her comments that it had only been received . We accepted the Claimant's evidence on this point and found that the Claimant had notice of that letter on 8 March 2018 when she received it in the post that day.

350. The Claimant complained that she had been given less than 2 days to respond, that the meeting had been cancelled in any event, that the letter had not been sent by email and that her solicitor had not been copied in. She confirmed that she would attend the meeting which had by then been re-scheduled to 15 March 2018.

Meeting 15 March 2018

351. A meeting of 15 March 2018 was arranged and took place attended by Tracey Harry and the Claimant. No notes of that meeting have been provided but, on 20 March 2018, a few days after the meeting, the Claimant wrote to Tracey Harry confirming that she had reflected on their discussion and accepted that the dismissal of Kerbcraft coordinator and the two assistants as one of her 'necessary adjustments' was causing the Respondent some difficulty. She confirmed that she would support their redeployment as an alternative [1514].

352. She stated the following:

> '*if Paul Keeble, Mark Davies and Emma Marshall were willing to apologise to me for their part in my unjust treatment and can maintain a professional attitude on my return to the workplace, I am equally eager to act professionally'*.

353. A further occupational report was obtained on 3 April 2018 from Dr Crosbie [1516] 22 March 2018. In that report he stated the following:

> *'The lady feels that she has been keen to return to work but the unresolved work related matters are preventing that return. The lady feels that a redeployment would not be an option as she feels this would endorse the original judgements that had been made upon her in May 2015.*
>
> *Overall the lady feels that it is the work related issues and the failure to resolves these issues that are preventing a return to work and not her underlying medical condition in itself. '*

Beynon Grievance Report

354. On 20 April 2018, Paul Beynon completed and issued his second report to the Respondent into the review of the Grievance submitted by the Claimant [1519-1558] ("Beynon Grievance Report").

355. The Claimant was informed on 23 April 2018 that the report had been received by the Respondent and arranged for Mark Hand, Head of Planning to consider the report and its findings and provide the Respondent's response in line with the grievance policy [1644]. She was informed that he would be sending her a copy of the report when he sent her a meeting request [1644].

356. On 29 April 2018, the Claimant issued the First Claim in Cardiff Employment Tribunal.

357. On 26 April 2018, the Claimants' GP, Dr Simkins, responded to the Respondent's Occupational Health Physician's request for an updated medical report on the Claimant. He confirmed that he had last seen her on 12 January 2018 [1646]. He confirmed that he believed that it was possible that the Claimant could make a full recovery from her anxiety with depression caused by workplace stress.

358. On 17 May 2018, a copy of the Beynon Grievance Report was emailed to the Claimant by Mark Hand [1650] and on 24 May 2018, he met with her. In advance of that meeting, the Claimant sent to him a list of what she termed 'preliminary questions' [1660-1665].

359. The Claimant's position on the Beynon Grievance Report was, as she put it in evidence, that she 'rejected it in its entirety'[8] and on 4 June 2018, she sent to Mark Hand her detailed comments on the report explaining the reasons why she was rejecting it in its entirety. Her comments were shown as changes she had inputted into the body of the

[8] Claimant witness statement para 183

Word document and resulted in an annotated report running to some 77 pages [1667-1743]. A further meeting took place Claimant to meet with Mark Hand on 15 June 2018.

360. The Claimant's main objection to the Beynon Grievance Report were set out in the section headed 'Initial Objections' to her Annotated response [@1667-1670]. Essentially, she felt that her complaint that her September 2015 First Grievance had not been properly dealt with by Roger Hoggins, and again not been addressed on the Beynon Grievance Report. She did not accept that Paul Beynon had addressed her concerns in his Kerbcraft Report that had been submitted on 25 November 2017. He then dealt with in summary, what he considered to be the main parts of the Claimant's First Grievance

361. On 31 August 2018, Mark Hand sent to the Claimant a detailed 37-page letter dated 24 August 2018 [1752-1787]. The letter should be referred to in full and is incorporated by reference into this Judgment. In summary, Mark Hand:

a. dealt with the First Grievance and agreed with Paul Beynon that the First Grievance had taken an excessive time to respond, and apologised to the Claimant.
b. agreed with Paul Beynon that the investigation was not purposefully delayed to prevent the lodging of an employment tribunal claim[9] but found that Roger Hoggins had concentrated on seeking a solution for the Claimant's return to work to the exclusion of examining the issues raised in her grievance.
c. sought to summarise her First Grievance and dealt with each in turn, before dealing with the 24 issues that, the Claimant had raised in her Second Grievance which had been supplemented in her Third Grievance. We do not attempt to summarise those findings further.
d. accepted that welfare support for the Claimant during her absence, could and should have been better. An apology was given to the Claimant for this

362. Mark Hand found that the actions of the Claimant's line managers were inadequate and did not respond appropriately to the Claimants '*valid safeguarding and data protection concerns*' and that there was a '*lack of support and leadership to tackle dysfunctional team relationships and disputed line management'* and that this had served to undermine the Claimant's role, her ability to address the issues and her message regarding the importance of safeguarding. Page 36 of his letter set out a table indicating which of the Claimant's grievances had been upheld, particularly upheld or not upheld [1789].

363. The Claimant's main concern was that Mark Hand 'refused to look' at her September 2015 First Grievance on the grounds that Roger Hoggins and Paul Beynon had already done so.

[9] Para 2.3 and 2.3 [1756]

364. The Claimant appealed on 4 September 2018, based on her annotated comments of Paul Beynon's Grievance Report [1790a-1795].

365. On the same day, Tracey Harry emailed the Claimant referencing the fact that she had been provided with Mark Hand's decision on her grievance and asking to meet to discuss the Claimant's return to work, in particular when and what further support/adjustments could be put in place to assist her return [1795]. She reminded the Claimant that the Council had already set out its position on the 12 pre-conditions the Claimant needed to return and that the Respondent had either implemented or confirmed as reasonable 10 out of the 12 steps. She suggested meeting at 10am on 14 September at Abergavenny Town Hall. She ended the email as follows

> If a return to your road safety role is not likely within a reasonable period of time then I would normally consider whether there are any alternative roles that would be suitable for you although I appreciate that you have previously stated that you do not want to be redeployed. If a return to work is not likely and your position on redeployment has changed please let me know, and I will arrange for the current list of vacancies to be sent to you. It is also important that you are aware that if it is not likely that you are able to return to your road safety role within a reasonable timeframe, and if redeployment is not a possibility, one of the things I will need to consider as a last resort is termination of your employment.

366. Ten days later, on the day arranged for the meeting, at 8.59am on 14 September 2018, the Claimant responded, complaining that Tracey Harry had not sent a copy of her email to her solicitor and she had been unable to speak with him [1797-1798]. She complained about the delay in receiving the Beynon Grievance Report and that rather than discuss that report the Respondent had commissioned Mark hand to prepare a further report. She stated that she was '*eager and willing to return to my full role, title and responsibilities*, *as was and without prejudice*' and stated that she had '*never been unwilling to return'*.

367. Whilst she confirmed that she would meet to discuss reasonable adjustments, she set out conditions that included

a. the meeting must have a proper agenda
b. a sound recording and a copy emailed to her within three days.
c. Tracey Harry '*must be able to prove as far as possible'* what reasonable adjustments had already been made and assurance that any further or outstanding reasonable adjustments were resolved before her return to the workplace.
d. Measures to address her Stage 3 appeal and timeline be forthcoming in advance of any meeting.

368. She ended the email that '*Subject to all other reasonable adjustments being made'* she would be willing to return to work on a phased return basis over four weeks

369. On 5 October 2018, Tracey Harry sent a further letter to the Claimant in response, suggesting that they meeting, on Tuesday 16 October 2019 10am at Abergavenny Town

Hall, to discuss matters and asked her to confirm her attendance by Friday 12 October 2019 [1803]. She included an agenda of matters to discuss as follows:

1) Welfare update
2) Discussing a return to work plan (specifically going through the paragraph 32 adjustments that you have said need to be implemented in order for you to return)
3) Agree a return to work date
4) Agree the phased return.

370. At 14:05 on 12 October 2018 the Claimant emailed Tracey Harry again complaining that she had not received recordings of meetings and had no indication of reasonable adjustments that had been requested as '*reasonable and minimum requirements to enable a meaningful discussion*' [1805]. Tracey Harry responded a few hours later at 16:54 confirming the agenda that would include discussion of the reasonable adjustments that the Claimant had sought in paragraph 32 of her Employment Tribunal Claim [1808].

Meeting on 16 October 2018

371. The meeting on 16 October 2018 did not proceed as arranged. The Claimant attended Abergavenny, and signed in as did Julie Anthony. The signing in books confirm as much. Whilst Tracey Harry attended with Julie Anthony, she did not sign in. It appears that this only became evident during the course of this hearing when the signing in books for the Town hall venue at Abergavenny for that day were disclosed by the Respondent.

372. For reasons that were not clear, neither the Claimant nor Julie Anthony and Tracey Harry met that day despite all being at the Town Hall as arranged. The Claimant assumed that Tracey Harry did not attend, Tracey Harry assumed that the Claimant had not attended. Neither made any attempt to ascertain from the other why they had not shown up for the planned meeting

373. On 23 October 2018, the Claimant attended a Stage 3 Grievance meeting. She was accompanied by her husband and her appeal was chaired by Julie Boothroyd, Chief Officer for Social Care, Safeguarding and Health. Julie Anthony was also present Stage 3 Grievance with Julie Boothroyd. She followed the meeting with an email to Julie Boothroyd, again confirming that her main concern was the failure to address her First Grievance. She did not accept that the Beynon Grievance Report had dealt with her first grievance.

Stage 3 Outcome of Grievance

374. A letter confirming the outcome of her Stage 3 grievance appeal was sent to the Claimant dated 14 November 2018 [1819 – 1820].

375. The letter should be referred to in full and is incorporated by reference into this Judgment. In essence, Julie Boothroyd did not consider that the Claimant had presented any new information that had not been considered in detail in the previous grievance investigations. She considered that the parties had reached what she called an '*impasse',* and that whilst she acknowledged that the Claimant was unhappy with the conclusions drawn by Paul Beynon and Mark Hands, she was of the view that they were fairly and properly entitled to reach the conclusions that they did on the evidence presented to them. On that basis she did not uphold the appeal.

Termination of employment

376. On 16 November 2018, the Claimant was sent an email attaching a detailed letter of the same date informing her that Tracey Harry had concluded that the respondent had no alternative but to terminate her employment which would end immediately, on 16 November 2018 and that the Claimant would be paid 12 weeks' pay in lieu of notice. She was informed that she had a right of appeal against the decision [1821-1823].

377. In her letter Tracey Harry set out a chronology of her attempts to meet the Claimant to discuss a return to work and reiterated that the Respondent had agreed all but two of the conditions, that the Claimant had set as pre-conditions for her return to work, being the dismissal and / or redeployment of the Kerbcraft officers, and the movement of management responsibility for road safety to Children and Young People Directorate which the Respondent did not consider to be reasonable.

378. She confirmed that the Claimant had been absent from the workplace without a Fit note since February 2018 and had exhausted the grievance procedure. She referred to where she had tried to arrange to meet the Claimant the previous 6 weeks, on 14 September 2018 and 16 September 2018.

379. She confirmed that she believed that they had reached '*an impasse and that on balance of probabilities there is no likelihood of a return to work in the near future'*. She took the view that the claimant had not met with her to discuss issues but that the Claimant had made it clear that she had no interest in considering alternative roles. She also took the view that, the Claimant having indicated that all communication should go through her solicitors, in itself suggested that a return to work, involving day to day communications with management was not reasonably likely in the foreseeable future.

380. She confirmed that the Respondent had no alternative but to terminate the Claimant's employment on the grounds that she had not returned to work. She set out her reasons as follows

'*with the impasse reached it is not reasonably likely that you will return in a reasonable period of time and so you are not capable/and or willing to carry out your contractual duties and/or for 'some other substantial reason' in view of the impasse and breakdown of the relationship between you and the Council as your employer'*

381. On 27 November 2018, the Claimant's solicitors, Slate Legal, wrote to the Respondent setting out the Claimant's grounds of appeal against her dismissal [1824-1832] and why she contended the dismissal was unfair for each of the reasons given of conduct, capability and 'some other substantial reason'. A fourth basis of appeal was also set out that the dismissal was also discriminatory.

382. On 19 December 2018, the Claimant's appeal hearing against her dismissal took place and Frances Williams, Chief Officer Enterprise for the Respondent, heard the appeal. Whilst no notes of the appeal meeting were provided, Frances Williams' letter of 14 January 2019 [1833-1837] set out her outcome decision and the reasons for her decision.

383. She concluded that Mrs Harry had formed a reasonable view that there was no reasonable prospects of a return to work within a reasonable timeframe and that there had been an irrevocable breakdown of trust in the employee and employer relationship. She concluded that the decision by Ms Harry to terminate the Claimant's employment feel within the band of reasonable responses of a reasonable employer and the decision fell within the scope of 'some other substantial reason' of a kind justifying the dismissal of the Claimant.

384. She also concluded that she was satisfied that the fact that she had made a protected disclosure to Paul Matthews '*played no part whatsoever'* in her decision to terminate the Claimant's employment.

385. She also disagreed that there was no 'impasse' as had been contended by the Claimant and confirmed that the Claimant had been clear in the appeal meeting that the two outstanding pre-conditions for a return to work needed to happen before the Claimant could return.

386. 14 February 2019 the Claimant again contacted ACAS and the Third EC Certificate was issued [148].

387. On 15 March 2019, the Claimant issued her Second Claim referencing the Third EC Certificate.

Submissions

388. The parties were directed to provide written submissions at the completion of the oral evidence and both Counsel filed detailed the Written Submissions by electronic copy on

23 October 2020. The Tribunal will not attempt to summarise those submissions, but incorporates them by reference.

389. The Respondent's Written Submissions ran to some 241 paragraphs/32 pages and the Claimant's Written Sumissions ran to some 295 paragraphs/66 pages.

390. Oral submissions were also taken from both Counsel which focussed on the other's written submissions. In relation to a number of complaints the Respondent's Counsel submitted that the Claimant's claim now differed from her pleaded claims and invited the Tribunal to find that the original complaints (where relevant) had been withdrawn and no application to amend had been made by the Claimant. We have considered this submission not generally, but specifically in relation to each complaint where it is submitted it was relevant.

