



EMPLOYMENT TRIBUNALS

Claimant: Miss Rose Southam

Respondent: Berkshire Healthcare NHS Foundation Trust

Heard at: Reading **On: 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29 and 30 March 2023**

Before: Employment Judge Gumbiti-Zimuto
Tribunal Members: Mr A Kapur and Mrs B Osborne

Appearances

For the Claimant: In Person

For the Respondent: Mr A Allen, KC

RESERVED JUDGMENT

The claimant's complaints are not well founded and are dismissed.

REASONS

Introduction

1. In a claim form presented on the 14 June 2019 the claimant made complaints of Unfair Constructive Dismissal (section 98 ERA 1996), Automatic Unfair Constructive Dismissal where the reason (or, if more than one, the principal reason) for the dismissal is that the claimant made a protected disclosure (section 103A ERA 1996) and Detriment on the ground that the claimant has made a protected disclosure (section 47B ERA 1996). The respondent defends the claim.
2. The claimant gave evidence in support of her own case. The respondent relied on the evidence of employees and former employees, Sharon Andrews, Elizabeth Chapman, John Daniels, Julian Emms, Daniel Groves, Gotham Guggilapu, Simon Hawkins, Amber Hiron, Heidi Ilsey, Deborah Luff, Trevor Lyalle, Allyson Maciw, Raja Natarajan, Stuart Overhill, Rose Psyllos, Allison Rees, Debra Simmons, Martin Sloan, Rozeena Toheed, Elaine Williams and Susan White. Lorraine Turnell gave evidence pursuant to a witness order. The Tribunal was also provided with a Trial bundle of documents containing 1792

pages of documents. From these sources we made findings of fact, set out below, which we considered necessary to decide the issues in the case.

3. The claimant has set out in her further particulars a large number of instances when she says disclosures were made, she alleges that some disclosures were made on multiple occasions. Her witness statement has not dealt with some instances of alleged disclosure being made so that it is clearly set out what is alleged to have been said or written by the claimant. The claimant seeks to make good this deficiency in her oral evidence by the declaration that in so far as she set out any matter in her further particulars, she relies upon it in her evidence. The difficulty that presents for the claimant is that in some instances she had no specific evidence about an event or matter other than the assertion in her further particulars, or if she has been questioned on the point the evidence she gives in answer to questions. Additionally, much of the evidence given by a number of the respondent's witnesses was not challenged during questioning by the claimant. Where it is clear that the claimant puts forward evidence that presents a challenge to some aspect of the respondent's case we do not treat it as unchallenged simply because it was not contested by the claimant in her questioning. However, in respect of those parts of the evidence where there is only one side the fact that the claimant contests something does not necessarily allow us to make a positive alternative finding due to the absence of evidence.
4. The section 94 of the Employment Rights Act 1996 (ERA) states that an employee has the right not to be unfairly dismissed.
5. Dismissal is defined in section 95 ERA, which includes where the employee terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate it without notice by reason of the employer's conduct, constructive dismissal.
6. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment.
7. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee, this is "the implied term of trust and confidence".
8. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract. The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.
9. The test of whether there has been a breach of the implied term of trust and confidence is objective.
10. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents.
11. Section 98(1) sets out that in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is a potentially reason as provided in section 98(2) or some other substantial reason. Where the

employer has fulfilled the requirements of section 98(1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.

12. Section 103A ERA 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.
13. The meaning of protected disclosure is set out in section 43A- 43H ERA.
14. To be a protected disclosure, the disclosure must satisfy three conditions. It must be a qualifying disclosure, one that, in the reasonable belief of the worker making it, is made in the public interest and tends to show that one or more of the six relevant failures has occurred or is likely to occur. It must be made, as relevant to this case, to the employer.
15. Section 47B ERA provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act by her employer done on the ground that the worker has made a protected disclosure.

The Backgrounds Facts

16. The claimant commenced employment with the respondent on 24 August 2015, initially as a Bank Administrator and then from January 2017 until her employment ended as a Lead Referral Coordinator. The claimant worked in the Integrated Care Team (ICT) in Wokingham.
17. The ICT supports patients in the community who have been discharged from local acute or community hospitals, and also referred from local GP and other health and social care teams. These patients normally need short term rehabilitation involving care and treatment by Physiotherapists, Occupational Therapists and Therapy Assistants. The ICT team also see patients in the community who have fallen, or who have shoulder or knee pain: again Physiotherapists and Occupational Therapists provide this support.
18. As a Lead Referral Coordinator, the claimant's role was a triage coordinator / clinical administration role. The claimant would see Community Physiotherapy and Falls referrals come in from the Hub (the main triage centre): she collected information on where the patient was coming from and allocated them to different clinicians into appropriate patient slots.
19. In June 2017 Mr Guggilapu, the claimant's line manager, carried out the claimant's appraisal. Mr Guggilapu's comments on the claimant's performance included the statement that the claimant *"had been in this team for nearly 5 months and has been delivering effective clinical triaging"*. In November 2017 Mr Guggilapu carried out an interim appraisal of the claimant and on this occasion, he commented that the claimant *"has been delivering Objective 1 with great success"*, he further stated that in delivering her objective 2 she was *"saving valuable time and resources"*, in delivering her objective 3 she was *"closely working with social services... to achieve effective and timely"*

intervention". The claimant herself describes how she "received excellent feedback from Clinical managers. Locality directors and West Berkshire CCGS Quality Assurance and Safeguarding Team".

20. In the Autumn 2017, the ICT advertised, internally and externally on the NHS jobs website, for a Lead Care Coordinator, a band 5 role. Among the applicants were the claimant and her colleague Allyson Maciw: for the successful candidate the role was a promotion. The recruitment process involved a competitive selection process, involving a Values based interview which aims to eliminate unconscious bias. Mr Guggilapu and Martin Sloan (Head of Service) interviewed a total of four candidates for the role. Ms Maciw achieved the highest score at interview and was offered the role which she accepted. The claimant had the second highest score: she marginally missed being appointed. There were two external candidates who scored lower than the claimant and were also not appointed.
21. On 1 December 2017, the claimant informed Elaine Williams, the Freedom to Speak Up Guardian (Guardian), that she was interested in being a Freedom To Speak Up Champion (Champion). The claimant set out an Expression of Interest in the role of Champion to Ms Williams in an email dated 4 December 2017.
22. The Guardian is intended to be someone who is independent and impartial; who can ensure that the focus is on the safety issue that has been raised, who can make sure that it is properly investigated and addressed if appropriate; and who can ensure that there are no repercussions for the person who drew attention to it. The purpose of the Champion role is to raise the awareness of employees across the Trust about being able to speak up about concerns / wrongdoings in the Trust. There is a dispute between the claimant and the respondent as to when she was appointed a Champion, the claimant says it was following her meeting with Ms Williams in December 2017, the respondent states that it was not until about May/June 2018 that the claimant became a Champion. There is no clear evidence to show who is right and who is wrong on this issue however, the Tribunal consider that it is more likely than not that the claimant was appointed a Champion around May/June 2018 because Ms Williams, the Guardian, refers to the claimant being provided with a "lovely reference" for the Champion role by Mr Guggilapu in an email dated 4 June 2018, there is also reference to FTSU Training in emails sent between the claimant and Ms Williams on the same date.
23. On 4 December 2017 the claimant was sent an email by Mr Guggilapu about the role of Fire Marshal (or Fire Warden as it also referred to). The email read as follows:

"Currently we are looking for a fire marshal from our team and ideally who is office based, enthusiastic and someone with real ability to save people. Fire marshal is responsible for safe evacuation of staff members out of the building in case of fire and co-ordinate the evacuation with other marshals. You will have training for this and will have support from 2 other fire marshals from this floor, one from the START team

and other from the HUB. Please let me know if you're keen to volunteer for this role.
Thank you."

The claimant applied for the role and was appointed a Fire Marshal.

24. In January 2018 the claimant, on the first Wednesday of every month, agreed to help with the patient safety thermometer: this involved the claimant inputting data on to the eHealth System from patient safety thermometer cards completed by staff following their morning visits.
25. The claimant volunteered to help undertaking work in respect of Medical Device Inventory in July 2018, at the time that she volunteered the claimant had been saying that she did not have enough work.
26. On the 1 December 2017, the claimant met with Trevor Lyalle, the Patient Advice and Liaison Service (PALS) Manager and raised some concerns about the Intermediate Care Team referrals not being actioned and that she felt unable to raise issues with her line manager. It was arranged that the claimant speak with Ms Williams on 8 December 2017. On 14 December 2017 the claimant sent an email to Ms Williams attaching a note setting out some of the matters that the claimant discussed with Ms Williams (p581).
27. On 05 January 2018 the claimant met with Ms Williams and Mr Sloan. The purpose of the meeting was to discuss the claimant's list of patient safety concerns. The meeting lasted over an hour. Mr Sloan went through each of the claimant's concerns discussing the issues with the claimant. Mr Sloan has no recollection of the detail of the meeting, Ms Williams states that at the end of the meeting the claimant was satisfied by what she had been told. The claimant however is more critical about the meeting. The claimant says that Mr Sloan refused to accept that the concerns were genuine; that nothing could be done because there were no additional resources available and that some of the concerns were "already being "addressed"; the claimant says that the issues raised were being 'swept under the carpet'; that no action was taken, and there was no follow up by Ms Williams, despite the claimant reminding her on several occasions.
28. The Tribunal note that there is no contemporaneous record of the claimant's unfavourable impression of the meeting or any evidence of the claimant chasing up anything arising from the meeting or making any complaint about the meeting. There is an email exchange between the claimant and Ms Williams in which the claimant expresses satisfaction with the outcome of "*our recent discussion*", but it is not clear whether this is a reference to the meeting on the 5 January or another discussion with Ms Williams. In answer to questions by the claimant Mr Sloan stated that he would have dealt with any concerns that were raised with him, he would have expected his managers such as Mr Guggilapu or Ms Andrew to deal with specific issues. Mr Sloan stated that he would have welcomed people raising issues as that allows him to improve the service, he denied that he would have subjected the claimant to a detriment because she raised concerns and pointed out that the concerns that the

claimant was raising would in many instances be concerns, he was already aware of because other people would have also been raising concerns. The claimant did not specifically address the meeting on 5 January 2018 in her questions for Mr Sloan. The conclusion of the Tribunal is that at the time the meeting took place the claimant did not express complaint about the way that the meeting on 5 January 2018 was dealt with by Mr Sloan, we consider that it is more likely than not that as Ms Williams stated in her evidence that the claimant expressed satisfaction with the way that the meeting went on the 5 January 2018.

29. On 13 April 2018 a meeting took place which the claimant refers to as a "*WISH Team-Review meeting of current issues*". The claimant says that the purpose this meeting was to discuss safety concerns raised anonymously by staff and to decide a way forward. Ms Andrews gives a different explanation. She says the purpose of the meeting was to review the progress from the meeting held on 23 March 2018 where Ms Andrews, Mr Guggilapu, and others had met to discuss a variety of issues. The meeting on 23 March gave rise to a number of actions and the 13 April meeting was a catch-up meeting to discuss progress. Ms Andrews denies that the meeting was a "*patient safety crisis meeting*". Mr Guggilapu's evidence supports the evidence of Ms Andrews as to the purpose of the meeting, he did not attend the 13 April meeting. In questioning Ms Andrews the claimant did not challenge her explanation about the nature of the meeting and what was discussed. We note however that the claimant's witness statement and the account given by Ms Andrews in some respects do not match. The fact that the meeting took place is not disputed, the meeting took place several years ago now, the way that the claimant and other witness recall the meeting in our view is likely to be significantly affected by the position they seek to advance today rather than any specific recollection of what took place.
30. On 10 May 2018 a Quality Assurance Observational Visit was carried on the Community Falls Team by the Berkshire West Clinical Commissioning Group (CCG). The CCG decided to visit the service to see how the team was delivering care: there were no quality or performance concerns about the service. One of the standard questions the CCG ask during such a visit is whether the organisation has an effective whistleblowing policy. The claimant, in front of the members of her team who were present, told the CCG team that she had blown the whistle and her concerns had been managed effectively. The claimant did not raise concerns during the inspection visit.
31. When Ms Maciw became responsible for the claimant's supervision and appraisals it was agreed that Ms Maciw would carry out the claimant's 1 to 1 supervision every 6 weeks. This in fact did not happen in practice. The claimant and Ms Maciw sat opposite each other and the claimant was able to raise matters with Ms Maciw as they arose. On some occasion when 1 to 1 supervision session should have taken place they did not because Ms Maciw's work load did not allow on other occasions the claimant indicated that she did not wish to have one.
32. A formal 1 to 1 supervision session did take place on 24 October 2018 the claimant and Ms Maciw discussed mobile phone use. The notes of the

supervision session include the following:

Mobile phone – We have discussed frequency of use during work time. It is understood that it is required in case of calls from school etc. I have requested that you are considerate about use of mobile phone. It was explained phone is required for Freedom to speak up.

The claimant explained that she was not provided with a work phone and that her personal details including her personal telephone number and email address were registered on the NGO database. The claimant received calls on her personal phone in respect of her role as a Champion.

33. Ms Maciw states that the claimant appeared to be on her personal mobile phone in the office a lot making or receiving several calls a day and that it was impacting on her working day. Ms Maciw felt that this was excessive. Ms Maciw asked the claimant to try not to be on her phone unless something was urgent. The claimant told her that sometimes the calls related to her role as a Champion. Ms Maciw stated that she did not criticise the claimant and tell her off for her mobile phone use, but had simply asked her to be mindful how much she was on her personal mobile phone in the office.
34. Where the respondent has a gap in resources this is filled by “Bank” workers through NHS Professionals. Many of the respondent’s employees are also registered with NHS Professionals so that they can carry out additional shifts at the Trust via NHS Professionals.
35. The claimant did not pick up shifts through NHS Professionals to cover ICT while she did pick up shifts elsewhere within the respondent Trust. There was evidence produced during the hearing of the claimant working one bank shift with the ICT.
36. Mr Guggilapu contests the claimant’s evidence stating that staff can only do an NHS Professionals shift if there is work available which justifies the use of a casual worker to cover it. The claimant did not do as many shifts as Ms Maciw because the work available was such that Ms Maciw was the only one with the correct skill set to do the work required and she did this work through NHS Professional while on annual leave from her substantive post.
37. The respondent’s staff were to be subject to an annual appraisal and a mid-year review as part of the appraisal process. The annual appraisal was mandatory the mid-year review is not. On taking on the role of Lead Care Coordinator Ms Maciw took over the responsibility of carrying out the claimant’s appraisal.
38. Ms Maciw carried out the claimant’s appraisal in June 2018. The claimant’s performance was assessed as largely meeting expectations. This was the only time that Ms Maciw carried out the claimant’s appraisal. The claimant was not appraised in June 2019 because she had left the respondent. Ms Maciw did not do a 6 monthly review (or interim appraisal) with the claimant in December 2018. Ms Maciw explains that at that time the claimant was refusing to meet

with her.

39. On 14 December 2018 the claimant attended a Freedom to Speak Up Information Session organised by the National Guardian's Office the aim of which was to provide an understanding of the background and expectation of the Guardian role and to provide people in different organisations an opportunity "to meet up and buddy up".
40. On 23 January 2019 the claimant made an application for secondment to the role of Complaint Manger. She completed an expression of interest form and sent her CV to Elizabeth Chapman. Ms Chapman replied to the claimant on the 25 January 2019 thanking her for expressing an interest in the role and telling her that she was *"looking at 4 February to invite people in for an informal interview and chat about the role"*. To which the claimant replied that she was *"flexible and can do either morning or afternoon"*, resulting in a further response from Ms Chapman in which she stated that *"it will be in the morning between 9am and 12.30. I will confirm with you on Thursday if that is ok"*.
41. On 31 January 2019 the claimant sent an email to Catherine Kirkham, Team Manager for Intermediate Care Services and also a Champion, in which she sought advice in respect of an encounter she had with a former member of staff who had applied for a role with the respondent, been verbally offered the role and then had the offer withdrawn because of a bad reference. The claimant explained how the individual had made a comment which was possibly just a joke but contained a veiled threat to the manager who had given the reference. Ms Kirkham's response included the suggestion that the claimant should inform the Guardian about the incident.
42. The claimant spoke with the Guardian about the incident. The Guardian told the claimant it was not the role of the Guardian or the Champion to investigate the matter. The Guardian stated that she would inform Recruitment and the Risk and Safety Manager of the issue, and they would pick it up through their respective roles and subsequently did so.
43. On the 31 January 2019 the claimant sent the following email to the NGO:
- "I am a freedom to speak up champion and has (*sic*) been for the last 18 Months, the problem is there are just so many problems with my trust that it is overwhelming, so many patients being put at risk and its happening everyday. It is not easy to be a freedom to speak up champion as there is also so many barriers. The freedom to speak up guardian has resigned and I am resigning too."
- The claimant informed the Guardian that she wished to step down from being a Champion. The Guardian forwarded the claimant's email to Mr Guggilapu. The claimant also informed Mr Guggilapu that she was stepping down as a Champion.
44. On the 1 February 2019 the claimant completed a "Raising a concern record sheet" in respect of patient AJ. The document was emailed to the Guardian who

replied by asking, “*is this a concern you are raising? Can you speak to Gowtham?*” To which the claimant replied, “this is a concern”.

45. On 1 February 2019 Ms Chapman wrote to the claimant and told her she would not be inviting the claimant for an interview for the secondment to the Complaint Manager position. The change in attitude to the claimant’s application is explained by Ms Chapman in her witness statements as follows:

“At some point between 25 January 2019 and 1 February 2019, I was working in the same room at the Trust as a colleague, Jane Summers. I had known Miss Summers a long time: she had previously worked for the CCG but at the beginning of 2019 she was working for the Trust as Assistant Patient Safety & Compliance Manager. Miss Summers mentioned to me that she was looking to leave her role in the Patient Safety team and she had seen the advertisement for the Complaints Manager role: Miss Summers said she could be available for the secondment and would be able to hit the ground running. This was because Miss Summers had literally done the Complaints Manager role at the Trust before. A few years previously, in 2014, the Complaints Manager role had been vacant for a few months (the substantive post holder was on long term sick leave for about 11 months), then was on a phased return when she came back to work: during that phased return from 11 March 2014 to June 2014 Miss Summers covered the Complaints Manager role for two days per week an agency worker. Prior to that, Miss Summers had also undertaken the Complaints Manager role from December 2012 until 2013: at that time, Miss Summers had undertaken the role on an interim basis because the Complaints Manager had taken early retirement on 13 December 2012 and the Trust had not yet recruited a replacement. In short, Miss Summers was very experienced in the role (she had also previously been the Complaints Manager for Berkshire East), knew how we worked in the department and I had confidence that she was proficient in the style of writing used in patient experience roles.”

Despite indicating to the claimant, a date and time for a potential interview and then entirely failing to follow a fair and objective assessment process for the role of Complaint Manager Ms Chapman states that the claimant “*was not appointable due to a lack of essential experience*”. The claimant set out that she was a Champion in her CV, however Ms Chapman denies that she was aware of the claimant’s alleged protected disclosures and we find that there is no evidence that the claimant’s alleged protected disclosure were known to Ms Chapman.

46. On 5 February 2019 Lorraine Turnell, of the NGO, spoke to the claimant about her emails of the 31 January 2019 to the NGO. Ms Turnell recalls the conversation as a “very brief call” in which matters were spoken about in very general terms about the claimant’s belief that there were risks to patients, and the lack of support from the respondent. It was agreed that the claimant would email Ms Turnell. On the following day the claimant wrote to Ms Turnell, at 19:22, in the following terms:

“Today I have been harassed left right and centre via email by my manager and our freedom to speak up guardian Elaine who has also handed in her resignation as a freedom to speak up guardian for BHFT. I am preparing a document which I will share with you soon as I have finished putting it together.”

47. At 15:48 the Guardian sent an email to Ms Turnell. The email read as follows:

“I believe one the champions (who resigned last week) has been in contact with you. Can you call me please?”

Ms Turnell then went on annual leave, Sam Bereket from the NGO called the Guardian, Ms Williams, and discussed the situation.