Relevant Law

391. We have provided a brief reference to the relevant legal principles that is applicable in these complaints and the references to the various relevant case authority in the written submissions are incorporated by reference also.

Protected Disclosure Claims

392. That the disclosure is a protected disclosure for the purposes of s.43B ERA 1996 is admitted.

Detriment short of dismissal - s47B ERA 1996

393. S.47B ERA 1996 provides that a worker has the right not be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

394. In cases where the 'whistleblower' is complaining that the employer has subjected him to a detriment short of dismissal, the employee has the burden of proving that the protected disclosure was a ground or reason for the detrimental treatment.

395. Section 48(2) provides that the onus is on the employer to show the ground on which any act, or failure to act, was done. If it fails to do so an adverse inference may be drawn against it.

396. In **Fecitt and ors v NHS Manchester (Public Concern at Work intervening)** *ICR 372, CA,* Elias LJ gave guidance that causation is satisfied where the protected disclosure materially (in the sense of more than trivially) influences the employer's treatment of the whistleblower.

Automatically unfair dismissal – s103A ERA 1996

397. S.103 ERA 1996 provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

398. The approach to the burden of proof in s.103A ERA 1996 cases is (**Kuzel v Roche Products Limited** [2008] IRLR 530):

a. Has the Claimant shown that there is a real issue as to whether the reason put forward by Respondent was not the true reason?
b. If so, has the Respondent proved the reason for dismissal?
c. If not, has the Respondent disproved the s.103A reason advanced by the Claimant?

399. If not, dismissal is for the s.103A reason.

400. When considering the 'reason' for the dismissal, we need to bear in mind **Royal Mail Ltd v Jhuti (2019) [2020] ICR 731** and that the 'reason' is to be considered in a broad, non-technical way in order to arrive at the 'real' reason and that the state of mind properly to be attributed to the employer may be that of someone other than the decision-maker.

Ordinary unfair dismissal – s98 ERA 1996

401. With unfair dismissal, we first have to consider the reason for the dismissal and whether it was a potentially fair reason for the dismissal.

402. In this regard, the Respondent bears the burden of proving on balance of probabilities, that the claimant was dismissed for one of the potentially fair reason set out in section 98(2) ERA 1996. The Respondent states that the Claimant was dismissed for some other substantial reason which was a potentially fair reason for dismissal and was capable of justifying the dismissal of an employee holding the position which the employee held.

403. After considering the reason for dismissal, on the presumption that we identified a potentially fair reason for dismissal, we then have to consider whether the application of that reason in the dismissal for the Claimant in the circumstances was fair and reasonable in the circumstances (including the respondent's size and administrative resources). This should be determined in accordance with equity and the substantial merits of the case and the burden of proof in this regard is neutral.

Disability

404. Equality Act 2010 defines a disabled person as a person who has a disability (s.6(2)) and s.6(1) provides that a person has a disability if he or she has a 'physical or mental impairment' which has a 'substantial and long term adverse effect on his or her ability to carry out normal day to day activities.

405. Supplementary provisions foe for determining whether a person has a disability is contained in Part 1 Sch 1 EqA 2010.

406. Furthermore, a non-exhaustive list of how the effects of an impairment might manifest themselves in relation to these capacities is contained in the Appendix to the Guidance on matters to be taken into account in determining questions relating to the definition of disability. Whilst the guidance does not impose any legal obligations in itself, tribunals must take account of it where they consider it to be relevant,

407. The burden of proof is on the claimant to show she or she satisfied this definition and the time at which to assess disability is the date of the alleged discriminatory act. This is also the material time when determining whether the impairment has a long-term effect.

Failure to make reasonable adjustments –s20 and s21 EqA 2010

408. The duty comprises three requirements and we are looking at the first requirement only which is a

> '*requirement where a provision, criterion or practice puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage'*
>
> (s20(3) EqA 2010)

409. Guidance on the approach to be taken in reasonable adjustment claims has been given by the EAT in the **Environment Agency** v **Rowan** 2008 ICR 218 which has stated that an Employment Tribunal must consider

a. the PCP applied on behalf of the employer;
b. then identity if appropriate of a non-disabled comparator; and
c. the nature and effect of the substantial disadvantage suffered by it.

410. In **HM Prison Services** v **Johnson** 2007 IRLR 951 Mr Justice Underhill stated that it was necessary for a Tribunal to identify with some particularity what 'step' it is that the employer has said to have failed to take in relation to the employee.

411. The onus is on the claimant to identify in broad terms at least the nature of the adjustment or step that would ameliorate the disadvantage. The burden then shifts to the respondent to show the disadvantage would not have been eliminated or reduced for the proposed adjustment and/or that the adjustment was not a reasonable one.

Discrimination arising from disability – s15 EqA 2010

412. Discrimination arising from disability is defined in s15 EA 2010:

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

413. (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

414. Section 15(2) applies only if the employer did not know (and could not reasonably have been expected to know) about the disability itself.

Victimisation – s27 EqA 2010

415. Under s27(1) EA 2010, victimisation occurs when a person (A) subjects another person (B) to a detriment because B has done a protected act, or because A believes B had done (or may do) a protected act.

416. Bringing proceedings which include a claim under the EqA 2010 is a 'protected act'.

Time

417. Section 48(3)(a) ERA 1996 sets the time limit for bringing any detriment complaint in contravention of s.47B ERA 1996 and provides that an employment tribunal shall not consider a complaint unless it is presented before the end of three months beginning with the act or failure to act to which the complaint relates or, where that act or failure to act is part of a series of similar acts or failures, the last of them.

418. Section 48(3)(b) ERA 1996 extends time if the complaint is brought within such further period as the tribunal considers reasonable in a case where it is essentially satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months

419. Section 123 EqA 2010 sets the time limit for bringing any complaint in contravention of Part 5 of the EqA 2010 and provides that proceedings may not be brought after the end of

a. The period of three months starting with the date of the act to which the complaint relates, or
b. Such other period as the employment tribunal thinks just and equitable.

420. For the purposes of s.123 EqA 2010, conduct extending over a period is to be treated as done at the end of the period and a failure to do something is to be treated as occurring when the person in question decided on it (s.123 EqA 2010).

421. Further s.124(4) EqA 2010 provides that in the absence of evidence to the contrary, a person is to be taken to decide on failure to do something:

a. When a person does an act inconsistent with doing it, or
b. If a person does no inconsistent act, on the expiry of the period in which a person might reasonably have been expected to do it.

422. Unlawful deductions claims must be brought with the time limits set out in s.23(2) and s.23(3) ERA 1996 which provide that (subject to s.23(4) ERA 1996) an Employment Tribunal shall not consider a complaint under section 23 ERA 1996 unless it is presented within three months beginning with the date of payment of the wages from which the deduction was made and where the complaint is in respect of a series of deductions , the last deduction.

423. Time may be extended where the Employment Tribunal is satisfied that it was not reasonably practicable for a complaint under s.23 ERA 1996 to be presented before the end of the relevant period of three months if it is presented within such further period as the tribunal considers reasonable.

424. There is a further limitation within s.23(4) ERA 1996 which provides that the Tribunal is not to consider so much of a complaint as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint. ending with the date of presentation of the complaint.

Conclusions

425. These claims originated in a series of a events dating back to the spring of 2015, and we accept that the acts that were undertaken in the summer of that year and the series of events that followed have shaped the Claimant's life since.

426. Counsel for the Respondent has submitted that it is a 'tragedy' that this has ended in the Employment Tribunal. We agree and sympathise with this Claimant who, after working in road safety for over twenty years, found herself in a position whereby she was summarily dismissed by email.

427. How this came to be however, needed us to carefully analyse the steps that had been taken, not just by the Respondent, but also the Claimant, before the decision to terminate arose, particularly because at first sight it appeared counter-intuitive that the people that were possibly responsible for the failings in the Kerbcraft scheme should remain undertaking their duties and have continued responsibility for both managing and operating the scheme, yet the individual, who had drawn attention to the failings in the scheme, should not.

428. A significant act for many of the specific complaints was the act of Paul Keeble, communicated to the Claimant on 29 July 2015, in removing the line-management of Kerbcraft staff from the Claimant. To an extent, we concluded that this act shaped many of the remaining claims brought before this Tribunal and we committed a considerable amount of time during our deliberations to the events in the period in the run up to that meeting.

429. We were satisfied, and as we made clear in our findings of fact, we found that Paul Keeble, Mark Davies and/or Emma Marshall did not know of the Claimant's disclosure to the Chief Executive until that meeting on 29 July 2015. We did not consider that the disclosure to the Chief Executive was operating in their minds prior to or at that meeting. It did not have any influence over Paul Keeble's decision-making that day.

430. Those findings were made after we had looked at the acts and omissions on an individual basis and reviewing them as a whole, on a collective basis, Those findings were reached after assessing whether we could and should draw inferences from some of the actions and behaviours of the lead players in this case, that had been evidenced through the oral testimony and contemporaneous documentation (much of which was in the form of lengthy and detailed email exchanges,) that was before us.

431. We were also conscious that despite our finding, that there was the possibility that Paul Keeble *may* have been aware of the disclosure prior to 29 July 2015. As an addition to our primary conclusions on each detriment in which that finding impacted, we have also addressed the treatment alleged and our conclusion on whether the Respondent has explained the treatment in any event.

432. We approached these complaints by initially reviewing the detriments that the Claimant asserted she had been subjected to, before moving onto the dismissal and the reason or principal reason for dismissal. We concluded our deliberations by then turning to the issue of the Claimant's disability and her discrimination claims and finally the unlawful deduction from wages claims.

Detriments – s.47B ERA 1996

433. Twenty four detriments claims were brought in the First Claim, nine detriments having been withdrawn from the original thirty three detriment claims pleaded, during this hearing, commencing in time from July 2015 and spanned through to October 2017.

434. A further six detriments were claimed in the Second Claim, five detriment claims having been withdrawn during this hearing, spanning from October 2017 to dismissal in November 2018.

435. We approached these claims by considering whether a reasonable worker would have or might have taken the view that the treatment accorded to them had in all the circumstances been to their detriment, and having in mind that the protected act must have materially influenced or been more than trivial influence in the Respondent's treatment of the Claimant.

First Claim Detriments

20.1 - the Claimant's professional reputation and personal integrity have been irreversibly damaged through the false representations made by others and the production of false documents and statements to endorse these actions. The damage to the Claimant's professional reputation lies in the fact that in the light of the national (ITV and BBC) and local (Monmouth Beacon and Chepstow Beacon) reporting of the failure of the scheme, she was the only person removed from the scheme and remains absent for this reason

436. This complaint has been the subject of much discussion during this hearing as a result of the lengthy narrative form that the Further and Better Particulars took. This has been referred to earlier in this Judgment.

437. The Respondent raised concerns about the way in which the detriment claim was presented and, when considering this detriment complaint, the Tribunal considered whether each allegation relied on was further particularisation of the '*false representations'* alleged, the Respondent's position being that it conceded that only two were capable of particularising paragraph 20.1.

438. We determined that if any of the seven remaining specific allegations were not capable of particularising paragraph 20.1, then they would effectively amount to a new complaint that was not before us and, as no application to amend had been made by or on behalf of the Claimant, would not be a complaint or an issue for us to consider or determine.

439. The Claimant's complaint is essentially not that the was 'suspended' in the that sense that she was removed entirely from the workplace but that she had been removed as line manager of the Kerbcraft scheme. She asserts that this decision was supported at the time and subsequently, by false representations about her aimed at discrediting her and/or the safeguarding concerns that she had raised. She claims that the effect of those false representations, which were aimed at supporting the decision to remove her from her role, was to unfairly tarnish her reputation and integrity.

440. We concluded that false representations were capable of amounting to a detriment to the Claimant in terms of the statements having the effect of damaging or impugning their personal integrity and were capable of endorsing actions that had been taken i.e. removal of Kerbcraft. Whilst we concluded that this could have led to the Claimant to feel that there had been damage to the Claimant's reputation internally within the Respondent, and could lead the Claimant to feel that her personal integrity had been damaged, and was capable of amounting to a detriment to her, we had no evidence before us to demonstrate that her reputation, by reason of the media communication or otherwise, had in fact been damaged as pleaded or 'tarnished'. We concluded that particular damage to reputation was not a detriment that the Claimant had been subjected to by the Respondents.

441. We were satisfied that each allegation amounted to further particularisation of the pleaded case that a statement had been that was capable of having the effect of damaging the Claimant's personal integrity and that the seven allegations relied on were not amendments to the claim as pleaded.

442. With regard to the claim that the representations were 'false', we interpreted this in the sense that they were untrue or deliberately untrue.

443. The first allegation was, that by way of email of 31 July 2015 [543], Paul Keeble falsely claimed that the Claimant was not performing adequately in her role as line manager of Kerbcraft. The argument was that the performance concerns advanced by Paul Keeble to justify removal of the Claimant's line management were unsubstantiated. We did not conclude this for the following reasons:

    a. We did not conclude that these were 'false' statements as such and that the Respondent had justified why the Claimant had been removed from Kerbcraft line management responsibilities in any event.

b. With specific reference to the matters referred to by the Claimant's Counsel in his Written Submissions, we concluded the following.

c. Paul Keeble's position from as early as 31 July 2015 was that he had drafted a spreadsheet document that led to the Claimant creating the 'Kerbcraft at a Glance' spreadsheet. We do not make any express findings on whether Paul Keeble did or did not draft a document that led to the 'Kerbcraft at a Glance' spreadsheet. Despite it becoming a significant issue, both in the Beynon investigation and in these claims, we concluded that whilst the Claimant immediately challenged that position in her response to his email, we concluded that it was highly unlikely that at that point in time, anyone could or would have considered the significance of what is in essence a rudimentary table. In any event, we concluded that Paul Keeble made a passing reference to the spreadsheet only as an example of the support he felt he had provided to her and not justification for the removal of the duty.

d. The fact that the Claimant had provided weekly updates on completion of that spreadsheet did not appear to us a relevant consideration, nor was the fact that there was no complaint about the lack of clear instruction about how to complete the spreadsheets. As indicated, it was our conclusion that the spreadsheets were basic and rudimentary which would not require instruction.

e. We concluded that the Claimant's managers came to a reasonable conclusion that the Claimant had not developed the process that Roger Hoggins had prepared for her, that the development of this was very much a role that Roger Hoggins and Paul Keeble expected her to undertake.

f. Whilst the Claimant may not have agreed with his statements, and may very well have taken the view that the statements were 'false', the comments made by Paul Keeble, were therefore not 'false' or could not reasonably considered to be false in the context of his concerns.

g. Our conclusions were that Paul Keeble had justified his decision to remove the duty of line management from the Claimant. We were satisfied that this was not because of her protected disclosure but due to concerns regarding the Claimant's ability to address the concerns she had raised and her line management ability to resolve those concerns, caused largely as a result of the breakdown in the working relationship between the Claimant and the Kerbcraft Team (see paragraph 180).

h. Even though this email was sent two days after Paul Keeble was aware of the protected disclosure, it was sent to justify his decision that had been made before that knowledge and could not be said to be because of the protected disclosure.

444. The second allegation was that on 24 November 2015 Paul Keeble had commented to Roger Hoggins in an email [543] that the Claimant demonstrated a *'lack of people skills'* in her role as Kerbcraft Manager.

    a. Again we did not conclude that this was a false statement as such. Rather we concluded that this was a statement of belief that Paul Keeble had held when removing the line management duty from the Claimant and that belief had been demonstrated to us as one that had been reasonably held by him at that time;

    b. We accepted his evidence, given on cross-examination, that the terminology was possibly not the right terminology and that he meant it in the context of 'how to get the best out people' and that he did consider that the Claimant lacked that skill in dealing with the team.

    c. We did not infer that Paul Keeble was in some way seeking to justify his decision to remove the duty from the Claimant by making a false statement, and we did not conclude that this statement was made because of the protected disclosure in any event for reasons already provided.

    d. Again, even though this email was sent some time after Paul Keeble was aware of the disclosure, it was sent to justify a decision made before knowledge of the disclosure and we did not consider that it could be said that the treatment was because of the protected disclosure.

445. The third allegation is that on 13 July 2017 by way of email [968] Sue Caswell falsely claimed that the Claimant might have slandered colleagues.

    a. We did not conclude that this was a false statement, but a statement of opinion of an individual.

    b. However we were satisfied that the documentary evidence presented to us demonstrated that the statement was made in response to the Claimant's references to libel and slander and not because the Claimant had made the protected disclosure.

446. The fourth allegation was that on 3 November 2016, Sue Caswell had falsely claimed that the Claimant had submitted a grievance against Jayne Haycock.

    a. It is accepted by the Respondent that Sue Caswell did say something of this kind and was 'false'. We interpreted that concession as being that the statement was wrong and not true. We had no suggestion that this was 'false', in the sense of being deliberately wrong, and it remained unclear as to who it was directed at in any event. It appears to have been communicated to the Claimant.

b. We did not consider that this was a detriment to the Claimant or could reasonably be considered to be a detriment. There is no evidence that it impacted on others or any decision-making in managing the Claimant.

447. The fifth allegation was that on 26 May 2016 Roger Hoggins falsely claimed [688] that the Claimant had advised him that she had not reported her concerns to any third party.

a. Whilst we did find that Roger Hoggins had given wrong information to the WAO initially, and had informed them that the Claimant had told him that she had '*explicitly stated that she has not been in touch with any 3rd party organisations about her allegations'*, we accepted the explanation provided by Roger Hoggins for this statement and found that it was a genuine mistake on his part caused by conflicting statements from the Claimant over a period of months (see paragraph 240 of the written reasons set out in this Judgment).

b. Whilst we conclude that this was an incorrect statement, we did not conclude that it was a false statement in the sense of being deliberate untruth.

c. We were satisfied with the explanation of the treatment from the Respondent in any event and made the further conclusions that this was not because of the protected disclosure.

448. The sixth allegation was that Roger Hoggins falsely claimed that he had investigated the Claimant's grievance [Further and Better Particulars [93].

a. This allegation was confused. A reference had been given by the Claimant's Counsel in his Interim Submissions to page [93] of the Bundle, that was a reference to the Further and Better Particulars, that in turn referred to an email of 5 May 2016, in which Roger Hoggins stated internally '*I have investigated her allegations in line with the grievance procedure so that the complaints were not ignored'.* However the final Written Submissions referred to the letter from Roger Hoggins to the Claimant of 28 July 2016, that had been drafted by the Respondent's solicitor. This is not what had been referred to in the Further Particulars [93].

b. We concluded that the complaint was set out in the Further and Better Particulars and related to the statement in the email of 5 May 2016 and that the statement was not a 'false' statement. We concluded that Roger Hoggins had genuinely believed that he had investigated the Claimant's grievance and has such this was not a false representation. Whilst the Claimant did not accept that the concerns had been investigated, or not investigated to the extent that she was satisfied, this was not a 'false' representation as such.

c. We did not infer from the criticisms that could be made of the grievance investigation, that the reason for such a representation was on the grounds that the Claimant had made a protected disclosure to the Chief Executive.

449. The seventh allegation was that on 26 August 2016 Roger Hoggins had stated that the Claimant was *'possibly jealous of the relationship between Mark Davies and Jayne Haycock'* (Further and Better Particulars [95] and 728]).

a. We found that Paul Keeble did consider that there were difficulties in the Claimant's management of Jayne Haycock and that Roger Hoggins had raised an issue regarding the relationship between the two at the meeting on 26 August 2016 with the Claimant.

b. We accepted the Respondent's submission on this point, that the Claimant's recall of this appeared to be less accurate and more intense over time and also found that that it was far from clear to us, that back in August 2016 that the Claimant was actually certain of the comment or inference at the time (see paragraph 248 and 249).

c. We therefore concluded that whilst a comment had been made by Roger Hoggins regarding the Claimant's perceived attitude to the relationship between the Claimant and Mark Haycock, we did not draw an adverse inference or conclude that this was because of the disclosure but was a repeat of the underlying concern regarding the management of Jayne Haycock and her willingness to be managed by the Claimant.

450. We were satisfied with the explanation for the treatment of the Claimant in respect of each on an individual basis and taken as a whole and concluded that this complaint was not well founded and was dismissed.

20.2 - When the Claimant attempted to halt the Kerbcraft scheme on 28 May 2015, she was falsely informed by her line managers that child safeguarding information was in place and had been seen by them. The WAO have since confirmed that this information was never in place. When a serious incident occurred, the scheme was halted. However, a document produced by the Respondent when the WAC were investigating this matter, excluded this information. As a result the WAC were misled and they, together with colleagues and staff, were led to believe the Claimant had made a false allegation.

451. Taking into account the timing of the act complained of, we concluded that any information given to the Claimant, at the time that she took action to halt Kerbcraft on 28

May 2015, was not, and could not, have been because the Claimant had made a disclosure to the Chief Executive as at that date, Paul Keeble was not aware of the disclosure.

452. In any event, the Claimant relies on the email Paul Keeble sent to her on 1 June 2015, in which he stated that he had spoken with Mark Davies who had told him that the documents had been completed and that it was just an issue of making them available.

453. When considering this allegation, we first concentrated on the specific allegation that the line managers 'falsely' informed her that safeguarding was in place and had been seen by them. In that regard, we considered that the allegation was that Paul Keeble and/or Mark Davies had fabricated information or were dishonest or untruthful in some way; that they had lied to the Claimant and had been deliberately deceptive.

454. We reviewed the email of 1 June 2015 sent from the Claimant and, taking into account our findings that Mark Davies and likely Paul Keeble had, by the end of May seen *some* documentation in Jayne Haycock's possession relating to safeguarding information of volunteers, that such a statement was not false information but that:

a. it was more likely than not that such documentation related to core volunteers only;
b. it could not be said that Paul Keeble had provided any false dishonest or untruthful information in that email.

455. We concluded that both Paul Keeble and Mark Davies were by and large ignorant of the importance and significance of the requirement of safeguarding, as had been identified in the internal investigation commissioned by Cath Sheen and that this had played a significant part in the lack of appropriate management of the concerns raised to them by the Claimant, and in what they believed was available by way of documentation.

456. Whilst any failure regarding safeguarding is not something that can or should ever be condoned or considered acceptable, and is particularly surprising in the context of a local authority setting, that failure had been highlighted by the WAO and was the reason for the treatment and not because the Claimant had made a protected disclosure.

457. The complaint is not well founded and does not succeed.

20. 3 - the Respondent breached the Claimant's confidentiality by disclosing her identity to those involved in her protected disclosures immediately after having made such protected disclosures – the WAO having confirmed that it did not reveal the Claimant's identity.

458. This claim related not to disclosures made in 2016 during the WAO investigation, but those immediately after 23 May 2015. This was evident from the Claimant's Written Submissions.

459. The Claimant could not particularise who shared that information, when and by whom. The Claimant's Counsel submitted that the Claimant's concern was that Kerbcraft officers, especially Paul Keeble, Mark Davies, Jayne Haycock and Roger Hoggins, would have been told about the fact of the protected disclosure to the Chief Executive some time shortly after 23 May 2015.

460. The Claimant does not rely on the disclosure of the document by the Chief Executive to Heath Heaney or Jane Rodgers as amounting to a detriment as she considers such disclosure was appropriate.

461. We did not conclude that there had been a breach of confidentiality to those named above.

462. We had found that the Chief Executive had not informed anyone of the Claimant's email to him of 23 May 2015 to anyone other than Heather Heaney and Jayne Rogers, a communication that was not being relied upon.

463. We therefore concluded that the Claimant had not been subjected to a detriment by the employer as alleged and this claim did not succeed.

20.4 the Respondent failed to abide by its own whistleblowing policy in response to the Claimant's protected disclosures;

464. It has been conceded by the Respondent that it failed to recognise the Claimant as a whistleblower and that it did not apply its own whistleblowing policy.

465. We are invited by the Claimant to find that a failure to apply a policy is capable of amounting to a detriment. It is contended however by the Respondent that this did not result in any detriment to the Claimant as a matter of fact.

466. We accepted that that such a failure was capable of amounting to a detriment and that the Respondent had not applied the terms of its Whistleblowing Policy.

467. We did also conclude however that the Respondent did not recognise the Claimant as a whistleblower, and it was this this had led to the Respondent's failure. That the Chief Executive and others did not recognise the Claimant's email of 23 May 2015 as a potential protected disclosure, at first blush, appeared to be not credible: the Respondent is a large public sector local authority with a written Whistleblowing policy giving rise to an

expectation that this would be an issue that they would be cognisant of as individuals and as an organisation and used to managing. It was perplexing as a result, that the possibility of the matters raised by the Claimant being a protected disclosure, appears to have not crossed the minds of either the Chief Executive, or those responsible for human resources or safeguarding with the organisation, particularly when the Chief Executive recognised the concerns as ones of safeguarding.

468. Whilst it is not necessary for the Claimant to expressly state that she is making a protected disclosure, we noted that there was no reference to the possibility of this being a protected disclosure in the internal communications of the Respondent, in particular the email exchanges between the Chief Executive and Heather Heaney/Jane Rogers and/or Operations and/or human resources. Despite the disclosure having actually been sent to her trade union representative, Richard Garner of UNISON, there appeared to be no suggestion from him that this was a protected disclosure at any time either.

469. Even if it could be said that the consequence of this failure was that the Respondent failed to investigate, or excessively delayed in investigating the Claimant's protected disclosure as a result which was capable of amounting to a detriment, for any failures to fall foul of S.47B ERA 1996, the Respondent's failure to abide by the terms of its own whistleblowing policy must have been materially influenced by the fact that the Claimant had made the protected disclosure.

470. In other words, simple incompetence in dealing with matters promptly or at all may not give rise to liability under S.47B ERA 1996.

471. Whilst such a conclusion will be unpalatable to the Claimant, and for different reasons may also be unpalatable to the Respondent (e.g. there are such criticisms of the Respondent and its management in failing to recognise this as a protected disclosure,) we concluded that in this circumstances of this case, the Claimant was unfortunate in facing a case of simple incompetence from her employers and that it could not be said that the disclosure itself materially influenced that failure.

472. The Claimant was not subjected to this detriment on the grounds of her disclosure and the complaint does not succeed.

20.5 the Respondent failed to investigate the Claimant's disclosures adequately or promptly;

473. The Chief Executive having been copied in to the email to Richard Garner of 23 May 2015, promptly notified Heather Heaney and Jane Rogers, those responsible for safeguarding in the Respondent and they, in turn, promptly contacted the Claimant. We did not conclude that the Claimant had been subjected to any detriment to the Claimant.

474. Again, whilst it is surprising that the Chief Executive and others appeared not to have even entertained the possibility that this was a protected disclosure, the Claimant is again in the position that we did not draw an adverse inference from this. We further concluded again that sheer incompetence from her employers was the reason for the failure and not the protected disclosure.

475. As such we did not conclude that the delay or failure was on the grounds that the Claimant had made the disclosure to the Chief Executive.