48. The respondent has “status exchange meetings”. These are monthly meetings attended by Ms Williams, in her capacity as Guardian, the Chief Executive and Executive Directors responsible for patient safety, whistleblowing and HR, respectively. The meeting has a twofold purpose, to ensure coordinated action is taken in response to concerns raised and to do “*a monthly temperature check and to help ... spot trends and issues relating to a team or service*”. The information is usually discussed on an anonymised basis. There are no formal minutes of the meetings. A status exchange meeting took place on the 5 February 2019, during that meeting the claimant was mentioned by Ms Williams. Ms Williams sent an email to the Chief Executive and to the Director of Strategy and Corporate Affairs on 6 February 2019. Ms Williams advised that the claimant had contacted the National Guardian’s Office and queried if there was an issue about her, as Guardian, she was not sure whether there was any guidance on how to deal with that situation and offered them copies of the correspondence she had had with the claimant’s line manager. Mr Emms viewed this as Ms Williams seeking support from senior management.

49. On 5 February 2019 Mr Guggilapu and the claimant had a meeting in which she raised a number of issues. The claimant said that she had stepped down from her role as Champion and had investigations to complete that could not be handed over. The claimant said that she was not happy with part of her recent appraisal that was about use of her personal mobile phone. The claimant said that it had been reported that Mr Guggilapu did not like being challenged. The claimant raised an issue about a patient AJ. The claimant also raised an issue about being approached by a colleague to report a printer problem.

50. The following day Mr Guggilapu did a number of things arising from his meeting with the claimant. He sent the claimant an email summarising the matters raised at the meeting Mr Guggilapu contacted Amber Hiron and Dan Groves about patient AJ asking for information so that he could respond to any complaint. Mr Guggilapu contacted Ms Williams by email and summarised the issues the claimant had raised about her investigations as Champion, and about the use of the claimant’s her personal mobile phone.

51. In an email responding to Mr Guggilapu, Ms Williams explained that as a champion the claimant was not involved in investigations, her role as a

Champion is to raise awareness and to pass on concerns to Ms Williams as Guardian. Ms Williams stated that she did not advise Champions to use their personal mobile for business purposes. Mr Guggilapu and Ms Williams agreed that they should have a meeting with the claimant.

52. When the invitation to a meeting was extended to the claimant her response was to reject the offer of a meeting because, she said, *"I have had a lot of problems as freedom to speak up champion and do not wish to re-visit or discuss anything to do with it, hence the reason why I decided to step down."* On receiving the claimant's email Ms Williams responded to the claimant saying, *"I am sorry to hear that you have had a lot of problems with your champion role. This is the first time you have mentioned this to me. I don't understand what is pending, can you let me know what this [is] please?"* The claimant's reply was that she had a long list of things pending *"as I had to gather evidence ... to prove them... All of this are where patients have been put at risk."* Ms Williams replied to the claimant explaining that the claimant should not be *"handling cases"* and stating that her role as Champion *"is to raise awareness of FTSU and to signpost to me."* It was around the time of this exchange with the claimant that Ms Williams sent her email, referred to above, to the Mr Emms and Ms Searle.

53. The claimant's email exchange with Ms Williams was copied to Mr Guggilapu and on seeing the reference to patients being at risk he asked the claimant if the patients were from their service and asked if he could meet up with the claimant to discuss "tomorrow", i.e. 7 February 2019. The claimant's response included the following passage:

"Now Gowtham, I had raised a lot issues with you which were ignored and I remember you telling me thank you for raising this issues because I was not aware of them. After that it was all wiped under the carpet and I continued raising issues with you. I got to [a point] whereby I had to forward the issues to PAL and then to Freedom to speak up guardian. We still have this issues, the saddest part Gowtham is that I have lost faith in raising issues."

54. On receiving the claimant's email Mr Guggilapu responded in an email sent at 18:22 and reiterated his wish to meet with the claimant to discuss the issues and making further comment on some of the matters that the claimant had raised.

55. The claimant has described the 6 February was day when a lot of things were going on and an occasion when she was being harassed from all sides by Mr Guggilapu and Ms Williams. On 6 February 2019 the claimant had arrived for work late because she had visited a colleague who was terminally ill. The claimant contends that she was told off by Ms Maciw for arriving late for work. Ms Maciw says that the claimant did not attend work at 9 am as expected so she called her to find out where the claimant was and when the claimant explained the position she told her that she could have asked for permission.

56. There was also an invitation extended to the claimant to attend a meeting with

Mr Guggilapu on 7 February 2019. The claimant denies that the meeting took place: Mr Guggilapu says that the meeting did take place. The parties agree that the claimant was invited to attend a meeting with Mr Guggilapu and Ms Williams on 11 February 2019 which invitation the claimant again declined.

57. Mr Guggilapu states that he approached the claimant at her desk to remind her that they had a meeting in twenty minutes, when the claimant said she was unaware of the meeting the claimant said she was ready there and then to have a meeting and they went into the WISH room. The claimant denies this took place.
58. Mr Guggilapu produced an email which he sent to Ms White on 7 February 2019 this email sets out the notes of the meeting that Mr Guggilapu claims took place. The email was also copied to Reva Stewart who is the Locality Director.
59. Mr Guggilapu's account of the meeting is that the claimant said that she felt she was being harassed by Mr Guggilapu and Ms Williams. When Mr Guggilapu asked the claimant to tell him what her patient safety concerns were, her response was that they had already been addressed, the claimant said that she had raised concerns with and Mr Guggilapu and he had refused to help. Mr Guggilapu says that the claimant refused to repeat her concerns, of which he claims he was unaware. Mr Guggilapu says that after the meeting had ended the claimant showed him an email she had sent to Ms Williams in April 2018 which referred to a list of problems. Mr Guggilapu states that the claimant did not show him an actual list of problems. Mr Guggilapu says that the claimant also said to him: "*Do you know what the problem is? The problem is you.*" Mr Guggilapu alleges that throughout these exchanges the claimant spoke to him in a high tone or a raised voice, and her behaviour towards him made him feel "*increasingly uncomfortable*".
60. The claimant says that the meeting was not possible because she was busy the whole day and there would be no time for the meeting to take place. The respondent says that the meeting was relatively brief and when trying to recreate the claimant's chronology of the day there is a window of time when the meeting could have taken place as alleged by Mr Guggilapu.
61. The Tribunal's conclusion is that there was contact between the claimant and Mr Guggilapu on the 7 February 2019. The exchange described by Mr Guggilapu as having taken place on that particular occasion in our view seems to chime with the claimant's general evidence about what transpired between the claimant and Mr Guggilapu. We are satisfied that it is more likely than not that there was an engagement between Mr Guggilapu and the claimant as he alleges, it may not now be recalled by the claimant as a meeting, and it may not have been perceived as such by the claimant at the time but we are satisfied that the encounter occurred and there was a discussion of the type of issues mentioned by the claimant.
62. Patient AJ was a referral to the ICT who had been rejected for community physiotherapy, the claimant had been asked by the physiotherapist, Ms Hirons, to let Patient AJ know she had been refused. The claimant had raised this with

Mr Guggilapu and he had in turn raised it with Ms Hirons and Mr Groves. On 8 February 2019 the claimant and Ms Hirons spoke about patient AJ and the issues arising. There is a discrepancy between Ms Hirons' account and the claimant's account of what happened. Ms Hirons says that she explained to the claimant that she wanted the claimant to be able to come to her if she felt that she did not want to do something she had been asked to by Ms Hirons, the conversation was "*calm and straight forward; it was not confrontational at all*".

63. The claimant's account of the incident is that Ms Hirons aggressively confronted her and asked her why she had reported her to PALS and the higher powers. The claimant's evidence is that Ms Hirons explained to her that Mr Guggilapu had said to Ms Hirons and others to "*watch out as the claimant was reporting to higher powers and PAL.*" The claimant was sufficiently concerned about her conversation with Ms Hirons to approach Mr Guggilapu about it. There is again a dispute about how this encounter played out. The claimant's account is that she went to Mr Guggilapu and, visible to all, she explained to him what had happened and when he refused to comment she told him she was going to send an email to PALS so that PALS can confirm that the allegation was not true.

64. Mr Guggilapu's account is that the claimant approached him at his desk and they then went into the WISH room which was opposite the claimant's desk and had a glass front where the claimant accused him, "*in a high tone, of telling Amber Hirons that she had gone to PALS about her.*" The claimant "*leant over the table*", stared at him and said loudly "*I have had enough and I'm going to escalate this.*" After asking the claimant to stop raising her voice at him he ended the meeting because he did not feel safe.

65. The claimant then wrote an email to Trevor Lyalle, the PALS Manager, which she copied to Mr Guggilapu. Mr Guggilapu's response was to send an email to the claimant which read as follows:

"His Rose
Just to clarify you, this was never mentioned by me that it was reported to PALS. Not sure what made you write an email to PALS about this. I's once again offering you to come and please meet up to avoid the confusion and work on this together.
Thank you
King regards"

66. The tone and content of this email to the claimant is surprising bearing in mind that in the meeting that had taken place within the last 15-20 minutes before he wrote the email he had alleged that he had been "*concerned for [his] safety*" and had "*ended the meeting because [he] did not feel safe.*" The email was not copied to anyone else so there was no need for Mr Guggilapu to be restrained on that account. The conclusion of the Tribunal is that if Mr Guggilapu did have any concerns about the claimant's demeanor at the time of these encounters with her we do not consider the impact on him was as severe as he now suggests.

67. On 8 February 2019 at 12:24 Mr Guggilapu sent an email to Dr Raja Natarajan,

Clinical Director West Berkshire Community Health Services, setting out concerns about the claimant. In his email Mr Guggilapu states that he was feeling unsafe at work because of the claimant's behaviour towards him and further stated that other staff had raised concerns about the claimant's behaviour. In questioning the respondent's witnesses, the claimant asked them each in turn if there had been complaints about her and no witness said that there were complaints made.