20.6 the Respondent breached their duty of care to the Claimant by

(a) requiring her to break the law in facilitating the relaunch of a scheme without statutory safeguards in place, putting her at serious risk as well as compromising her professionally and putting her under severe stress;

(b) subjecting her to bullying behaviour by demanding that she perform tasks whilst depriving her access to information without which those tasks were impossible,

(c) for the first two years of her suspension she was given no welfare help or advice, and HR made no attempt to even approach her; (d) subjecting her to sustained and relentless pressure in meetings on 9 November 2015, 14 March 2016, 14 June 2016, 24 August 2016, and *3* March 2017 at which she endured false accusations and at which any evidence she presented was dismissed out of hand

476. We dealt with each in turn:

a. Requiring her to break the law

i. Matters at a), pre-date the date that we found that Paul Keeble had knowledge of the disclosure and therefore we concluded could not have had any influence on his decision-making. The claim does not succeed as a result.
ii. In any event, we concluded that the Claimant was not required to break the law and our findings at paragraph 142 and 143 are relevant in this regard. The Claimant was not in work from 29 July 2015 and therefore any steps taken by the Respondent to re-launch the Kerbcraft Scheme in September 2015 were not imposed on the Claimant.
iii. The Claimant was not subjected to this detriment by the Respondent

b. Bullying her by demanding she perform tasks while depriving her of access to information

    i. Matters at b), pre-date the date that we found that Paul Keeble had knowledge of the disclosure and therefore we concluded could not have had any influence on his decision-making. The claim does not succeed as a result.
    ii. In any event, we concluded that expecting the Claimant to manage Kerbcraft and line manage Jayne Haycock following support having been given by both Paul Keeble, Mark Davies and Roger Hoggins, could not reasonably be said to be 'bullying behaviour' on the evidence and based on our findings in relation to the steps they took in this period.
    iii. The Claimant was not subjected to this detriment

c. For the first two years suspension given no welfare help or advice

    i. Whilst we accepted that save for the letter from Emma Marshall of 18 August 2015 [527], and the referral to Occupational Health in September of that year, there was no 'welfare' approach in terms of absence management in terms of regular contact with the Claimant to discuss their well-being as provided for in the Respondent's own Absence Management Policy[10].
    ii. We concluded that the failure to do so could amount to a detriment as it could lead to an employee feeling isolated and to a lengthening of the absence period.
    iii. In the context of this case, the Claimant was at this time off work with stress-related condition and Dr Crosbie from Occupational Health had identified that she was unlikely to return until the perceived work related issues had been resolved.
    iv. Whilst we concluded that the lack of welfare support was unacceptable and should have been given, we did not infer that this was because of the Claimant's disclosure to the Chief Executive.
    v. We concluded that for late 2015, and for much of the early part of 2016 focus and contact with the Claimant was through the management of the Claimant's grievance. That was the reason for the lack of further welfare support post-dating Emma Marshall's letter.
    vi. Roger Hoggins was seeking to resolve the 'work-related issues' referred to through the Claimant's grievance and Roger Hoggins was in contact with the Claimant throughout the period September 2015 through the beginning

[10] [@44] Managers will maintain regular contact with employees who are absent in order to discuss their well-being, expected length of continued absence from work and any other work matters that require attention in their absence;

of 2016. That focus on resolving the grievance, was likely to be the reason for the lack of welfare support.

vii. After February 2016, Roger Hoggins' focus was on the WAO investigation and, once the Claimant had been requested to remain at home during this investigation in the period from March 216 to June 2016, that was the likely reason for the lack of welfare support in that period.

viii. From June 2016, the focus on Roger Hoggins' interaction with the Claimant was on supporting her to return to work.

ix. Whilst we did conclude that the Claimant had been subjected to this lack of support and that this amounted to a detriment, we were persuaded that the lack of support was explicable and did not conclude that the Claimant's disclosure played any part in that failure for the reasons given and that this claim did not succeed.

d. Relentless pressure during meetings

i. The Claimant had limited her claim from the initial assertion that this complaint down from conduct in 5 meetings, down to conduct in two meetings on 14 June 2016 (when Roger Hoggins proposed a return to work (paragraph 242) and 24 August 2016 (when Roger Hoggins commented on the relationship between Mark Davies and Jayne Haycock).

ii. The Respondent's submissions in relation to this issue resonated with us. Put simply, the Claimant was accompanied at these meetings by her union representative, and if there had been any inappropriate behaviour the union would have challenged that.

iii. We also formed that conclusion and were not persuaded that the Claimant had been subjected to the detriment as alleged. This complaint did not succeed.

477. This complaint was not well founded and did not succeed.

20.7 - the Respondent failed to address the Claimant's first grievance promptly and/or failed to report its grievance decision promptly to the Claimant;

478. Having submitted the First Grievance on 21 September 2015, Roger Hoggins sent out:

a. interim observations on 11 December 2015, just under 12 weeks after the Claimant had submitted her grievance; and
b. concluded his grievance until 18 January 2016, some 16 weeks after the Claimant had first submitted her grievance.

479. The Claimant did not meet Roger Hoggins to discuss her grievance until 9 November 2015, he needed to undertake interviews which took place over the course of November

and December, and the documentation that he was likely to have had to consider was considerable. This explained the period of time.

480. We have been asked to draw an adverse inference from the lack of explanation for the delay. We did not, as whilst we concluded that this was a failure to address or report on the First Grievance 'promptly', taking into account that the factors which lead to the delay, whilst unacceptable, was an explanation nonetheless.

481. The complaint was therefore not well founded and failed.

20.8 - the Respondent failed to adhere to its grievance policy/procedure by not allowing the Claimant a proper, unbiased, investigation when she raised her first grievance

482. To an extent, we have dealt with this complaint in our earlier conclusions.

483. The Claimant has submitted that something was operating in Roger Hoggin's mind that prevented him from properly considering the Claimant's concerns and that the Respondent has not offered a reasonable explanation for this failure and that an adverse inference can be drawn from that fact.

484. We did not draw that adverse inference, taking into account:

a. our findings and conclusions on the organisation's lack of acknowledgement that the 23 May 2016 email was, or potentially was, a protected disclosure;
b. a further conclusion that Roger Hoggins personally lacked recognition or acknowledgement of the email as a protected disclosure at this point in time; and
c. our finding that the disclosure played no part whatsoever in Paul Keeble's decision to remove Kerbcraft from the Claimant.

485. We also concluded that it was more likely than not, that any failings arose as a result of Roger Hoggins' failure to recognise the problems within Kerbcraft and to take appropriate action in response. It was reasonable for Roger Hoggins to have trust in Paul Keeble as his deputy in that operational setting and, in the context of our finding in relation to Paul Keeble's knowledge, we were not persuaded that the disclosure influenced Roger Hoggin's approach to the grievance investigation.

486. More fundamentally we had concluded that the focus of Roger Hoggin's investigation had been on getting the Claimant back to work, rather than the detail of the complaint and, that whilst the January grievance response did not deal with the complaints in the way that the Claimant was likely seeking at that point, there was an explanation for that, which we

accepted, which was not the protected disclosure. We found Mr Hoggins to be a credible witness in this regard and we accepted his evidence on this.

487. This detriment complaint does not succeed and is dismissed.

20.10 - the meeting of 29 July 2015 was effectively a disciplinary meeting (because its outcome was that the Claimant was suspended for over 2 years), yet the Claimant was neither given reasonable notice of the meeting nor informed of the right to be accompanied at that meeting despite the purpose and outcome of the meeting having been communicated by Paul Keeble to Emma Marshall a month before the meeting was held – which adversely affected her ability to properly prepare her 'own defence. The reason given at the meeting for the Claimant's suspension was her failure to produce a strategy for relaunching the suspended scheme. The Claimant had in fact produced a substantial and comprehensive body of work which Paul Keeble claimed as his work

488. We have already dealt with elements of this complaint in our earlier conclusions. This was another complaint that had to be broken down to its constituent parts due to the narrative style of the pleading.

489. In the Claimant's Written Submissions, Claimant's Counsel had referred to this detriment as being *'C was sent home or 'suspended' from work on 29 July 2015'*

490. We did not find that the meeting was a disciplinary meeting. Rather it was management action that Paul Keeble considered he was, and was entitled to take outside the parameters of the disciplinary process. The Claimant had not been subjected to the detriment of a 'disciplinary' meeting by the Respondent.

491. The reason that the Claimant was off work for over two years, was that she had presented as sick immediately following the meeting and had submitted FIT notes and/or to an extent, had not attended work of her own volition for much of that period.

492. That meeting did not result in the Respondent subjecting the Claimant to the detriment of being 'suspended for over 2 years'.

493. Further, we did not find that Paul Keeble had claimed a 'substantial and comprehensive body of work'. In his email of 31 July 2015 [543], Paul Keeble had simply made passing reference to a spreadsheet to record details of volunteers as an example of the support that he considered had been provided to the Claimant. We have no evidence as to what Paul Keeble actually drafted, this has never been available. We do know that at best it would have become the 'Kerbcraft at a Glance' document.

494. Even if it could be said that at this time, it was only the information system that remained outstanding, it had still not been fully completed and we concluded that Paul Keeble was under pressure to ensure that all safeguarding issues were in place to ensure that the scheme was back up and running again in September. He says as much in the opening paragraphs of that email of 31 July.

495. We did not draw adverse inference from that the fact that WAO was still expressing concerns regarding the safeguarding matters a year later, or that this in some way demonstrated that the reason for Paul Keeble's decision was because of her protected disclosure to the Chief Executive.

496. Paul Keeble had not given advance notice to the Claimant of his intentions to enable the Claimant to prepare for such a message i.e. the removal of line management responsibility. He should have done so and that was a poor management decision in our view. Equally, Emma Marshall in her HR support role, should have been more robust and advised him that it was reasonable to have done so. She had informed the Claimant of her right to be accompanied and we inferred from that that she too considered the meeting was on a level that would have an impact on the Claimant.

497. The failure to do inform the Claimant of the intention to remove line management of Kerbcraft subjected the Claimant to a detriment. We accepted that the failure would mean that the Claimant would not have been in a position to properly prepare for or challenge any decisions, although we did not conclude that the criticisms of the Claimant had been unsubstantiated.

498. However on the basis of the conclusions already reached and set out in these written reasons, we did not consider that the protected disclosure played even a trivial part in that process or the decision-making that had been taken due to lack of knowledge on Paul Keeble or Emma Marshall's part, and that as such, any detriment was not on the ground that the Claimant had made the protected disclosure.

20.11 - the Claimant was sent home or 'suspended' from work on 29 July 2015 without any contractual basis or justification and such improper suspension is ongoing;

499. We did not find that the Claimant has been suspended and therefore concluded that the Claimant had not been subjected to a detriment by the employer on that basis as alleged and this complaint failed.

500. Neither did we find that the Claimant had been 'sent home'. Neither the GP or Occupational Health records, nor indeed the Claimant's own contemporaneous emails to the Respondent managers at this time, make any reference to being suspended or 'sent home'.

501. We concluded that the Claimant had been neither sent home nor 'suspended' on 29 July 2015 and had not been subjected to the detriment as pleaded.

502. The claim is therefore not well founded and is dismissed.

503. In the sense that the pleading meant that the Claimant was refused the chance to return to her role 'as was', as submitted by Claimant's Counsel in his Written Submissions, this was not what was pleaded and was not the complaint before the Tribunal. This required an application to amend and none had been sought.

504. However, in the interests of justice and to ensure finality to this litigation, on the basis of any amended claim, we would say that our conclusions on this were that whilst the removal of line management responsibilities for Kerbcraft staff was a detriment that was applied to the Claimant, our conclusions in relation to the earlier detriment apply equally to this complaint. We therefore concluded that the Claimant had not been subjected to a detriment by the employer on the grounds of the protected disclosure and this complaint too failed.

505. Even though at some point in late 2015, the Respondent was aware that the Claimant was making it clear and express that she considered herself a 'whistleblower', we did not consider the fact that she had raised her concerns with the Chief Executive at that point played any part in the decision not to allow her to resume line management responsibilities.

506. We were satisfied that the failure to allow her to return to manage Kerbcraft staff, was treatment that the Respondent had justified and we have dealt with this in relation to the following detriment complaint which applies equally to this complaint.

507. This complaint is not well-founded and is dismissed.

20.12 - the Respondent has refused to allow the Claimant to return to work on the basis of her contracted role - even when she subsequently became fit for work once a fit note had expired without being renewed

508. The Claimant's Counsel has submitted that, although not particularised, this relates to the period from 29 July 2015 to 16 January 2017 (when the Claimant was offered the return of her line management role) relying on:

a. the removal being asserted as temporary until Kerbcraft was to resume,
b. Kerbcraft resuming in September of that year,
c. the Respondent requiring the Claimant to return to work in August and again in September 2016, but without those line management responsibilities; and

d. that this was not an '*as was'* return and that as such this Tribunal cannot be satisfied that the protected disclosure did not materially influence this treatment.

509. The Claimant's contracted role was Road Safety Officer [254] and we concluded that the Respondent had sought to get the Claimant back into that contracted role from the summer of 2016. The Respondent had not subjected the Claimant to the detriment of not being allowed to return to work on the basis of her contracted role and on that basis the complaint did not succeed.

510. However, in the Written Submissions, the Claimant's Counsel has referred to this as '*refusing the chance to return to her role 'as was'.* This was not the Claimant's pleaded case. However, dealing with that alternative interpretation of the Claimant's case, we also concluded the following as being significant factors in the Claimant not returning to work in this period;

a. From July 2015 to January 2016, the Claimant was on sick leave. She did not indicate that she wanted, or was in a position to return.

b. Whilst the Respondent had not proactively told the Claimant she could resume line management when she was well, it could not be said that she was refused a return to line managing Kerbcraft during this period.

c. In February 2016, the Claimant had presented a Fit note for one month. This appears to have been the last Fit note from the Claimant for a number of months. Despite this, the Claimant continued off work on sick leave and continued to receive sick pay. The failure to provide Fit notes to cover this period appears to have been left unaddressed by both the Claimant and the Respondent. Certainly the Claimant did not at this stage, give any indication that she was now not sick and that she was now in a position to and wanted to return to work.

d. Indeed throughout this period, at no time did the Claimant expressly state that she wanted to return to work and had, in February 2016, rejected any proposals to meet and discuss what was necessary to facilitate her return to work.

e. We accepted that at that stage, the Respondent considered Kerbcraft had been operating satisfactorily.

f. However we noted that Roger Hoggins had highlighted to the Claimant, in his grievance outcome letter of 18 January 2016 (point 2 and 4 [633/634]), the disruption amongst the staff providing road safety and Kerbcraft ,and that he considered that there was '*significant work to be done to restore trust and confidence amongst staff before a coherent and effective team can be contemplated'.* He had proposed three options to resolve the Claimant's concerns,

but the Claimant had rejected any suggestion of meeting up to discuss a return. Such a discussion may very well have entailed addressing how the relationship issues could be addressed.

g. We concluded that the relationship between the Claimant and the team, and how that relationship could best be repaired, was therefore a determining factor in the Claimant not returning to those line management responsibilities at that point.

h. Against the backdrop of the Claimant's response to Roger Hoggin's grievance outcome [649], and in particular her refusal to meet up and continued lack of response to the three options he presented on 3 February 2016 [649], it was difficult to see how it could be said the it had been the Respondent that had prevented the Claimant from returning, subject to the following conclusions.

i. Further, and tied in with managing those working relationships, the subsequent WAO impacted on the Claimant returning to work at all.

j. We had concluded that Roger Hoggins believed that the Claimant's return to work would be difficult as a result of the WAO investigation and formed the view that the best way to proceed was that when the WAO report became available, he would reconvene the team and make a fresh start at that stage.

511. We concluded that the reason for the treatment were based on a hybrid of all these factors and not on the grounds that the Claimant had made the protected disclosure.

512. We therefore further concluded that the Claimant had not been subjected to a detriment by the employer as claimed on the grounds that the Claimant had made the protected disclosure.