68. It is alleged that an incident occurred on 13 February 2019 the claimant had a cough, she stood up from her desk and stated to Ms Maciw, who sat opposite the claimant, "*I am ill and it is all your fault*". Ms Maciw was accused by the claimant of "*always coming to work with infections, you should not come to work.*" The claimant is alleged to have then shouted "*you're always coughing.*" The claimant then went to speak to Mr Guggilapu before leaving to go home.
69. The evidence from the claimant, which was not disproved, is that the claimant was on training course on 13 February 2019. The claimant asks us to conclude that this allegation is a fabrication to discredit the claimant. In our view it more likely than not that the date is wrong, we note that the report of the incident was made some days later on 19 February 2019, as part of the fact-finding that was converted into a collation of incidents relating to the claimant.
70. On 14 February 2019 Lesley McDonald sent a complaint to Mr Guggilapu about the claimant.
71. On 19 February 2019 as a result of the complaint from Ms McDonald and the issues raised by Mr Guggilapu, Sue White, Head of Rehabilitation, commissioned Mr Guggilapu to carry out a formal fact-finding investigation under the respondent's Disciplinary Policy into issues relating to the claimant's conduct to see if they warranted further action. A formal fact-finding investigation is the first step in the disciplinary process.
72. Ms Williams was of the view that Mr Guggilapu should not undertake the formal fact find as he had been accused of harassing the claimant, someone independent should undertake the formal fact find. Ms White then asked him to collate documents for Ms White to review. Ms White says that when she received this information from Mr Guggilapu, she concluded that a formal fact finding was required.
73. On 8 March Ms Maciw sent Mr Guggilapu another statement making allegations that the claimant was abrupt and rude. The claimant was unaware of this complaint or the other complaints which had been the trigger for Ms White to commission a fact-finding investigation later converted into a collation of information.
74. On 11 March 2019 the claimant resigned giving one month notice of termination of her employment. The claimant gave no reason in her resignation letter, when asked by Ms Andrews why she was leaving she replied: "*I am leaving so that I can progress career wise, working as a bank will give me the opportunity to work for other teams, share my skills and experience and also learn from them.*"

Ms Andrews stated that the claimant would be “*missed so much*” and given “*a glowing reference*”.

75. The claimant says that following her appointment as a Champion she was raising concerns about patient safety. The claimant says that over time she came to be harassed by Mr Guggilapu, Ms Maciw and Ms Williams, the Guardian, because she was raising concerns. This was in breach of the respondent’s policy on “Freedom to Speak Up: Raising Concerns (whistleblowing policy and procedures)”. The claimant says that the way she was treated amounted to a breach of the implied duty of trust and confidence and a “material breach of contract”. The claimant says that she was subjected to detriment because she made protected disclosures and that these detriments were individually and cumulatively a fundamental breach of the implied mutual duty of trust and confidence. We understand that in being subjected to the detriments alone the claimant says that there was a breach of contract regardless of whether it was because of the claimant making protected disclosures.
76. The claimant also contends that the respondent’s failure to carry out a fair grievance, follow its own disciplinary and grievance process as shown on the claimant’s terms and conditions of contract amounts to a fundamental breach of contract.
77. The claimant relies on a variety of sections from documents created by the respondent which deal with disciplinary process and form she says part of her contract, including:
Guidance for participants in investigation process at bullet points 1-4 (p1108)
Terms and Conditions of Employment, sections 23, 24 (p320-321)
Breach of ACAS Code of Practice 1: disciplinary and Grievance Procedures, paragraphs 9, 12, and 27.
78. The manner in which the several alleged protected disclosures were made, breaches of contract and detriments arose is clarified by the claimant in her further and better particulars of claim (p164) and as articulated in the final list of issues (p285). We set out our findings on each below.

Protected disclosures.

79. PD1: *The claimant says that she reported that the clinicians are repeatedly taking patients referral and medical summary home even though the referral and the medical record is accessible electronically on their laptops, this was a breach of patient’s confidentiality.* The claimant says that the disclosure was made to Mr Guggilapu on several occasions, orally in face-to-face meetings. She also states that it was made to Mr Sloan and Ms Williams.
80. The claimant says that this was a failure to comply with the respondent’s data protection obligations to patients under the General Data Protection Regulations and patient-medical advisor confidentiality. The claimant says that this was a crime and a breach of legal obligations. When asked why this was a crime the claimant said that “*if lost then it is a breach of the data protection – crime could*

be committed by the person who picks up any lost/misplaced records.”

81. Mr Guggilapu denies that this was a disclosure of information that was ever raised with him by the claimant.
82. There is no contemporaneous document recording this alleged disclosure to Mr Guggilapu. The claimant accepted in her evidence that she only raised it orally in her meetings with Mr Guggilapu who denies that such occurred. The claimant did raise the issue with Ms Williams in a meeting in December 2017 she then recorded it in the note to Ms Williams (p580). The claimant in this note does not say that she raised it with Mr Guggilapu. It is also important to note that in this meeting with Ms Williams which took place on 8 December 2017 the claimant was saying that she considered the service was in crisis or that the service was chaotic and she was looking for help from Ms Williams.
83. A meeting was subsequently arranged for the claimant to meet with Mr Sloan and Ms Williams and in that meeting they discussed the claimant's concerns as listed in the document (p581) attached to the email of 14 December 2017 (p580). What the document states is that *“staff members are taking paperwork home with them for next day assessments, breaching confidentiality, manager does not think it's a problem”*. Mr Guggilapu says that such *“a serious incident of breach of information governance”* would have resulted in him taking *“action to prevent it happening again”*.
84. There is no evidence given by the claimant specifically referring to PD1 as set out in the further particulars. We are unable on the evidence before us to conclude that there was an occasion when the claimant gave Mr Guggilapu information as set out in PD1. The best we can do is to conclude that the claimant certainly told Ms Williams and Mr Sloan that she had raised the issue of staff members taking paperwork home with her manager, Mr Guggilapu.
85. To be a protected disclosure, the disclosure must satisfy three conditions. It must be a qualifying disclosure, one that, in the reasonable belief of the worker making it, is made in the public interest and tends to show that one or more of the six relevant failures has occurred or is likely to occur. It must be made, as relevant to this case, to the employer.
86. On balance we consider that it is more likely than not that the claimant did make the disclosure of information that the clinicians are repeatedly taking patients referral and medical summary home. What the claimant reported would be a serious incidence of breach of information governance, the respondent has a legal obligation to protect patient data. We are satisfied that in the reasonable belief of the claimant, the disclosure is made in the public interest. The disclosure was made to the claimant's line manager, the head of service and the Guardian and thus in our view made to the employer.
87. PD2: *The claimant reported unsafe referral processing system which puts patients at risk. Service accepting patient referrals when there is no capacity leading to elderly patients with multiple health problems being left at home without personal care support, medication administration and food, resulting in*

delays in patient's recovery, hospital re-admission and putting pressure on families to fill in the gaps. This is a serious safeguarding issue and a risk to patient's health and safety. The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.

88. The claimant says that her disclosure of information to various people was made orally in face-to-face meetings or in telephone conversations.
89. Mr Guggilapu accepts that the claimant mentioned an issue relating to the team next to his team in the office. Mr Guggilapu recalls a specific occasion when the Hub was not told that the Rapid Response Team had no capacity, which created a one-off risk that referrals were still being put through to the Rapid Response team. When Rapid Response is at capacity, they should let the Hub know so that any referrals from GPs or nurses in the community are not accepted and diverted elsewhere. Mr Guggilapu says that this incident led to an escalation process being put in place where care capacity would be reviewed, and steps taken with a view to avoiding calling capacity. The claimant discussed, in her meeting with Mr Sloan on 5 January 2018, unsafe referral processing system, this issue relates to the question of calling capacity.
90. The Tribunal is satisfied that there is evidence to support the claimant's contention that she made a disclosure of information that was a qualifying disclosure, that the health or safety of any individual has been or is being or is likely to be endangered, in that she reported unsafe referral processing system which puts patients at risk. At the time that the disclosures were made it was in the reasonable belief of the claimant that it was in the public interest. The disclosure was made to Mr Guggilapu and Mr Sloan, and therefore it was made to the employer.
91. PD3: *Clinicians prioritising meetings and administration leading to capacity being called, resulting in patient's care given a lower priority and increased avoidable hospital admission Email dated 25/04/2017 Dr. Gupreet Singh advising patients to make complains. This is a serious safeguarding issue and a risk to patient's health and safety. The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
92. The document that set out what the claimant contends was discussed in her meeting with Mr Sloan on 5 January 2018 shows that one of the matters discussed was the concern that clinicians prioritised meetings and administrative tasks which lead to capacity being called (p581). The email of 25 April 2017 points to a potential complaint on behalf of patient of Dr Singh. Mr Guggilapu has no recollection of the specific context in which the email exchange relied on by the claimant took place on the 25 April 2017.
93. On the evidence before us it is not clear what the context of the conversations that the claimant was having with Mr Sloan and Mr Guggilapu were. Mr Sloan and Mr Guggilapu do not recall, and the claimant does not set out what was said and or not said beyond a headline topic. There is no evidence that the contended disclosure was made to anyone else. To be a protected disclosure, the disclosure must satisfy three conditions. It must be a qualifying disclosure,

one that, in the reasonable belief of the worker making it, is made in the public interest and tends to show that one or more of the six relevant failures has occurred or is likely to occur. It must be made, as relevant to this case, to the employer. The evidence does not allow us to conclude that there was a qualifying disclosure.

94. PD4: *Reported that therapy assistants calling in sick last minute and there is no cover leading to patient being left without personal care support, medication administration and food. This has resulted in patients at risk self-administering their medication leading to a large number of recorded incidences of overdosing and other medication Errors. This is a serious safeguarding issue and a risk to patient's health and safety. The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
95. Mr Guggilapu denies that this disclosure was made to him by the claimant. The claimant does not give evidence of the disclosure being made to Mr Guggilapu beyond the assertion contained in the further particulars which are without the background circumstances or articulation of what was said and when it was said. Mr Sloan does not recall the detail of what was discussed in the meeting on the 5 January 2018 and he denies that the claimant ever raised the matter outside the meeting. There is no more detail provided in the evidence of Ms Williams as to what was said at the meetings that she had with the claimant in December 2017 or January 2018. The claimant has not provided the evidence from which we could conclude that there was a protected disclosure it is entirely unclear what the claimant said, when she said it other than the meeting on 14 December 2017 and 5 January 2018 and whether what was said was a qualifying disclosure. We are unable to determine that there was a disclosure of information amounting to a qualifying disclosure.
96. PD5: *Reported that therapy assistants repeatedly missed and arrived late to provide personal care support to the elderly patients, leaving patients vulnerable to dehydration, undignified treatment and unnecessary delays This is a serious safeguarding issue and a risk to patient's health and safety. The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
97. There is no mention of this disclosure in the attachment to the 14 December 2017 email (p581). The claimant in her witness statement has not set out the evidence which shows that she made the disclosure to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others. There is no reference to the making of this disclosure in the claimant's witness statement. The only reference to the disclosure appears in the claimant's further particulars which are short of information that illustrates what the disclosure of information was. Mr Guggilapu says that there was no such disclosure made to him by the claimant. Mr Sloan gives no evidence about what transpired in his meeting with the claimant other than an acceptance that there was a discussion of the matters in the attachment to the 14 December 2017 email, in respect of this matter he denies that the claimant made any disclosure to him. There is no evidence from which we could conclude that the claimant has made the qualifying disclosure alleged.

98. PD6: *Reported falsification, reckless alteration of patient's medical record, contained events that did not happen, such as face to face contacts and events with incorrect outcomes such as patient cancellation as opposed to a did not attend time, putting patients at unwarranted risk of harm. This is a serious safeguarding issue and a risk to patient's health and safety. The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
99. There is no evidence of this disclosure being made to anyone. It is not contained in the attachment to the email of 14 December 2017 and is not referred to in the claimant's witness statement, so that it can be said what was said, or written, when it was said or written, or to whom it was addressed. Mr Lyalle does not refer to the protected disclosure. It is denied that the alleged disclosure was made to by Mr Guggilapu and Mr Sloan. There is no evidence of this qualifying disclosure having been made by the claimant.
100. PD7: *Reported that vulnerable elderly patients were left to have prolonged bed rest and put to bed as early as 18:00. This resulted in increased number of grade 3 pressure sores injury. This is a serious safeguarding issue and a risk to patient's health and safety. The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
101. There is no evidence of this disclosure being made to anyone. It is not contained in the attachment to the email of 14 December 2017 and is not referred to in the claimant's witness statement, so that it can be known what was said, or written, when it was said or written, or to whom it was addressed. Mr Lyalle does not refer to the protected disclosure. It is denied that the alleged disclosure was made to by Mr Guggilapu and Mr Sloan. There is no evidence of this qualifying disclosure having been made by the claimant.
102. PD8: *End of life patient's referral accepted into the service but denied care and families wrongly advised to privately fund their own care this resulted in lack of support for the patient to die with dignity and put pressure on families to fill in the gaps Email 21/02/2018 @10:55 this patient became end of life very quick, the daughter made a complaint to the GP, I was contacted by the Wokingham Adult and social care Manager Helen Stoke wanting to know why we did not provide end of life care to the patient and an investigation was launched by the GP. Looking on the patients record one was able to see the rapid response nurse David Harris misleading patient family and wrongly advising them to privately fund their care . District nurse comments documenting on patient's progress notes the appalling service from the intermediate care team. This is a serious safeguarding issue and a risk to patient's health and safety. The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
103. There is no evidence of this disclosure being made to anyone. It is not contained in the attachment to the email of 14 December 2017 and is not referred to in the claimant's witness statement, so that it can be seen what was said, or written, when it was said or written, or to whom it was addressed. Mr

Lyalle does not refer to the protected disclosure. It is denied that the alleged disclosure was made to Mr Guggilapu and Mr Sloan. There is no evidence of this qualifying disclosure having been made by the claimant.

104. PD9: *Reported inadequate training for therapy assistants and locum leading to staff not being able to provide personal care and meeting patients care needs. This led to patients being put at risk Locum staff leaving patients assessments unfinished. unable to upload patient's information on the system, not able to discharge and send discharge letter to GPs and patients. This is a serious safeguarding issue and a risk to patient's health and safety. The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
105. The claimant's witness statement does not contain any evidence setting out the circumstances in which this protected disclosure is made by the claimant. The matter is not referred to in the document attached to the 14 December 2017 email. Ms Williams states that she has no recollection of this disclosure being made by the claimant. Mr Lyalle's evidence is silent on this and contains no evidence of this disclosure being made. Mr Guggilapu states that he does not recall the claimant ever raising inadequate training for therapy assistants and locums with him. Mr Guggilapu however accepts that the claimant did flag an issue around SP who was a new locum who did not have access to the respondent's electronic patient record system and was therefore unable to complete discharge paperwork, resulting in his completing hard copy paperwork. This however is not a qualifying disclosure. The evidence fails to establish that there was a protected disclosure as alleged by the claimant.
106. PD10: *Reported unacceptable waiting times for Domiciliary Physio & Falls prevention, initially two physios working part-time then they left, a whole month without physio, with a waiting list of over 200 for both Dom's and Falls. Leading to poor timeliness of care, quality of life for the patients, increased anxiety from the patients and toxic, divided and dysfunctional service at logger heads with GPs, repeatedly threatening and reporting the service to CCGS. The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
107. Mr Guggilapu states that he cannot recall the claimant specifically raising this matter with him but accepts that the claimant may well have done. The claimant's role included the objective of reducing waiting lists and waiting times. Mr Guggilapu states that where there are long waiting lists it is part of the claimant's job to mention these to him. Mr Guggilapu accepts that there had been a time when the waiting lists were too long but, with the claimant's help, they had acted and reduced it so that any risk to patient safety arising from the delay was reduced.
108. The claimant describes her role as including the requirement to:

“Working through waiting lists daily to minimise waiting times and to facilitate the allocation of assessors appropriate to patient's needs.”

It is accepted by the respondent that the claimant had been praised for her performance in her role by reducing waiting lists, indeed the claimant relies upon her success in this area as a factor that suggests that she should have been promoted.

109. The Tribunal is not able to identify evidence of the claimant making a qualifying disclosure in this regard. The claimant may well have pointed out, in her role, that waiting times were unacceptable but there is no evidence that in doing this she was doing so because she was making a protected disclosure. There is no evidence of what, where, to whom, or when any disclosure of information was made by the claimant. On the basis of the claimant's success in the role it does not follow that at the time that the claimant makes a comment that waiting lists were unacceptable that it would have been reasonable to conclude that one of the gateways in section 43B ERA was established so that the disclosure was in the public interest. The evidence that the claimant has produced falls short of establishing that the claimant made a protected disclosure.
110. PD11: *Reported that the manager is allowing CBNRT referrals to be diverted to us even though we have no neuro physio, this led to pressure on the resources and the CBNRT patients sitting on our case load and missing out on specialist service from CBNRT Evidence (Email 15/03/2018). The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
111. This was a matter about which the claimant did not give any direct evidence in the hearing. The issue is addressed by Mr Guggilapu and Ms Toheed in their evidence both say that the issue was raised by the claimant. Mr Guggilapu says that "in 2018, the claimant escalated to me that the ICT was having to pick up neuro patients when we did not have a neuro specialist". He then goes on to state that rather than this being a matter about which there was a risk to health and safety the effect of this was the opposite.
- "These were patients with a lot of needs which we could not leave suffering so ICT went to see the patients to support them as much as we could because CBNRT had no capacity. This was the very opposite of endangering patient safety or breaching our duty of care to patients."
112. Ms Toheed does not specifically recall discussing this with the claimant but states that it was something that happened sometimes. However, the effect of what was done to take on new referrals when there was no capacity in CBNRT meant that the patients did not miss out on specialist services, it meant that patients received some service as opposed to no service. The evidence presented does not show that there was a protected disclosure as alleged.
113. PD12: *Reported poor reporting of patient's safety incidence on Datix incidence reporting system, lack of consistency, omission and false reporting, serious incidence not recorded leading to inability to respond appropriately, learning and making necessary improvements. The Datix process was set up for incidents that have already harmed the patients or staff. The claimant says that*

the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.

114. The respondent's normal procedure for raising concerns, especially patient safety concerns, is to report the concerns to a manager and record the concern on the Datix system. The Datix is then followed up by feedback to members of staff or other actions. There was a lot of evidence given about the use of the Datix system by the respondent's staff to raise concerns. The evidence given was that the Datix was regularly reviewed.
115. In her evidence the claimant stated that in March 2017 she noticed an increase in patient safety concerns some of which were raised in the Datix system. The claimant also says that "Patients and their families were constantly ringing the service with complaints and frequent safeguarding incidents related to medication were being reported on the incidence reporting system Datix". The claimant also says that some incidents were not reported on the Datix system.
116. Overall the evidence showed that the respondent's Datix system worked as it should. While the claimant states that she had concerns about the poor reporting it is not evident from the evidence that the claimant made a protected disclosure concerning the Datix. There is not evidence given that explains how this occurred.
117. PD13: *Reported that Wokingham Borough Council OT and service manager under the influence of previous head of service Martin Sloan now working for the council putting pressure on the service by demanding the local authorities' patients be prioritized over our NHS patients and referring patients without their CONSENT. This led to NHS patients waiting longer to be seen and putting pressure on resources and anxiety to patients (Email:12/07/2017) The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
118. Mr Sloan denied that the claimant raised this issue with him. Mr Guggilapu recalls the claimant saying that the ICT was having to go and see the local authority's patients before its own. He says that this was said in an informal conversation during which his response to the claimant was that "there is no them and us they are all our patients once referred to the NHS and we see them together ... and prioritise based on clinical need."
119. In her evidence the claimant explained that she raised the issue that patients should not have been accepted as referrals and the fact they were referred without consent was the breach of a legal obligation and a breach of health and safety.
120. The conclusion of the Tribunal is that the claimant has not been able to articulate a breach of legal obligation or breach of health and safety to the Tribunal during the hearing. We are unable to conclude that there was a protected disclosure. The claimant's evidence fails to set out the basis upon which the claimant contends that she reasonably believed that her mistaken view of the position was made in the public interest. The alleged wrongdoing

that the claimant contends in our view has not been set out by the claimant so we could determine that she reasonably believed that information tended to show that there was a breach of health and safety, or a breach of legal obligation.