513. The complaint was not well-founded and is dismissed.

20. 17 - on 11 November 2016 the Respondent altered the Claimant's job description without any prior consultation. Her job was advertised requiring no road safety qualification but an engineering background. The job advertised had been designed to exclude the Claimant and to accommodate a candidate already lined up for the post (the Claimant was formerly senior to Graham Kinsella who was an Assistant Engineer and had no background in Road Safety Education, nor any qualification;

20.18 - the Claimant's job was effectively given to two other officers: one performing her management role (as above) and the other performing the general road safety officer role (now carried out by the Respondent's new Road Safety Officer);

514. It is submitted on behalf of the Claimant that the effect of the November 2016 restructure was to transfer the Claimant's management responsibility for road safety issues, to a new role that she could not apply for.

515. Paul Keeble on cross-examination confirmed that that the Claimant's role had remain unchanged. He expressly confirmed, in answer to a question that the new role incorporated duties that had previously been held by the Claimant, that no duties were transferred from the Road Safety Officer to the new Traffic and Road Safety Manager. We accepted that evidence.

516. We concluded Claimant's job was not advertised. The role of Traffic and Road Safety Manager, a role that Graham Kinsella was appointed to, was a replacement for Mark Davies, the Claimant's line manager.

517. We therefore concluded that the Claimant had not been subjected to a detriment by the employer as alleged and this claimed failed.

518. With regard to the Claimant's role, this remained unaffected. A temporary cover was advertised in July 2017 and this is dealt with in response to the detriment complained of at para 20.23 below.

519. This complaint is not well founded and is dismissed.

20.20 - subject access requests made by the Claimant on 2 February 2016 and 4 April 2016 were denied and remain outstanding. The Claimant was concerned that as an officer with a longstanding and high profile presence in the community, questions regarding her absence will have been asked and she was anxious to know what statements had been made in response. However, the Respondent refused to disclose the same and she was told by Roger Hoggins that this information was not within the scope of the Data Protection Act 1998. When the Claimant asked for the release of this information as a matter of goodwill, she received no response

520. The SAR request contained in the email of 2 February 2016 was not dealt with by the Respondent and this was capable of amounting to a detriment.

521. However, we were satisfied that the reason for this treatment was that the Respondent did not recognise this email request as a SAR under the Data Protection Act 1998 (as would have been in force at that time). The detriment was not on the grounds of the protected disclosure.

522. The SAR, that was repeated in the email of 4 April 2016, was not 'denied' or 'remained outstanding'. Rather, the Claimant has assumed that the documents, that were provided in response, did not amount to the totality of documentation that she considered would and should have been available.

523. Whilst we accept that the Claimant was disappointed and expecting more, we accepted the Respondent's evidence that this was the totality of the Respondent's documents relating to her specific SAR. We did not consider that the Claimant had proven that she had been subjected to the detriment as pleaded with regard to the Respondent's response the 4 April 2016 SAR.

524. We therefore concluded that the Claimant had not been subjected to a detriment by the employer as alleged and this complaint was not well founded and was dismissed.

20.22 - whilst she was suspended, the Respondent threatened the Claimant, by letter of 30 September 2016, that it would recover salary paid to her since 29 July 2015;

525. This was a detriment that the Claimant had been subjected to but we were satisfied with the Respondent's explanation for the treatment.

526. We accepted Roger Hoggin's explanation that he was exasperated with the Claimant. It was not right to say, as had been submitted by the her Counsel, that the Claimant was engaging as expected as an employee on sick leave or attending meetings to discuss her return. She had in fact refused to engage with the three options provided to her by Roger Hoggins in February 2016, rejecting a proposal to meet to discuss a return, and failing to respond on the proposal of an independent investigation.

527. We accepted that the Claimant had been insisting for several months that she had been 'dismissed', despite assurances that she had not. She had remained on full pay and we had some sympathy with Roger Hoggins and with the argument that he took her insistence that she had been dismissed to its 'logical conclusion' in order to show her what it would mean financially if she had been dismissed. He also made it clear that it was a proposal only.

528. In light of the Claimant's conduct and persistence in maintaining that she had been dismissed, we did not consider that Roger Hoggins response was an unreasonable response.

529. We were persuaded by the Respondent's explanation for the treatment and therefore concluded that the Claimant had not been subjected to a detriment on the grounds of the protected disclosure and this complaint failed and is dismissed.

20.23 the Claimant was removed from her post – without first informing the Claimant that they were advertising her post, an announcement that the "new Road Safety Officer" for Monmouthshire was in post was made by the Respondent on 29 September 2017 with no mention of it being a temporary appointment, neither was there anything in the email communications from the person newly appointed to clarify that his appointment was temporary

530. We did not find that the Claimant had been removed from her post. She had not been subjected to the detriment as claimed.

531. This relates to our findings in paragraph 307 and 308 of these written reasons. Whilst we found that the Claimant had not been told of the advertisement, the advert did make it clear that the post was a temporary appointment and that it was to cover for the Claimant's absence on sick leave.

532. As soon as the Claimant sought information in relation to the advert, Tracey Hoggins dealt with it.

533. The Claimant had not been subjected to the detriment as alleged and this complaint was not well founded and is dismissed.

20.25 - the Respondent failed to communicate its new grievance policy to the Claimant whilst she was suspended - the first time she heard of it was on 17 November 2017 when Mr Beynon met with her in connection with his investigation into her grievances and told her he had been employed by the Respondent "to undertake a Stage 2 Review under the Council's Fairness at Work (Grievance) Policy";

534. Whilst we accepted that if the Respondent had insisted in applying its new grievance policy to the Claimant's complaints, this may have resulted in her being subjected to a detriment if she considered that it in some way would have frustrated her attempt to advance her grievance, we did not consider that any reasonable worker would have seen any failure to *communicate* its new grievance policy as a detriment.

535. The complaint as pleaded therefore did not succeed.

536. Further, the new grievance policy was not in fact applied to the Claimant's complaints and therefore no detriment arose regarding any application of any new procedure.

537. We therefore concluded that the Claimant had not been subjected to a detriment by the employer and this complaint was not well founded and was dismissed.

20.26 - the Claimant's grievance was submitted confidentially to Peter Davies and

complained about Tracey Harry (the Respondent's Head of People Services & information Governance). Although Peter Davies was asked for an acknowledgement, none was forthcoming and he forwarded the grievance to Tracey Harry

538. We accepted that the forwarding of the complaint, to an individual that was referred to within the body of the complaint, was capable of amounting to a detriment.

539. However, we considered Tracey Harry's explanation, provided on cross examination, as to why she had been passed the grievance by Peter Davies and how she had dealt with it i.e. that she had scanned it and passed on to Paul Beynon to investigate. Whilst we could accept that if she had been involved in the investigation this would have amounted to a significant detriment, she was not. We also considered that any detriment would have ended as soon as Tracey Harry passed the complaint on to Paul Beynon.

540. We accepted the explanation that Paul Davies passing the grievance to Tracey Harry was part of a normal practices in a large organisation such as the Respondent as a reason for the treatment and we did not consider that the protected disclosure had any material influence on that treatment.

541. This complaint was not well founded and is dismissed.

20.28 - the Respondent failed to put in place the reasonable adjustments and other reasonable pre-conditions to enable the Claimant to return to work which were discussed during the meeting between the Claimant and Tracey Harry, on 20 June 2017 and which were subsequently listed as 12 key points in Ms Harry's letter of 3 July 2017 and were commented upon by the Claimant in her email of 5 July 2017 and as discussed at further meetings with Ms Harry on 11 September 2017, 16 October 2017 and 15 March 2018

542. The way that this claim was presented in the Interim Submissions was that this related to paragraphs 170 and 171 of the Claimant's witness statement. This section of the Claimant's statement in turn referred to:

a. The request for reasonable adjustment made to Tracey Harry, in the letter of 14 February 2018 [1499-1503] - This related to the 12 'pre-conditions' that Tracey Harry had articulated in her earlier letter of 3 July 2017 [957]
b. That she had sought verbal assurance from HR in the subsequent meetings in May and June 2018 that the '*scheme was being run and would be run in accordance with requisite controls*'

c. That when she had '*asked if the offending members had been asked to address these issues',* she had been told that it was not a matter for discussion as disciplinary matters were private
d. She had been expected to manage a team who had no respect from her without assurance of 'reasonable adjustment/condition;

543. However, the Claimant's final Written Submissions suggested that the basis that this claim is now put by Claimant has changed, the Claimant having been made aware during this hearing that:

a. By reason of the unredacted Kerbcraft report (that had been requested by the Tribunal,) Paul Beynon had recommended action or further action be taken against Paul Keeble, Mark Davies and Jayne Haycock;
b. By reason of Tracey Harry's live evidence, Mark Davies and Jayne Haycock had been formally spoken to regarding conduct issues identified in the Kerbcraft Report.

544. He submitted that the Claimant had not been told that such action had or would be taken, and that Tracey Harry had not provided a satisfactory explanation for not sharing that information with the Claimant before she was dismissed which he asserted was surprising where the Claimant had shown a willingness to compromise.

545. To an extent, we considered that the amended basis did not alter the claim as pleaded. Despite the Claimant's original grievance focussing on the actions of Paul Keeble on 29 July 2015, the Claimant had, by March 2018 indicated that she was willing to accept an apology from Paul Keeble, Mark Davies and Emma Marshall (see paragraph 352 of these written reasons). We concluded that the issue of whether Paul Keeble and or Mark Davies had also been subjected to some form of disciplinary or indeed any management action, was not an 'adjustment' or pre-condition that the Claimant had required.

546. We were satisfied that the Respondent had addressed all but two of the 'pre-conditions' that the Claimant was relying on as 'reasonable adjustments', and that in respect of those pre-conditions, it could not be said that the Respondent had failed to put such 'adjustments' in place.

547. We were satisfied that there was an explanation of why the Respondent was not prepared to consider the remaining two that were outstanding.

a. We were satisfied with the Respondent's explanation, through the evidence of Paul Keeble, for the position that it was not reasonable for the Claimant's role to be moved to another directorate and the Respondent was entitled to conclude that the Road Safety role should remain in the directorate.

b. We were also satisfied with the Respondent's explanation for its position that it was not reasonable to dismiss and/or redeploy the whole of the Kerbcraft Team.

548. On the basis that the Claimant was seeking the dismissal and/or redeployment, of not just Jayne Haycock, but also the two Kerbcraft Assistants, and not simply assurance that *some* formal action would be taken against Jayne Haycock, we were not persuaded that the Claimant would have been satisfied even if Tracey Harry had informed her that Jayne Haycock had been 'spoken to formally'. However we did not draw an adverse inference from the fact that Tracey Harry had not but had disclosed such a matter in this hearing.

549. We were satisfied that the Respondent had provided an explanation for its treatment of the Claimant in relation to the two outstanding pre-conditions or 'adjustments' as they were pleaded and concluded the Claimant had not been subjected to a detriment by the employer as alleged.

550. This complaint is not well founded and is dismissed.

20.29 - requiring the Claimant, by letter dated 21 July 2017, to await the outcome of her second grievance before the Respondent would consider implementing reasonable adjustments and pre-conditions for her return to work but without guaranteeing her full pay in the meantime;

20.30 - the Respondent has underpaid the Claimant ever since 20 September 2017 and has made no payments whatsoever since 20 March 2018

20.31 - despite being fit for work and willing and able to return subject to reasonable adjustments and reasonable assurances/other agreed reasonable pre-conditions, the Respondent is currently not in receipt of any pay

551. These three detriment claims have been dealt with by both parties as one, and we too have dealt with these complaints collectively.

552. They relate to the decision-making,

a. in relation to Tracey Harry's decision, confirmed in her letter of 21 July 2017, to defer consideration of the Claimant's 12 pre-conditions until the outcome of the Paul Beynon Grievance investigation; and
b. Tracey Harry's subsequent refusal, in September 2017, to extend the discretionary pay that had been agreed in that same letter, for a further period from the initial two month period.

553. Whilst we accepted that Tracey Harry had suggested in her letter of 21 July 2017, that the independent grievance report be received before considering the steps that the

Respondent would need to put in place to meet the Claimant's 12 preconditions, the Claimant did not object to this. We also felt that this decision had to be placed in the context of what led to that proposal, which was that the Claimant was maintaining that whilst she wished to return, her position was also that the Respondent had *'failed to provide a safe environment for my return'* [972].

554. We were satisfied that the Respondent had demonstrated a reason for this treatment, namely that Tracey Harry genuinely believed that an external audit would be best placed to consider Kerbcraft and for this to include the Claimant's grievance and that it was premature and could prejudge the outcome of that investigation, if she had dealt with those preconditions at that stage. Again this decision was made in the context of the Claimant's stated position which was that the 12 pre-conditions would need to be put in place for her to return.

555. In any event, if this decision had been to the Claimant's detriment, we would have expected the Claimant to have objected to this decision immediately. She did not.

556. We did not conclude that this element of the decision was on the grounds that the Claimant had made a protected disclosure.

557. However we accept that as the investigation took longer than anticipated, and this decision then became detrimental to the Claimant, in particular from the beginning of October 2017, when she exhausted her full pay.

558. Again we were satisfied that there was a reason for this delay. That the investigation took longer than was anticipated was a relevant consideration for us. The Claimant's understandable desire to fully consider the additional documentation supplied to her in response to her second SAR, and subsequent decision to submit a Third Grievance would have naturally contributed to, and did extend the length of time that it took to undertake Paul Beynon to undertake the investigation.

559. In any event, by January 2018 Tracey Harry had commented on the pre-conditions and effectively only one remained; that related to the dismissal of the Kerbcraft team.

560. We did not conclude that this was the case where the Respondent was in any way trying to contrive a delay either to the investigation, or to delay the implementation of the 12 pre-conditions set by the Claimant. We were satisfied for the reasons for the delay in the investigation and we still did not conclude that the reason for this decision was on the grounds that the Claimant had made a protected disclosure to the Chief Executive two years previously.

561. We concluded that whilst the Respondent did subject the Claimant to half pay from September 2017 and nil pay from 20 May 2018, and that this was to the detriment of the

Claimant, the reason for that treatment was that the Claimant had exhausted her contractual sick pay entitlements by reason of her sick leave:

a. The Claimant had been off on work and submitting FIT notes for a considerable period from July 2016.
b. By September 2017 she had exhausted her full contractual sick pay and had exhausted her half pay by February 2018.
c. On 10 August 2017 the Claimant had presented a FIT note for 6 months [1179].

562. Whilst Tracey Harry had agreed in July 2017 [974] that the Respondent would increase the Claimant's full pay sick pay to the end of September 2017, she was also told that she would then reduce to half pay for 6 months (see paragraph 3299 to 302 of these written reasons).