121. PD14: *Reported that the service manager Gotham Guggilappu was not seeing patients on his caseload and failed to send exercises to patients prior to the day of the assessment this led to delays in patient's recovery and patients declining input. This is a serious safeguarding issue and a risk to patient's health and safety. The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
122. Mr Guggilapu accepted that there was an occasion when the claimant pointed out that he had not visited a patient and that he had forgot to send exercises to a client. This was an unfortunate mistake on Mr Guggilapu's part, the sort of omission that can sometimes happen in a clinical setting. Mr Guggilapu then acted and resolved the situation. It was put to the claimant that if someone made a mistake and did not see a client that is not a breach of a legal obligation. The claimant's response was that "it is if it is a continuing matter; the service has a duty of care to the patient." There was no evidence that the situation was continuing or that the claimant thought it was continuing. The claimant's evidence did not contend that the situation was a continuing one.
123. In pointing this situation out to Mr Guggilapu the claimant is not making a protected disclosure. The wrongdoing the claimant contends could not reasonably have been believed to be information that tended to show a breach of legal obligation.
124. PD15: *Reported toxic, divided and dysfunctional service at logger heads with GPs and A&E, repeatedly threatening and reporting the service to CCGS as capacity was called nearly every single day without anyone understanding why it has been called and why referrals accepted when there is no capacity, patients discharged from A&E left at home without assessment. GP referrals rejected, This led to patients being put at risk i) This is a serious safeguarding issue and a risk to patient's health and safety. The claimant says that the disclosure was made to Mr Guggilapu, Mr Sloan, Mr Lyalle, Ms Williams, and others.*
125. This is not covered in the claimant's witness statement. Mr Guggilapu says that the claimant did not raise this with him. There is no evidence that it was raised with the other individuals mentioned by the claimant. In the course of her evidence it was put to the claimant that she did not raise this issue with anyone, her response was that she did and that she relied on her further and better particulars. The said further and better particulars do not set out evidence from which we could ascertain that the claimant did make the alleged disclosure to anyone.
126. PD16: *Reported that the service is in crisis after a one hour long meeting with the clinical staff Sharon Andrews, Colin Moodeley, David Harris, Becky Schoffield and Lesley Dyson to discuss serious patients safety concerns . The*

service needed help and support and I approached Elaine Williams Freedom to speak up Guardian in an email and face to face asking her to find us help Elaine Williams promised to get back to me but she did not. The claimant says that the disclosure was made to Ms Williams.

127. The claimant relies on an email that she sent to Ms Williams on 13 April 2018 (p616). In the email she tells Ms Williams that a meeting had taken place that morning, chaired by Sharon Andrews, attended by the claimant, and others. She describes the purpose of the meeting as “to discuss patient safety concerns raised anonymously by staff and decide a way forward.” In her email the claimant says “we are in crisis everyone has agreed.” The claimant asked:

“Just out of interest would you be able to help us out by pointing my team to the right direction as we all love what we do, we have a very dedicated team of clinicians, admin and therapist with a passion for what they are doing and we want things to improve.”

128. The claimant says that she “had a reasonable expectation” that Ms Williams would “investigate and seek to resolve the matter.” Ms Williams in her evidence stated that she could not remember if she responded to the claimant’s email.

129. The conclusion of the Tribunal is that there is no disclosure of information in this email which tends to show any of the matters set out in section 43B (1) Employment rights Act 1996. The claimant states that as a result of staff raising concerns there was a meeting at which it was agreed that the service was in crisis and the claimant asks for help from Ms Williams.

130. *PD17: Reported to West Berkshire CCGS Quality and Safeguarding team, Corroborated by Wokingham council of GPs toxic, divided and dysfunctional service at logger heads with GPs and A&E, GPs repeatedly threatening and reporting the service to CCGS Service accepting referrals when there is no capacity to see these patients and patients are left at home without care calls support personal care, medication administration. This puts patients at risk of harm. GP under enormous pressure from patients, carers and families to visit patients at home after the service failed to visit patients Patients overdosing on medication GPs referrals rejected without explanation.*

131. The claimant says that the disclosure was made to West Berkshire CCG Quality and Safeguarding Team quality assurance observation meeting with Mrs Simmons and Mr Hawkins. The claimant’s account of precisely what was said is vague.

132. The evidence of the respondent’s witnesses Mrs Simmons and Mr Hawkins was that during the CCG visit on 10 May 2018 the claimant did not report “a toxic, divided and dysfunctional service at logger heads with GPs and A&E and GPs repeatedly threatening and reporting the service to CCGs.” They say that had the claimant raised this, it would have been reflected in the report, raised with the Trust by the CCG and have been looked into.

133. We find that on 10 May 2018, a Quality and Assurance Observational visit was

carried out on behalf of the Berkshire West Clinical Commissioning Group (CCG). There were no concerns about the Community Falls Team, the CCG “simply decided to visit the service to see how the team was delivering care”. The claimant was among the people that were spoken to, the CCG asked open ended questions about what was going well and what was not going well. Mr Hawkins states and we accept his evidence:

“The claimant did raise something during the audit in relation to referrals: the claimant raised this in front of Mr Guggilapu and Ms Psyllos and there was no tension in the room when this was raised. The details of this are found under the heading of ‘Responsive’ in my report. The issue raised by the claimant related to the volume of referrals received by the service, and the team’s ability to meet the demand given the team’s capacity.”

134. Mr Hawkins states that the claimant did not raise concerns about a toxic, divided and dysfunctional service at logger heads with GPs and A&E; GPs repeatedly threatening and reporting the service to the CCG, although challenging relationships between GPs and providers were not uncommon; GPs being under pressure to visit patients at home; and Patients overdosing on medication. Mr Hawkins states that had these matters been raised the CCG would have required a response from the respondent and the matters would have featured in the report’s recommendations.
135. The conclusion of the Tribunal is that the claimant did not make a protected disclosure on the 10 May 2018.

Detriments

136. The claimant has in our view established that she made protected disclosures at PD1 and PD2. She has not however established that any detriment that occurred was because she made the protected disclosures. We set out in the following paragraphs our conclusions on each of the alleged detriment.
137. D1: *“Victimised by being denied 6 monthly mandatory appraisal every year like anyone else. I only had 2 appraisals for 2 years and 3 months I was employed I should have had 4 appraisals”.*
138. Ms Maciw was responsible for the claimant’s appraisal from 1 December 2017. She carried out the claimant’s appraisal on 8 June 2018. The claimant should have had a mid year review in December 2018, she did not have a mid-year review because she refused to meet with Ms Maciw. The next appraisal for the claimant was due in about June 2019, by this time the claimant had resigned from her employment with the respondent. The claimant was not subjected to a detriment in this.
139. D2: *“Victimised by being denied mandatory 1:1 6 weekly supervision, postponed and cancelled on a continual basis. I had a total of 4 supervisions as shown from 2 years and 3 months.”*

140. Ms Maciw got the job that the claimant had also applied for. Prior to Ms Maciw's appointment in the role of Lead Care-Coordinator she was in the role of Lead Referral Coordinator, i.e. the same role as the claimant.
141. The claimant and Ms Maciw sat opposite each other in the office and issues were dealt with between them as they arose. Although it was agreed that they would have 6 weekly 1:1 supervision sessions this did not take place because Ms Maciw had a heavy workload and on some occasions because the claimant indicated in verbal exchanges with Ms Maciw that she did not want one.
142. We are satisfied that any disclosure made by the claimant at PD1 and PD2 was not connected to the failure to carry out the weekly supervision sessions. Ms Maciw and the claimant had a difficult relationship, there were problems related to the claimant providing cover for Ms Maciw when she was away. Ms Maciw stated that she was uncomfortable with the claimant because of her behaviour there was no connection to the claimant making disclosures.
143. There was no breach of contract by the respondent in the way Ms Maciw conducted herself and managed the claimant.
144. D3: *"Victimised by being denied NHS Professionals shift cover work in my team unlike my other colleagues in the same team who were allowed to take on NHS Professionals shift within the team, I had to cover shift for mental health CPE instead covering 6 hours a week."*
145. The respondent's employees could, on their days off work, work on the 'Bank' as agency staff carrying out their own jobs or other roles within their department. The evidence showed that the claimant did this on one occasion. There was also evidence that other staff did so. The claimant pointed out that she did 'Bank' work for another department. There was no evidence given that showed that the claimant was denied a shift on any occasion. The evidence was simply her assertion that she did not get 'Bank' work 'Bank' workers are only used when extra cover is given. The evidence given was that there was one occasion when the claimant was given 'Bank' work in the department. There was no evidence that there was suitable 'Bank' work in the department which was denied to the claimant.
146. D4: *"Subjected to the detriment of humiliating and demanding comments from my manager Gotham Guggilapu to other staff that he finds me tricky, and I run before I can walk Rose is difficult."*
147. Mr Guggilapu denied that he ever said to anyone that he found the claimant tricky. This was the only occasion that was alleged by the claimant to support this issue. We have not been satisfied that it occurred as the claimant alleges.
148. D5: *"Subjected to the detriment of being asked to book myself into a conflict resolution class for challenging manager Mr Guggilapu decision on accepting CBNRT referrals not appropriate for the service as we did not have neuro rehabilitation physios."*

149. Mr Guggilapu accepts that he said that the claimant should book herself on to a conflict resolution training course, he did this because he considered it was a way to address an issue that had arisen out of feedback that he had received on the claimant. The claimant was having conflict with colleagues arising from the way the claimant was speaking to others.
150. In our view there is no detriment in this attempt to address an issue arising from the feedback given to him about the claimant. There was no breach of contract.
151. D6: *Subjected to the detriment of being criticized and told off .As a freedom to speak up champion we were asked by the freedom to speak up guardian Elaine Williams to use our personal phones ,no work phone was issued, I was told off in the open and also in my 1 to 1 supervision for frequent use even though the manager Gotham Guggilapu was aware I was not issued with work phone for my freedom to speak up role, our private number was available on the national guardians webpage alongside their existing directory of freedom to speak up guardians.*
152. The claimant used her own mobile phone for her work as a “Champion”. Her personal phone number was on the NGO online database. In one of her few 1:1 meetings with Ms Maciw the claimant was told by Ms Maciw that she should watch her phone use during working hours. Ms Maciw’s concern was about use of the phone for private matters in work time. The claimant was not “told off in the open plan office”. The claimant told Ms Maciw that she used her phone for her work as a champion. We recognise that the claimant was unhappy about this. However, following this discussion the claimant continued to use her phone as she did before the matter was raised by Ms Maciw.
153. In our view there was no detriment in this. Ms Maciw was entitled in a 1:1 discussion to raise the phone issue, the discussion which took place was a reasonable one, in which the claimant explained her position, there was no breach of contract. To the extent there was any detriment it was not related to the claimant making a protected disclosure.
154. D7: *Subjected to the detriment of being given new responsibilities on top of the existing ones with no cover when I am on leave. This can be seen in the month of January 2018, 11/02/2018 the only fire warden responsible for 36 member of staff ,02/01/2018 asked to be responsible for the safety thermometer, asked to be in charge of medical inventory 11/07/2018, ordering of clinician’s uniform and ordering of incontinence equipment’s for assessment.*
155. D10: *Subjected to the detriment of my health and safety put at risk as the only fire warden in- charge of 36 members of staff of whom some had mobility issues and some expectant mothers. Email from myself to the Trust fire and safety manager advising them that I cannot possibly be able to evacuate 36 members of staff then go and meet the fire brigade in case of fire. My manager Gotham Guggilapu ignored this and continued to put my health and safety at risk for over one year and a half.*
156. The claimant volunteered for the various additional roles that she took on.

There was no connection to the claimant having made a protected disclosure. There was no breach of contract.

157. D8: *Subjected to the detriment of being excluded from attending the MDT therapy meeting, advised by my manager Gotham Guggilapu that if I had anything to share with the team in the team meeting, I should communicate it to the Allyson Maciw who will then share it with the team. All MDT minutes my name was under informed apologies.*
158. The claimant was not excluded from any meeting. The MDT meeting is a weekly meeting for clinicians and therapists to discuss patient care. Members of the Admin Team do not normally attend the MDT. There was also a Admin Team Meeting which the claimant did attend.
159. D9: *Subjected to the detriment of not being considered for promotion unlike my comparative even though I had made several improvements in the service in terms of waiting times so well done that I was asked to help reading Intermediate care reduce their waiting list, credited for good work by West Berkshire CCG and Wokingham locality director. I was also covering a higher band work.*
160. The claimant applied for the role of Lead Care Coordinator and was unsuccessful. The role was advertised in Autumn 2017 and interviews took place in November 2017. The claimant went through an interview process in which she did well but was not the best applicant and so was not offered the role. This decision was made before the claimant made her alleged protected disclosures. In any event there was no connection between the claimant's lack of success in her application for this role and her protected disclosures.
161. The claimant also applied for the role of Complaints Manager. This was a temporary role to cover a maternity leave. The recruitment was clumsily handled by Ms Chapman. It was in some respects a paradigm of how not to carry out a recruitment process. However, Ms Chapman's incompetence was not connected to the claimant's disclosures.
162. The claimant raised a number of concerns with Mr Laylle in December 2017. Mr Laylle would have discussed matters with Ms Chapman including PD2. However, by the time that the claimant was applying for the role of Complaints Manager, Ms Chapman was not aware of the claimant being a "whistleblower". The fact that the claimant was not considered for the complaints manager role was not related to the claimant having made protected disclosures.
163. The claimant was entitled to believe that any application for promotion within the respondent would be treated fairly and given proper consideration. Mrs Chapman insists in her evidence to us that the claimant did not have relevant experience for the role and so would not have been able to do the full scope of the role from the start without training in the role of limited duration. The claimant's response to the unsuccessful application was to send an email to Ms Chapman saying: "Thank you".

164. The poor way in which the claimant's application was treated was not related to her protected disclosures. Ms Chapman did not know that the claimant had raised concerns and she made her decisions based on the claimant's lack of experience for the role. Regrettably it was implicated by the manner in which Ms Chapman handled the claimant's application, nonetheless we do not consider it was because of a protected act.
165. D11: *Subjected to the detriment of my locker was ransacked every time I was on leave and when asked I was told they were looking for my laptop.*
166. Mr Guggilapu denied ransacking the claimant's locker every time she was on leave, he says that he did not know that she had a locker, he has never looked for the claimant's laptop when she was on leave. Ms Maciw stated that she did not know that the claimant had a locker. The claimant gave little evidence about this in her questioning by counsel. The Tribunal concluded that the claimant has not proven to us, on a balance of probability, that her locker was ransacked in the way alleged.
167. D12: *Subjected to the detriment of my telephone conversations listened in to which was mostly staff ringing to raise patient's safety [concerns].*
168. The evidence of the claimant and Ms Maciw is at odds on this issue. The claimant says that she was often on the phone to staff raising concerns with her as a Champion. Mrs Maciw says that the claimant sat opposite her with their desks next to each other so when the claimant was on the phone at her desk she could hear the claimant's conversations without having to make any effort to listen in. Mrs Maciw says that the conversations were often private matters and not Champion work, she accepted that she could only hear half the conversation, i.e., what the claimant was saying, but she was able to ascertain when the conversations were not about work-related matters.
169. The Tribunal is not satisfied that the claimant has proven on a balance probability that she was subjected to the detriment that she alleges in this regard.
170. D13: *Subjected to the detriment by being reported in an email twice to the Chief Executive Julian Emms and Director of Strategy and Corporate Affairs Bev Serle for contacting the National Guardian's Office with serious patients' safety concerns. My Identity was revealed to the trust by the National Guardians Office, and I suffered detriment. (a) Irregular handling of evidence by the Freedom to speak up guardian, and the trust's failure to properly address the issues of patient's safety raised. (b) I believe with evidence there was a collusion between the Freedom to speak up guardian Elaine Williams, the National Guardians Office, the CEO Julian Emms, Director of Strategy and Corporate Affairs Bev Searle who breached my anonymity and closed ranks this discovery was made through subject access request as shown in an email.*
171. The claimant is complaining about events of the 5 and 6 February 2019. On Tuesday 5 February 2019 Mr Emms attended a status exchange meeting with Ms Williams, Bev Serle and others. The meetings occur monthly to reflect on

FTSU concerns raised and to discuss any themes. The two-fold purpose of the meeting is to ensure coordinated action is taken in response to concerns raised and to check for any trends and issues relating to a team or service. The information discussed at the meeting is usually anonymised. No formal minutes are kept of status exchange meetings, but a note of action points is usually made. At the meeting on 5 February 2019 Ms Williams mentioned that one of her Champions was very unhappy. The claimant's name was mentioned at the meeting. There is no detriment in this occurring.

172. On Thursday 6 February 2019 Ms Williams sent an email to Mr Emms and Bev Searle informing him that the claimant had contacted the National Guardian's Office and asking for guidance on how to deal with the that situation. Mr Emms states that there was no collusion, between Ms Williams, the National Guardian's Office, and Bev Searle or breaching the claimant's anonymity in any way. Mrs Williams evidence supported what Mr Emms said. The evidence from the Mrs Turnell was in line with the evidence of Mr Emms and Ms Williams.
173. While the claimant asserts that there was collusion, the evidence did not show that there was collusion as alleged by the claimant.
174. D14: *Subjected to the detriment of my concerns were not addressed, constantly being interrogated, and accused when I raised concerns, asked where I got my information from and who I am talking to, before I knew it, she had copied in security officer, and 3 other senior HR managers, revealing my identity breaching confidentiality and breach of my anonymity. (Email: 31/01/2019 Email 01/02/2019@10:11 Subjected to the detriment of falsely being accused of discussing concern raised, with someone out of the trust even though the issue with one of the champions an email: (Email 31/01/2019) Subjected to the detriment of falsely being accused of discussing concern raised, with someone out of the trust even though the issue was discussed with one of the champions in an email: Email: 31/01/2019 Note: National Guardians office Buddy arrangements allows champions or guardians to share concerns for as long as they are mindful of confidentiality with and through guardian networking.*
175. On 31 January the claimant sent an email to Ms Catherine Kirkham, who was also a Champion, seeking her advice about an individual was a former member of staff who had reapplied for employment with the respondent. The individual had received an offer of employment and then very soon after the offer was withdrawn because of a poor reference from her former manager. The individual spoke to the claimant about this and in doing so made a comment about waiting for the manager in the car park, the claimant was seeking advice about how to deal with this situation from Ms Kirkham. In her response Ms Kirkham stated that at the time of this incident the individual was not employed by the respondent so the claimant should not have been involved.
176. The claimant forwarded her email to Ms Kirkham to Ms Williams. Ms Williams spoke to the claimant on the telephone when the claimant said that she wanted to investigate the incident, but Ms Williams explained it was not within their remit to investigate incidents. Ms Williams denies that she interrogated and accused

the claimant. Ms Williams reported the matter to Recruitment, and the Risk and Safety Manager.

177. The issue in this incident is about security of an employee from outside. The incident as described does not prove that the claimant was “interrogated and accused” by Ms Williams. When speaking to the claimant Ms Williams in our view would have been entitled to question the claimant to establish what happened. If the claimant’s complaint about this incident concerns her being chided by Ms Williams for speaking with Ms Kirkham or the former employee, the issue is not clearly expressed, we do not consider that such a complaint is made out. The incident in our view does not show that the claimant was subjected to a detriment or that there was a breach of contract.
178. D15: *Bullied, harassed, and repeated use of defensive deflection tactics. (a) In her email dated 06/02/2019: 16:29 between myself freedom to speak up Guardian and the manager. I felt harassed and bullied because they were aware of patients’ safety concerns raised some documented and they were trying to pretend that they have no idea other staff members also gave statement to say that the manager did not act when concerns were raised with him. Statements Sharon Andrews Integrated Care Home Service manager. Also falsely accused of working independently of system in place for champions email 06/02/2019. (b) Accused of using my personal phone for raising patients’ safety concerns when all champions had been advised to as no work phone was issued and Elaine Williams Freedom to speak up Guardian lying in email that she did not advice champions to use their personal phones when my personal phone is registered as the contact phone number on the National Guardian’s Office database and online email: 06/02/2019 @08:21 Highlighted.*
179. D16: *Accused, reported and my identity revealed to the executives by the freedom to speak up Guardian for contacting National Guardian office regarding the barriers and serious patient’s safety concerns. An email was sent to the CEO and the directors to tell them that I had been in touch with the National guardian’s office and that they had no guidance in place.*
180. D17: *Visiting one of our nurses who was End of life 06/02/2019 told off in front of staff in an open plan office for vising or nurse colleague who was end of life even though they were aware this was witnessed by Debbie Luff one of the nurses Statement from Debbie Advanced Nurse Practitioner same day I had raised patient’s safety concerns in an email.*
181. D18: *GG email dated 06/02/2019 at 07:51 to AH and DG. email shows GG deliberately revealing the claimants Identity to AH and DG (both clinical staff) as a whistle-blower and breaching claimant’s employment contract page 7 of 8 paragraph 24.*
182. The claimant stated in her evidence that a lot was happening on 6 February 2019. The claimant lists 29 emails sent by various people which relate the claimant sent that day. The claimant suggests that this shows something untoward going on. It should be noted that these emails do not contain any indication of bullying or harassment of the claimant, they in our view merely

show that a number of things relating to the claimant were going on at this time. The claimant had announced that she was stepping down from the position of champion and this provoked a degree of activity.