563. We did not consider that in light of the particular pleading the Respondent needed to explain the reason for refusing the extend the Claimant's pay further. However, we do not draw any adverse inference from that fact.

564. Taking into account the Respondent is a public body, and in circumstances where an employee had been off work for over two and a half years, it would not be surprising that pay, which had been already been awarded on a discretionary period, would not be further extended. Whilst the Claimant may have considered this was harsh, it was understandable in that context. It was not a contractual entitlement on any basis.

565. We concluded the Claimant had not been subjected to this detriment on the ground that the Claimant had made the protected disclosure.

566. The complaint was not well founded and is dismissed.

20.32 - when by letters dated 17 July 2017 and 16 October 2017 through the Claimant's solicitor, the Claimant declared herself fit for work and willing to return, subject to the Respondent implementing reasonable adjustments and the other pre-conditions for the Claimant to return to work, the Respondent responded by questioning whether her disability was continuing. This was an insult to the Claimant as a disabled person.

567. This claim relates to a paragraph in the Respondent's solicitors letter of 1 November 2017 [1338 – 1340 @1339], sent in response to the Claimant's solicitors letter of 17 July 2017 and 16 October 2017.

568. In that passage, the Respondent's solicitors indicated that they did not accept, at that time, that the Claimant was disabled within the meaning of the Equality Act 2010 and requested medical evidence and an impact statement in relation to normal day to day activities in order to consider whether the Claimant was disabled and if so, at what times.

They concluded that as the Claimant had declared herself fit for work, it was not clear whether any disability continued.

569. It is claimed that this is an 'insult' and is therefore a detriment.

570. We did concluded that:

a. in the context of legal correspondence;
b. in light of the Claimant's solicitor's letter of 16 October 2017 [1301], in which they confirmed that the Claimant was now fit for work,

the Respondent's position, and their request for information was not unreasonable and was part and parcel of the process of assessing both the issue of disability and the period of disability.

571. It was reasonable for the Respondent to take such a position and we concluded that no reasonable worker would have taken such a request to be an 'insult'. No reasonable worker would or might take the view that this treatment had been to their detriment.

572. In any event, the treatment was explicable.

573. The complaint is not well founded and is dismissed.

20.33 despite having raised a second formal grievance on 27 October 2017, the Respondent has still not issued its grievance decision over 6 months later. Such delay is unjustified, constitutes a breach of the ACAS Code of Practice on Disciplinary & Grievance Procedures and is a further and ongoing detriment to the Claimant.

20.4 – (Second Claim) falling to communicate its grievance decision to the Claimant - In relation to her second formal grievance dated 27 October 2017 - until 31 August 2018, over 10 months after the grievance had been presented. Such delay was unjustified and constituted a breach of the ACAS Code of Practice on Disciplinary & Grievance Procedures

574. These two detriment complaints are the same and are dealt with together.

575. Essentially whilst the time taken to resolve the Claimant's grievance was lengthy, we were satisfied that there was a satisfactory explanation for this treatment. We did not conclude that the reason for this treatment related to the Claimant's protected disclosure:

a. We did not consider it difficult to understand why it took Paul Beynon to April 2018 to produce the Beynon Grievance Report.

b. The chronology of events, as articulated in the Respondent's Written Submissions (paragraph 151) was reviewed and adopted by us as a fair assessment of the

explanation of the period from 27 July 2017 to 20 April 2018 when Paul Beynon submitted his report.

c. That was the reason for the delay which we accepted as an explanation for the treatment.

d. Likewise we also accepted that chronology as an explanation for the period whilst in Mark Hand's control.

e. That was the reason for the delay in Mark Hand dealing with the grievance which we accepted was the explanation for the treatment.

576. We did not conclude that the delay was on the grounds of the protected disclosure.

577. The complaint is not well founded and is dismissed.

Detriments – Second Claim

20.5 failing to communicate its grievance appeal decision to the Claimant until 14 November 2018, over 2 months after the grievance appeal had been presented. Such delay was unjustified and constituted a breach of the ACAS Code of Practice on Disciplinary & **Grievance Procedures**

578. The meeting between the Claimant and the appeal officer did not take place until 12 October 2018. The outcome was provided on 14 November 2018. Taking into account the amount of information to digest, and delay before the meeting, we did not consider that this was inexplicable or unreasonable in the given circumstances.

579. We concluded that there was not an unjustified delay and that this was a reasonable time frame in those circumstances.

580. We therefore concluded that the Claimant had not been subjected to a detriment of unjustified delay as a detriment.

581. In any event, even if the claim is that any delay is a detriment, we were satisfied that the Respondent had an explanation for the period had been provided which we accepted as the explanation for the treatment which was unrelated to the protected disclosure.

582. This complaint is therefore not well founded and is dismissed.

20.6 failing to hold a welfare meeting with the Claimant following the communication of the grievance

appeal decision and before any decision was taken to dismiss the Claimant

583. We accepted that this was a detriment to the Claimant. That it would have made no difference to the outcome, as suggested by the Respondent's Counsel, was not a relevant consideration for us in the context of this specific complaint. The detriment was the 'opportunity denied' as had been submitted by the Respondent. We agree.

584. This does call for an explanation and we were satisfied with the explanation provided by Tracey Harry in her statement (paragraph 35). We did not find that this related in any way to, or was on the grounds that the Claimant had made a protected disclosure over three years previously.

585. This complaint was therefore not well founded and is dismissed.

20.8 permitting Richard Gamer to make or play a material part in making. the suspension. dismissal and dismissal appeal decisions

586. We had accepted the evidence of Tracey Harry, that Richard Garner had authored the original template letter that had been eventually used to form the basis of the letter that had been sent to the Claimant.

587. Save for that finding, and our finding that the Claimant had sent her protected disclosure to Richard Garner on 23 May 2015 (and had copied in the Chief Executive,) we had no evidence from either the Claimant nor the Respondent to make any other finding or draw any conclusions on what role or part Richard Garner had to 'play' in either the Claimant's suspension, dismissal or dismissal appeal decisions.

588. We therefore concluded that Richard Garner played no part in the Claimant's suspension, dismissal or dismissal appeal decisions.

589. This was not a detriment that the Claimant had not been subjected to as alleged.

590. This complaint is not well founded and is dismissed.

20.9 - deciding to pay the Claimant in lieu of notice instead of permitting her to return to the office during her notice period to give her an opportunity to at least say goodbye to work colleagues whom she had not been in contact with during her lengthy suspension of *3* years and 4 months - which had materially contributed to her isolation and depression (as mentioned in her Impact Statement);

591. Whilst we accepted that being prevented from being able to say goodbye to work colleagues is capable of amounting to a detriment, immediate termination and payment in lieu does not in itself prevent a worker from making contact with work colleagues and we did not conclude that the Claimant had been prevented from doing so.

592. The impact of immediate termination and pay in lieu was therefore not, in these given circumstances, a detriment that this Claimant had been subject. The complaint therefore failed on that basis.

593. In any event, we were satisfied with the explanation that there was no reasonable expectation that the Claimant would return to the office in any event.

594. We therefore concluded that the Claimant had not been subjected to a detriment by the employer as alleged.

595. The complaint is not well founded and is dismissed.

20.11 deciding to dismiss the Claimant by email rather than at a meeting.

596. This was a detriment to the Claimant. Whilst we draw shy of agreeing with the Claimant's submissions, that it was intended to demonstrate contempt towards the Claimant, to term it discourteous is an understatement, especially towards a long serving employee. It calls for an explanation. Tracey Harry could have, at the very least, sought to try to meet with the Claimant to communicate the decision to terminate. She did not.

597. However, we were ultimately satisfied that the Respondent has demonstrated the reason for that treatment, however unpalatable and undesirable the Respondent's actions in dismissing by email were.

598. The Claimant had been warned as far back as July 2016 that termination of her employment could be an eventual outcome and again we reflected on the chronology of events leading to the decision as set out in the Respondent's Written Submissions (paragraph 160).

599. We accepted the explanation from Tracey Harry as the explanation for her treatment and concluded that the Claimant had not been subjected to a detriment by the employer on the grounds of the protected disclosure. There was no suggestion that the protected disclosure was even a trivial reason for this treatment.

600. The complaint was not well founded and is dismissed.

Time – Jurisdiction - Detriments

601. We did not hear any substantial argument and did not hear any discrete submissions from either party in relation to the time of each detriment and/or whether any particular detriment complaint was or was not brought in time.

602. Rather, we had a general submission:

a. from the Claimant (paragraph 226 Written Submissions) that the claims were all in time as the acts of detriment formed part of a continuing act and continued through to the date of the Claimant's dismissal and that the latest act of detriment relied upon by the Claimant occurred on 16 November 2019 (dismissal by email); and

b. from the Respondent (paragraph 233-241 Written Submissions) that the only periods the Tribunal has jurisdiction only to consider are 30 January 2018 – 29 April 2018 (First Claim) and 15 November 2018 - 15 March 2018 (Second Claim).

603. With regard to time, in respect of the complaints brought under s.47 ERA 1996, we were persuaded by the Claimant's position which was that the complaints were of a series of similar acts and the complaints were brought in time, having been brought within the relevant time limit of the last act.

s.103A ERA 1996 – Automatic Unfair Dismissal

1. With regard to the reason or principal reason for dismissal, for a claim under s.103A ERA 1996, we have to ask ourselves whether the Claimant has shown that there is a real issue as to whether the reason put forward by Respondent (in this case some other substantial reason of a kind justifying dismissal) was not the true reason? If so, has the Respondent proved the reason for dismissal?

2. The Respondent draws our attention to in particular, paragraphs 12-14 of the Rider to the ET1 to the Second Claim, which very much focused on the involvement, or otherwise, of the Claimant's former UNISON trade union representative, Richard Garner, as being supportive of the argument that the reasons for the dismissal were a pretext and that in fact the decision was taken by Richard Garner.

3. This perplexed us, particularly due to the emphasis by the Claimant on his involvement in the pleadings, and by references to him in the earlier sections of

the contemporaneous documentation, as this has not been in issue in the live evidence in this hearing (save for the issue of Richard Garner authoring certain documentation). Our findings and conclusions in relation to the detriment claim are repeated.

4. We agree, as submitted by the Respondent's representative, that the Claimant is no longer disputing that Tracey Harry was the decision-maker in relation to the dismissal and it was not suggested that anyone other than Tracey Harry made the decision to dismiss. This is also reflected in the Claimant's written and oral submissions, which again made no reference to Richard Garner and/or his involvement in the decision to dismiss the Claimant.

5. For the avoidance of doubt, we did not conclude that Tracey Harry had been manipulated into dismissing the Claimant by anyone else whose reason for doing so was because of the Claimant's protected disclosure.

6. Notwithstanding that, the Claimant's case was reflected in the Claimant's Written Submissions, paragraphs 8-84 of which were dedicated to the reason for dismissal, and which we considered carefully when reaching our conclusions. Those submissions are incorporated by reference and are not repeated.

7. We are asked to conclude that the protected disclosure was a 'live' issue up to and including the date of dismissal. We were not persuaded and did not agree. We did not accept that the protected disclosure, made to the Chief Executive back in May 2015, was still a 'live issue' at point of termination. In reality we did not consider that this had been a 'live issue' for a considerable period of time.

8. The interaction of the Claimant with the Respondent, in relation to the resolution of her grievances and her deep-rooted discontent with the way that her complaints had, in her mind, not been resolved, leading the Respondent to conclude that an 'impasse' had been reached was in our view the live 'issue'. That the Respondent concluded that an 'impasse' had been reached, and whether or not it was reasonably likely that the Claimant would return within a reasonable period was, in essence, the reason for the termination of her employment.

9. We did not conclude that the Claimant had shown a real issue that the stated reason for dismissal was not the true reason. We did not draw any adverse inference from the acts relied on by the Claimant to demonstrate this. In addition, our conclusions in this regard also supported our conclusion that the Respondent had proved its reason for dismissing the Claimant, namely some other substantial reason of a kind such as to justify the dismissal of the Claimant holding the position she held.

10. Whilst we accepted that there had been a refusal to extend the discretionary pay period, our conclusions in relation to the discrete detriment claims were relevant in this regard and repeated.

11. That Tracey Harry had, by December 2017, altered her July 2017 stance on the Claimant not returning to work until the investigation on the grievances was concluded was not, in our minds, inexplicable. We did not draw from this any adverse inference.

12. Whilst it had been Tracey Harry that had suggested that the Respondent await the outcome of the grievance before the Claimant return, this was against the backdrop of the 12 pre-conditions being in place before the Claimant could return, and the Claimant not disagreeing with that approach. Thereafter, the Claimant's solicitor in October 2017 [1338] indicated that the Claimant was fit to return to work and it would have been becoming clearer that the investigation was taking longer than anticipated. The Claimant's sick pay that had been extended, was also expiring. The position had moved on from that in July 2017 suggestion and we did not draw adverse inference from that or conclude that the Claimant had shown a real issue regarding the real reason for dismissal.

13. Whilst we found Tracey Harry's failure to re-organise with the Claimant the missed October 2018 meeting, to be poor management of this employee, and her decision to dismiss the Claimant by email without any further meeting, to be a harsh decision for the Claimant to take, we accepted Tracey Harry's evidence; that she had concluded that the Claimant did not wish to meet with her, particularly against the backdrop of the Claimant's response to Mark Hands' grievance decision, and determined to make a decision regarding her employment in her absence. The position that Tracey Harry held, that the Claimant had been unwilling to attend meetings, and as a result was unlikely to return, was a position that was held not without foundation, in our view.

14. The pattern of the Claimant's behaviour, particularly after she had engaged legal advice, in the latter part of 2017 and beginning of 2018, reflected a resistance to meet and engage about a return to work. Her decision to leave it 10 days, to the morning of the 14 September 2018 meeting, to set out pre-conditions before she would meet, was also reflective of that resistance. Whilst we viewed critically Tracey Harry's decision not to make contact with the Claimant after the missed 16 October 2018 meeting, we also concluded that the fact that the Claimant did not contact Tracey Harry either, would have led Ms Harry to reach the reasonable conclusion that the Claimant was unwilling to meet.

15. We concluded that the Claimant did not want to return to her job 'as was' in a

wider sense. She wanted to return with the personnel that had made up the Kerbcraft team gone, either by way of dismissal or redeployment. We did not consider the Respondent's refusal to accede to that pre-condition was an unreasonable position for the Respondent to have taken. Against that backdrop, it could not be said that Tracey Harry's criticism of the Claimant for not considering redeployment was unreasonable.

16. Counsel has raised in his submissions '*the problem with R's failure to hold Kerbcraft officers to account for failings that placed children at unnecessary risk of harm over an extended period of time* '.

17. We made no findings on whether children were placed at unnecessary risk of harm over an extended period; that is not the role of this Tribunal and the matter has been explored both internally by the Respondent and with WAO. We have focused on the Claimant's reliance of the apparent lack of accountability of Paul Keeble, Mark Davies and Jayne Haycock.

18. Whilst the Claimant lacked knowledge that Kerbcraft officers had, to any extent, been held accountable in relation to Kerbcraft and may very well have left the Claimant dissatisfied, we accepted that they were in fact formally spoken to and it did lead not us to form a view that the Claimant had shown a real issue that the reason for the dismissal was not the true reason, in the circumstances of this case.

19. We were satisfied that the reason for dismissing the Claimant was the reason given by Tracey Harry as articulated in her letter of 16 November 2018 [1821]. Neither the reason, nor principal reason for the Claimant's dismissal was that the Claimant had made a protected disclosure and her claim of unfair dismissal under s.103A ERA 1996 does not succeed and is dismissed .

S.98(4) ERA 1996 Ordinary Unfair Dismissal

20. As reflected in our conclusions in relation to automatic unfair dismissal, we concluded that the reason provided by Tracey Harry for the termination of the Claimant's employment was that set out in her letter of dismissal.

21. We concluded that the Respondent had discharged the burden of showing that the principal reason for dismissal reason fell within s.98(1) ERA 1996 and that the dismissal was for dismissing the Claimant fell within the 'some other substantial reason' for dismissal which potentially justified the termination of the Claimant's employment.

22. With regard to the issue of whether this was fair in all the circumstances, we

concluded that whilst the manner of the dismissal by email was harsh, and that there had been no discussion with the Claimant regarding the outcome of the grievance appeal in advance, it could not be said that no reasonable employer would have dismissed in all the circumstances of this case.

23. We concluded that it was reasonable for Tracey Harry to form the view that there was an impasse/breakdown; that as a result it was not reasonably likely that the Claimant would return in a reasonable period of time; and that there had been a breakdown in the relationship between the Claimant and the Respondent has her employer.

24. We concluded that Tracey Harry had evidence before her to form that view as a result of the backdrop of:

    a. over three years' absence from work (during which time the Claimant had not returned to work despite being fit to do so,)
    b. an internal grievance process that had involved an independent grievance investigator, and
    c. the Claimant sill not accepting the outcome of that investigation, as articulated by her in the grievance appeal and meeting.

25. Whilst there had been no consultation after the grievance outcome, and whilst inconsistent with Tracey Harry's position back in April of that year, that they would meet to discuss the matter after Mark Hand's grievance outcome, we concluded this decision was not outside the bands of a reasonable response from an employer, for the reasons we have articulated in relation to the reason for dismissal in these written reasons.

26. The Claimant herself had indicated that she was prepared to work with Paul Keeble, Mark Davies and Emma Marshall in March 2018. The Claimant constantly maintained the position that she would not work with Jayne Haycock, or the remaining members of the Kerbcraft team; that she wanted them dismissed or later, redeployed. We concluded that Tracey Harry's state of mind, that this issue was never going to be resolved and that an 'impasse' had been reached, was a reasonable conclusion.

27. Indeed, we concluded that many employers would have reached the same decision as that reached by Tracey Harry and that they had no option other than to end the working relationship in its entirety in light of her refusal to consider redeployment and insistence on redeployment of the Kerbcraft scheme.

28. We did not conclude that the Respondent's failure to inform the Claimant that they had been 'formally spoken to' was a relevant consideration for the reasons

given above in relation to the reason for the dismissal.

29. We did not accept that if there had been a further meeting after the grievance appeal outcome with the Respondent, the Claimant might have or would have moved away from her position that the Kerbcraft team had to be removed in its entirety through redeployment or dismissal. This was a position that she had maintained for over a year. This was not credible and we did not accept that any further meeting would have made any difference.

30. This remained our conclusion. We did not accept that the 'impasse' would have been broken even if she had been informed at that stage that they had been 'formally spoken to'. She had already and for some time indicated that she would accept an apology from Paul Keeble and Emma Marshall. The Claimant required redeployment or dismissal of the Kerbcrtaft team and we did not accept that even if she had been informed of this, it would have impacted on the 'impasse' or the Claimant's position on return to work.

31. We therefore did not consider claim of unfair dismissal to be well-founded and this claim was dismissed.

Disability

32. The disability claims have not been the focus of either the cross-examination nor indeed the submissions presented by either the Claimant nor the Respondent. Rather the focus has very much been on the protected disclosure claims and that is reflected in the brevity of our conclusions in relation to these complaints in comparison.

Disability

33. The Claimant relies on an anxiety and depressive disorder. She claims that she was disabled from 6 August 2015. She further contends that the duty to make reasonable adjustments arose on receipt by the Respondent of her Fit note on 6 August 2015.

34. The Respondent's position is that whilst they concede that the Claimant was a disabled person, they do not concede that she was a disabled person on 6 August 2015, but that she was disabled from 6 August 2016, a year later. Its position is that the Respondent had knowledge of the Claimant's disability from 27 March 2017 from Dr Crosbie from 27 March 2017 following receipt of their medical report.

35. We did not conclude that the Claimant was disabled from 6 August 2015, when

she first presented with stress-related symptoms. Rather, these symptoms appeared to us from the medical evidence, to reflect an adverse reaction to the stressful situation that presented itself in work.

36. That the Claimant did not attend work from that point was not, in our mind, reflective of the impact any condition had on her normal day to day activities, as had been argued by her representative. As the Claimant has maintained she could not return to work until the work-related issues could be resolved. It was the lack of resolution to her satisfaction of work-related issues that impacted on her ability to carry out the activity of going to work, not any impairment she had.

37. We did not consider that the OHA assessment of 28 September 2015 gave any indication, other than the Claimant was still suffering from an adverse reaction to the work-related situation. This was reflected by the OHA confirmation that Claimant was unlikely to return until the work-related issues had been resolved.

38. Even if we are wrong on that, we did not consider that it could be said that it was, at that point in time (or indeed 'always'), unlikely that the work-related issues would be resolved such that any impact on the Claimant would continue for at least 12 months. Indeed, there was every possibility within that first 12 months, from when the Claimant presented as sick, that the grievance outcome could have resolved the matter at any point and the Claimant could have returned to work.

39. This position continued throughout the early part of 2016, with the Claimant presenting Fit notes referring to 'stress-related' problem, until the summer of 2016, when we concluded that the Claimant had, by that stage, developed more deep-rooted depression as reflected in her prescriptive medication in the July of that year.

40. We were satisfied that by August 2016, the Claimant had not been in work for 12 months and was, more likely than not, unable to return due to work at that stage due to more deep rooted depression and symptoms that were presenting as much as the lack of resolution of the work-related matters.

41. By that stage, it could be said that the impact of the Claimant's symptoms on the day to day activity of going to work was such that it had a long term adverse impact on day to day activities and the Claimant was a disabled person from 6 August 2016, being a year from the date that her Fit note was first presented.

42. We accepted the Respondent's arguments that the Respondent would not have been aware of, and could not reasonably have been expected to know, that the Claimant was a disabled person at that point as:

a. The Fit notes presented as stress-related symptoms only;
b. The September 2015 occupational health report indicated that the Claimant could return once 'work-related' issues were resolved and no reasonable adjustments were recommended;
c. The Claimant's FIT note had expired in February 2016, yet the Claimant did not return to work;
d. The Respondents did not know that the Claimant's symptoms had reached the point whereby anti-depressants had been prescribed. There was no suggestion that this had been communicated to the Respondent.

43. In those circumstances we were persuaded that the Respondent would not have knowledge of the Claimant's disability until the receipt of the March 2017 OHA Report from Dr Crosbie.

S.20/21 Failure to make reasonable adjustments

44. We have again set out the Claimant's pleadings in relation to these claims in full to demonstrate the difficulty of the narrative nature of the pleading that we faced and to contextualise the challenges made by the Respondent's Counsel in her Written Submissions that the Claimant had amended her claims to that originally pleaded without permission.

45. We have dealt with time issues at the end of our deliberations.

Para 32.1 (First Claim) and Para 35.1 (Second Claim) – suspension - The Claimant's continued suspension[11] was a PCP which puts the Claimant at a substantial disadvantage as it caused her unnecessary additional stress which has exacerbated her symptoms. Ending her suspension and permitting her to return to her role and job title with no changes to either, would be a reasonable adjustment.

46. The pleaded PCP was that the Claimant was under 'suspension'. Having found that the Claimant was not 'suspended', we concluded that the Respondent did not apply the PCP of 'suspension'. This complained is not well founded and is dismissed.

47. There had been no withdrawal of that pleaded allegation and there has been no application to amend. However, due to the need for finality in the litigation, we have also made conclusions on the alternative complaint, as set out in the Claimant's written submissions, that the:

[1111] From the date of the First Claim, in respect of the pleading in the Second Claim

a. PCP was a '*removal of management responsibilities, without agreement, in response to alleged concerns about C's ability to discharge her manager role effectively'.*
b. the disadvantage to the Claimant was that she was '*caused additional stress following the application of the PCP on 29 July 2015 and this impacted her fitness to work'.*

48. We did not conclude that the Claimant would succeed in any event on the following basis:

    a. The Claimant was not disabled at the point of that removal of duties and/or the Respondent did not know of the disability until March 2017;
    b. We did not accept the Claimant's interpretation of the Occupational Health Report and agreed with the Respondent's interpretation. The September 2015 Report did not in our view make it clear that the stress and absence from work was not solely attributable to perceived work-related stressors.
    c. We were not persuaded of the comparative substantial disadvantage. It could not be said that it was unlikely that a non-disabled person would have suffered that disadvantage;
    d. The offer to reinstate was made in January 2017, prior to the date of the Respondent's knowledge of disability in any event.

49. On that alternative basis, the complaint also is not well founded and is dismissed.

50. With regard to time, whilst we did not find that the complaint well founded in any event, we concluded that the decision to remove such duties was a one-off act with continuing consequences and the limitation period for such a claim expired on 28 October 2015. The Claimant did not take steps to contact ACAS until February 2017 and, despite having union representation throughout this period and knowing she could bring employment related claims, she chose not to do so.

51. However we did consider that it was just and equitable to extend time on the basis that we did not consider that the Respondent would be prejudiced.

PCP Para 32.2 (First Claim) – Working environment - Certain aspects of the Claimant's working environment are a PCP which puts her at a substantial disadvantage. Having to work with a team who the Claimant cannot professionally endorse (due to serious breaches endangering children), who have refused direct instructions to amend their failures, who lied to the WAO

to mask their shortcomings, means that the Claimant would find it impossible to recommend them remaining in her team with Continuing responsibility for the safeguarding of children and would place the Claimant under unnecessary additional stress and would exacerbate her symptoms. Similarly, requiring the Claimant to continue to be line-managed by managers who have demeaned the Claimant in front of other staff, have slandered her and seriously damaged her professional reputation and personal integrity, have claimed her work as their own and have proven to be vengeful and vindictive, would place her under unnecessary additional stress and would exacerbate her symptoms. Making the necessary arrangements to remove/minimise the effect of this PCP, such as giving the Claimant full managerial responsibility to elect and train a fresh team that the Claimant can recommend to schools without compromising her professional integrity and, as initially suggested by the Respondent, transferring Road Safety and the Claimant's line management to a more appropriate directorate such as Children and Young People, would be a reasonable adjustment;

52. The Claimant in the Written Submissions claims that:

    a. the PCP is that the '*Claimant was required to return with working colleagues that had not, as far as she was aware, been held accountable for their role in the failings of Kerbcraft and for the way that C had been treated after raising those concerns'*
    b. The substantial disadvantage is to the Claimant is 'it *placed a particular pressure on her as a disabled person suffering with anxiety and depression to return to work in those circumstances'*. Again the Claimant relies on the September OHA Report.

53. The Respondent in their Written Submissions identified two PCPs from the pleading as being

    a. PCP of 'H*aving to work with a team who C cannot professionally endorse*; and
    b. PCP of '*requiring C to continue being line managed by managers who have demeaned the Claimant in front of other staff, have slandered her and seriously damaged her professional reputation and personal integrity, have claimed her work as their own and have proven to be vengeful and vindictive, would place her under unnecessary additional stress and would exacerbate her symptoms'*

54. We agree with the Respondent, that the PCPs the Claimant relied on in her pleadings were those that had been identified by the Respondent. No application to amend had been made.

55. We dealt with the claim on the basis of the pleaded PCPs.

56. We have dealt with the two PCPs together and concluded that a complaint based on either PCP did not succeed on the following basis:

    a. We did not accept that the Respondent applied the first PCP on the basis set out in the Respondent's submissions (paragraph 192) which we adopted.
    b. We accept that the Respondent applied the second PCP, of requiring the Claimant to be line managed by Paul Keeble, Roger Hoggins and, at least until the restructuring, Mark Davies.
    c. We would repeat our conclusions on the medical evidence presented and again we were not persuaded that the Claimant had suffered a comparative substantial disadvantage. We concluded that it was as likely that the second PCP would cause the same stress, and have the same impact on a non-disabled person who could not work with the Kerbcraft Team and/or line managers. We did not accept that it placed particular pressure on her.
    d. For the reasons given earlier in these written reasons, we did not consider it an unreasonable conclusion, and in turn it would not have been a reasonable adjustment in any event, to dismiss or redeploy Kerbcraft.
    e. Further, we accepted that it would not, in any event, have been a reasonable adjustment to move Kerbcraft into a different directorate for the reasons given by Paul Keeble on cross-examination that is reflected in the Respondent's submissions (paragraph 193).
    f. In any event, by March 2018 the Claimant was accepting that she could work with Paul Keeble. No mention is made of Roger Hoggins and Mark Davies was no longer her line manager. She was offered redeployment that would have meant that she did not have to work for the Kerbcraft Team or be line-managed by Paul Keeble and/pr Roger Hoggins.