183. The first matter that the claimant complains about is the email that Mr Guggilapu wrote to the claimant and copied to Ms Williams. The email asked the claimant to meet to discuss patients the claimant considered to be at risk. The claimant's response was as follows:

Hi Gotham

This was my job as a freedom to speak up champion, I first raised a lot of issues regarding the service (it was a long list) this issues were discussed with Martin and Elaine was with me (I am surprised you did not know about this) because the reason why we raise concerns is for us to learn and improve things. Now I am asking myself what was the point of me raising the concerns and you not being told, not a single change was made, this this escalated and Sharon had a big meeting with us (we created a big box and everyone was asked to write down what issues we were having and put it in the box. The list is saved in a shared drive with a password. I did not see you there this was then presented to Martin by Sharon and Colin and David Harris was also involved. No changes were made and before we knew it Martin left. Now Gowtham, I had raised a lot of issues with you which were ignored and I remember you telling me thank you for raising this issues because I was not aware of them. After that it was all wiped under the carpet and I continued raising issues with you. I got to appoint (sic) whereby I had to forward the issues to PAL and then to Freedom to speak up guardian. We still have this issues, the saddest part Gowtham is that I have lost faith in raising issues. The last straw was a patient in tears begging for our service, this is an 83 year old women and I had to organise for the locum to kindly see this patient. I think it is sad that we are ok putting patients at risk. Now all this is draining me and to be honest with you I have done a lot of this to a point whereby I have given up. I have documented my journey with all this problems and its heart breaking.
Regards

Rose

We set out below Mr Guggilapu's response in full below:

Hi Rose,

Many thanks for your email and I'm really sorry to hear that you felt you've not been listened to.

You mentioned about Doms patient in our meeting yesterday for the first time and you came up with a resolution even before I acted upon it. I asked you to utilise one of our physios to go and see this patient asap, and you've already done that. That's the kind of positive

behaviour we developed in our team and I really appreciate you for delivering that. I've asked Amber to come back to me with a timeline from referral point.

I remember you coming over to me recently asking me to give you an opportunity to understand roles of the other admin staff. We tried that by letting you get on to P2P so that you would be able to place some orders when required. You're now happy to order uniforms for the team and new starters, which was an admin role. You're slowly understanding the roles of other administration team and helping out with Reablement triage when Ally M is not there. That was really an added bonus to me as we have more than one person who is able to deliver that task.

When you had some challenges with the CBNRT team, we arranged a meeting with CBNRT team with myself, Dan and rest of the PT team to address some of the concerns raised by you. This is work in progress and as a result of your initiative, we lined up more meetings in the future. That credit goes to you but no one else.

There are nearly 36 of us in our team and like yourself, many staff raise their concerns and I try and address them in a reasonable time with support from you all and my senior management.

May be there are times I did not meet your expectations, however I tried my level best to address your concerns at the same time.

As a line manager, I've an obligation to discuss your concerns and try and address them. When I don't meet your expectation, obviously you're free to discuss this with my manager or FTSU as appropriate. However I would like to know the concerns you mentioned in your email to discuss and see to find a better solution. I sent you an invite to meet up tomorrow to discuss them.

Thank you.

Kind regards,

Gowtham Guggilapu

184. On 6 February 2019 the claimant was also corresponding by email with Ms Williams. Ms Williams invited the claimant to a meeting to discuss problems the claimant had in the role of champion. The claimant's response was to say that she "did not wish to revisit or discuss anything to do with it" and said it was the reason she had resigned as a champion. One of the matters that Ms Williams mentioned to the claimant was that she was concerned that the claimant appeared to be handling cases and had acted independently of the system in place. This was not inappropriate for the claimant as a champion did not have casework or an investigatory role, this appeared to be the approach that she was adopting, Ms Williams was trying to understand what "investigations"

the claimant wished to complete in respect of a role that was merely about raising awareness and passing on concerns. In an email to Mr Guggilapu on 6 February 2019 Mrs Williams stated:

“I didn’t advise her to report the issue of her personal phone to HR. There is no way I would advise any champion to use their personal phone for business purposes, in fact I stopped a what’s app group as some champions do not have work mobile numbers.” (p875)

185. The claimant explained in her evidence that her personal email was set out as a contact number on the National Guardian’s database. It was evident that Mr Guggilapu did not appreciate that the claimant needed a phone for champions role and explained how he could have sought a business phone for the claimant if he had been aware of her need for it. What Ms Williams said to Mr Guggilapu was not a lie it was true.
186. In the status exchange meeting the fact that the claimant, a Freedom to Speak Up Champion, had made a complaint against Ms Williams, the Freedom to Speak Up Guardian, was mentioned by Ms Williams who asked for advice on the situation in the status exchange meeting (an internal body) and she also contacted the National Guardians Office.
187. The claimant’s allegation that she was told off in the open plan office by Ms Maciw and Mr Guggilapu for visiting a nurse colleague who was End of Life on 6 February was denied, what is said by the respondent is that the claimant did not arrive for work as expected at 9 a.m. and she did not follow procedure for someone who is late. Ms Maciw called the claimant to discover that the claimant was on the bus on the way to visit one of the Rapid Response nurses who had terminal cancer and was off work. Ms Maciw then said to the claimant that she should have asked for permission. The claimant was not told off in front of staff.
188. The claimant and Mr Guggilapu had an unplanned meeting on the 5 February 2019. In that meeting the claimant mentioned a number of matters one of the matters she raised was in connection with a Domiciliary Physiotherapy patient. The claimant said that the patient’s GP was going to complain, she provided details of the patient to Mr Guggilapu who said he would follow it up with the team by contacting Ms Amber Hirons (Physiotherapist) about the patient.
189. On the 6 February 2019, Mr Guggilapu sent an email to Ms Hirons and Mr Dan Groves about the Domiciliary Physiotherapy patient asking for details that would enable him to dealwith any complaint made. In his email to Ms Hiron, Mr Guggilapu introduced the query with the following: *“There were few things that came up in a meeting with Rose Southam yesterday that was planned for different purpose”*. The remainder of the email set out the enquiry.
190. Ms Hirons states that she was surprised by Mr Guggilapu’s email and that she had not approached the claimant. Neither Mr Guggilapu or Ms Hirons saw this issue as being an instance of whistleblowing. Ms Hirons said that if the claimant was unhappy about contacting the patient she would not have asked her to do so. The Tribunal do not consider that the communication from Mr Guggilapu to Ms Hirons was revealing that the claimant was a whistleblower, the circumstances were not such that confidentiality of the claimant’s identity should be maintained in the the communication to Ms Hirons.

191. In respect of the issues raised in D16, D17, D18 arising from activity on 6 February 2019 we do not consider that they reveal any detriment nor do they in our view amount to a breach of contract by the respondent where considered individually or as a composite.
192. D19: *Cynical, deliberate email and meeting fabrication: My manager Gotham Guggilapu sending an email to the head of rehabilitation Sue White copied in locality director and Revas Stewart, freedom to speak up guardian Elaine Williams falsely claiming that a meeting took place on the 7/02/2019 between me, himself and the Freedom to Speak up guardian in the full view of staff members at the Old forge Wokingham with discussions back and forth. The meeting never took place, I had been asked in an email dated 06/02/2019 to attend a meeting on the 07/02/2019 by Gotham Guggilappu and Elaine Williams and I had declined. Gotham and Elaine deliberately went ahead and fabricated, misleading and claiming that the meeting took place. my email 06/02/2019 @15:28 (a) Questioned my mental health and wellbeing in this email dated 07/02/2019 my manager also mentioned in this email that during the meeting that never took place he was worried about my mental health and wellbeing even though there was no meeting on that date (b) Deflecting attention from his own failures (Serious patients concerns) and recommending that I be investigated by the senior management level even though he and the freedom to speak up guardian Elaine Williams fabricated the meeting and falsely claimed that there was a meeting and that I attended the meeting bear in mind this meeting never took place.*
193. The claimant and respondent disagree strongly about whether on 7 February 2019 there was a meeting between the claimant and Mr Guggilapu. Mr Guggilapu states that acting on the advice of Mrs White he sent the claimant an invitation to attend a meeting to discuss her concerns. The claimant says that such a meeting did not take place and refers to emails she sent on 6 February 2019 in which she declined attending a meeting to discuss matters arising from her role as champion.
194. Mr Guggilapu states that while the claimant declined attend a meeting with Mrs Williams and himself she did meet with him alone on 7 February. Mr Guggilapu produced a note of the meeting which was sent to Mrs Williams, Mrs White and Ms Reva Stewart soon after the alleged meeting.
195. In Mr Guggilapu's email to Dr Raja Natarajan, Mr Guggilapu says that the claimant "was offered a 3-way conversation for clarity but she's declining to discuss". This tends to support the claimant's refusal of the meeting. However, the note also refers to behaviours that appear to reference how Mr Guggilapu says the meeting on 7 February played out.
196. The conclusion of the Tribunal is that, in a sense, both the claimant and Mr Guggilapu are correct about 7 February 2019. We are satisfied that the exchanges as described by Mr Guggilapu occurred however we consider that it was reasonable for the claimant to deny that there was a meeting as such. We