57. With regard to the alternative PCP set out in the Claimant's submissions, and for the avoidance of doubt, we concluded that any complaint on this alternative basis would also fail for the following reasons:

    a. The Respondent did not have knowledge of the disability until March 2017 and by that stage Roger Hoggins had investigated her First Grievance.

    b. Whilst we accepted that the Claimant was required from January 2017

to

i. return to working colleagues; and
ii. the Claimant was not aware had been held accountable for their role in the failings of Kerbcraft

again, we were not satisfied that there was a comparative substantial disadvantage with non-disabled persons.

58. We accepted that the complaint was in time on the basis of the Claimant's Written Submissions.

59. This complaint is not well founded however and is dismissed.

Para 32.3 (First Claim) – Delay - Not dealing promptly with the Claimant's grievance was a PCP which put the Claimant at a substantial disadvantage. Reaching a prompt grievance decision would be a reasonable adjustment. Despite having submitted her second formal grievance on 27 October 2017, she has still not received a grievance decision — over 6 months after submitting that grievance. Her grievance appears not to have been prioritised and treated with the importance that it deserved. Throughout this 6 month period, the Claimant causing her unnecessary additional stress which has exacerbated her symptoms. It is particularly relevant that the Respondent was well aware that stress had this effect on the Claimant, given the nature of her disability (mental impairment)

Para 35.3 (Second Claim) - Not dealing promptly with the Claimant's grievance was a PCP which put the Claimant at a substantial disadvantage. Reaching a prompt grievance decision and grievance appeal decision would have been a reasonable adjustment. The Respondent took over 10 months to communicate Its grievance decision to the Claimant In response to her second formal grievance of 27 October 2017. The Respondent also took over 2 months to communicate Its grievance appeal decision in response to her grievance appeal of 4 September 2018. Her grievance appears not to have been prioritised and treated with the importance that it deserved. Throughout this 12 month period. the Claimant had no idea when the grievance process would finally end and the uncertainty about this has resulted in a substantial disadvantage namely. causing her unnecessary additional stress which exacerbated her symptoms. It Is particularly relevant that the Respondent was well aware that stress had this effect on the Claimant. given the nature of her disability (mental Impalrment)

60. It was agreed that the PCP was the practice of delaying the grievance processes.

61. The substantial disadvantage relied on was the stress it caused the Claimant which in turn impacted on her ability to return to work.

62. We were not persuaded that the Respondent operated a PCP of delay in dealing with or reaching grievance decisions. Rather, that on each occasion through the differing reasons, whilst there was a delay, such delays had been explicable and did not amount to a practice. In any event, a significant part of the delay had been occasioned by the Claimant not progressing the grievance from the point of Roger Hoggins' grievance outcome and/or not responding to the three options presented, including the option of an independent investigation, for a substantial period of time. As such it could not be said that it had been a delay through operation of a practice by the Respondent.

63. In any event we were not satisfied that the comparative substantial disadvantage was demonstrated:

    a. We did not conclude that it was unlikely that a non-disabled person would not have suffered the same degrees of stress and/or would have been incapable of working;
    b. We were not persuaded that stress impacted on her returning to work. In turn it could not be said that any such PCP disadvantaged her in the manner suggested. The Claimant did not in fact return to work as she demanded Kerbcraft staff demoted or dismissed which was not forthcoming, and/or later, because she did not accept Mark Hand's grievance decision.
    c. Our conclusions on time in relation to Paragraph 32.1 apply equally here.

64. The complaints are not well founded and are dismissed .

65. We further accepted that this complaint was not brought in time by one day. We have had no detailed submissions on why it would be it would be just and equitable other than it would not have caused prejudice to the Respondent. We agree and for that reason we extend time for this complaint.

Para 35.2 (First Claim)– Changing Occupational Health Adviser - Not acting promptly in response to the Claimant's Occupational Health Physician's report of 3 April 2018 (which recommended, amongst other things, a phased return to work over a 4 week period, commencing on 50% of working hours, gradually increasing over the 4 week period to 100%) was a PCP which put the Claimant at a substantial disadvantage. Not actioning this report promptly, and the uncertainty about when it would be actioned has caused the Claimant unnecessary additional stress which has exacerbated her symptoms. Again, it is particularly relevant that the Respondent was well aware that stress had this effect on the Claimant, given the nature of her disability (mental impairment)

66. We accepted the Respondent had operated a PCP of changing its occupational health provider.

67. We are not persuaded that a disabled person would have suffered a substantial disadvantage as a result of the said PCP in comparison to a non-disabled person in the same circumstances.

68. The fact that the Claimant asserted that it caused her stress did not persuade us of the substantial disadvantage in the context of the fact that the Claimant was fit for work and had not, in fact, been referred to occupational health from the time of the change of provider.

69. Had it reached a point whereby the Claimant had in fact been referred to the new provider, the Respondent may have at that point treated the Claimant/'s concerns differently. She was not and this is then purely speculative.

70. The complaint is out of time but for the reasons set out in the Claimant's Written Submissions, time is extended.

71. The complaint however is not well-founded and is dismissed.

Para 35.5 – (Second Claim) – not delaying reaching any decision as to the Claimant's continued employment until after the Respondent had consulted with the Claimant following notification of the grievance appeal outcome was a PCP which put the Claimant at a substantial disadvantage. Delaying reaching any decision as to the Claimant's continued employment until after the Respondent had consulted with the Claimant following notification of the grievance appeal outcome would have been a reasonable adjustment. This was particularly important given that (I) the Claimant had been kept away from the office. effectively suspended at home. for 40 months by the time she was notified of the grievance appeal outcome; (ii) Tracey Harry had previously promised to meet with the Claimant. once the Paul Beynon investigation had been completed and once they had both had time to digest the information in his report. but that no such meeting had ever been convened by Tracey Harry. Further despite Tracey Harry offering the Claimant "support" 'to enable a smooth return to the workplace with ongoing support provided to ensure positive working relationships would be maintained'. no such support materiallsed. This was evidenced by the fact that the Claimant was dismissed within only 2 days of being informed of the grievance appeal outcome and without any further consultation in between. in the circumstances. it was neither fair nor reasonable to do so. particularly given the nature of the Claimant's disability (anxiety and depression)

72. The PCP claimed was '*not delaying a decision as to continued employment until after the Respondent had consulted with the Claimant following notification of the grievance appeal outcome'*

73. The substantial disadvantage claimed in the written submissions which was not

pleaded was that this had left the Claimant '*devastated by this treatment, which exacerbated her depression and led to an increase in her dosage of anti-depressants'.*

74. Again, there is a disparity between the pleaded case and what the Claimant now says is her complaint through the Written Submissions. We have dealt with both.

75. The Respondent's submission is that the pleaded disadvantage arose because of the matters referred to at (i) and (ii) in the paragraph 35.5 of the ET1 Grounds of Complaint. We agree and have dealt with the pleaded case first.

76. The reasonable adjustment suggested was that Tracey Harry should have met with the Claimant to discuss the grievance appeal outcome before determining whether the Claimant should have been dismissed.

77. We did not accept that the PCP caused a substantial disadvantage to the Claimant on either disadvantage (i) or (ii) on a comparative basis for the reasons already provided earlier in these conclusions and on that basis the complaint fails.

78. Similarly, we concluded that it would be likely that any employee would be left 'devastated' with the decision to terminate without further discussion and again we were not persuaded that a disabled person would have suffered a substantial disadvantage as a result of the said PCP in comparison to a non-disabled person in the same circumstances

79. The complaint is brought in time for the reasons set out in the Claimant's Written Submissions but is not well-founded and is dismissed.

Para 35.8 - (Second Claim) - since 29 July 2015 the Claimant had been isolated from her normal place of work and from her work colleagues and had seen no evidence of which, if any, of the requested reasonable adjustments and pro-conditions for her return to work had already been made and which remained to be made. This was a PCP which put the Claimant at a substantial disadvantage. Accordingly. in her email to Tracey Harry of 14 September 2018. the Claimant requested proof. as far as possible. of the reasonable adjustments that the Respondent said it had already made. Provision of such proof would itself have amounted to a reasonable adjustment. given the nature of the Claimant's disability and the fact that she was not present in the office or in touch with any colleagues to satisfy herself that any reasonable adjustments had actually been made. The Claimant's request for such proof was understandable. given that **the Respondent had refused to even admit that the Claimant was disabled until 2 days before she was dismissed and given that Julie Anthony had told the Claimant on 19 June 2018 that she was unaware of any reasonable adjustments having been made. The failure to provide the Claimant with such proof amounted to a failure to make a reasonable adjustment:**

80. The PCP pleaded is that 'the Claimant had been isolated from her normal place of work

and from her work colleagues and had seen no evidence of which, if any, of the requested reasonable adjustments and pro-conditions for her return to work had already been made and which remained to be made'.

81. The pleaded reasonable adjustment claimed is 'proof' of the 'reasonable adjustments'. We took this to mean the 12 pre-conditions.

82. The Claimant's Written Submissions refer to the Claimant not knowing what a return to work would look like and that the PCP was:

    a. a failure to '…..*discuss C's proposed role and job description with her…*' and

    b. a failure to '…… *demonstrate or provide evidence to show how Kerbcraft would operate within safeguarding requirements once she returned to her manager role*.

83. Again, the aggravated anxiety is stated to be the substantial disadvantage.

84. Again, we agreed with the Respondent that the Claimant's Written Submissions did not reflect the pleaded case and we turned first of all to the pleaded case.

85. We did not conclude that the Respondent had operated a PCP of isolating the Claimant. The Claimant had not returned to work for a variety of reasons largely borne out of the Claimant's mental and emotional state, but also because the Claimant refused to return until the pre-conditions were to her satisfaction. The Respondent had agreed to all other pre-conditions save for the removal of Kerbcraft employees and/or moving the Claimant to a different directorate. We do not conclude that all the pre-conditions were reasonable in any event for reasons already given.

86. The Respondent repeatedly sought get the Claimant back into work and as such it could not be said that the Respondent applied either a PCP of isolating the Claimant or failing to demonstrate or provide evidence to show how Kerbcraft would operate.

87. It has not been established that the Respondent had operated a PCP as pleaded. The complaint is not well-founded and fails.

88. On the basis of the alternative complaint, submitted by the Claimant, that too fails for the following reason:

    a. There was no failure to discuss role or job description. This was not a

PCP that was operated by the Respondent;

b. Our conclusions above apply in relation to the second PCP. There was no PCP operated by the Respondent. Had the Claimant attended work there would likely that have been demonstration and evidence to show how Kerbcraft would operate. That the Claimant did not attend work, resulted in the Respondent not getting to the point that this had been discussed. There had been no failure as such by the Respondent and no operation of this PCP.

89. The complaint was presented in time for the reason set out in the Claimant's Written Submissions but is not well-founded and is dismissed.

Para 35.10 – (Second Claim) - conveying the dismissal decision by email and not in person was a PCP which put the Claimant at a substantial disadvantage. it would have been a reasonable adjustment to have conveyed the dismissal decision In person. rather than simply by email. This is because the Respondent knew full well about the nature and effect of the Claimant's disability. it knew that the Claimant was willing and able to attend meetings with the Respondent in relation to her return to work. but it failed to recognize that for someone with the Claimant's disability (anxiety and depression). to receive notice of dismissal by email. without any prior warnlng or meeting to soften the impact. would impact much harder on them than on an employee who was not disabled or not similarly disabled. The Respondent ought to have realised that receiving notice of dismissal In this way was highly likely to exacerbate the Claimant's mental health condition. We are instructed that the Claimant was devastated by the news of her dismissal and the way in which It was conveyed to her by email and had to visit her GP again who significantly increased the dosage of her anti-depressant medication

90. The PCP is conveying the notice of termination by email.

91. The substantive disadvantage claimed is that the manner was 'devastating' impact on the Claimant and her medication was increased.

92. We accepted that this was a PCP that was capable of being applied to all employees. We were not persuaded that the comparative substantial disadvantage had been demonstrated. We concluded that the impact on any non-disabled employee in the same circumstances were likely to have been the same.

93. We were not persuaded that it could be said that the Respondent knew or be expected to know that the Claimant was likely to be placed at the relative disadvantage asserted.

94. The complaint has been brought in time for the reasons set out in the Claimant's Written Submissions but is not well founded and is dismissed.

S.15 EqA 2010 – Discrimination arising from disability

95. The unfavourable treatment claimed is dismissal, and the 'something arising' claimed is that the Claimant did not return to work (see paragraph 285 Claimant's Written Submissions).

96. We did not conclude that the 'something arising' was in consequence of the Claimant's disability however. Whilst the Claimant did not return to work, this was because she refused to do so, particularly in light of the Respondent's resistance and refusal to redeploy Kerbcraft staff (which we did not conclude would have been a reasonable adjustment in any event). It was in consequence of the Claimant's refusal to return as a result of that and the resulting 'impasse', that caused the dismissal.

97. In any event, if we are wrong in our formulation of that s.15 EqA 2020 claim, we concluded that dismissal was an appropriate and reasonably necessary way to deal with the Claimant's absence from work at that point and we did not see, in light of the Claimant's refusal to consider redeployment herself, how anything less discriminatory could have been done instead to balance the needs of the Claimant and the Respondent.

98. The complaint is not well-founded and is dismissed.

s.27 EQA 2010 - Victimisation

99. The Claimant did a 'protected act' by issuing the First Claim and the Claimant was later dismissed. The submissions indicate that the Claimant is relying on dismissal and not the detriments pleaded in the Second Claim.

100. The Claimant relies on absence of reasonable grounds to dismiss, as well as the decision by Tracey Harry not to meet to discuss and dismiss by email. We are invited to draw an adverse inference. We do not for the reasons already given in this Judgment.

101. We had found that the Respondent had established a fair reason for dismissal and had not, for the avoidance of doubt, concluded that the Claimant's detriment complaints in the Second Claim were well founded.

102. We concluded that this complaint was brought in time on that basis but is not well founded and is dismissed.

S.13 ERA 1996 - Unlawful deductions

103. For the reasons provided earlier in this Judgment, we concluded that the Claimant was paid such sums that she was contractually entitled to and/or were properly payable in the circumstances of our conclusions on the reasonable adjustments claims.

104. The Claimant received her contractual entitlement to her sick pay at the agreed full rate until reduction to half rate and eventual nil rate. She received the discretionary pay on the basis agreed and for the period communicated to her by Tracey Harry.

105. The complaint was brought in time but the Respondent did not make unauthorised deductions from the Claimant's wages.

106. The Claimant's complaint was not well-founded and is dismissed.

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Employment Judge R Brace
Dated: 21 December 2020

JUDGMENT SENT TO THE PARTIES ON 22 December 2020

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS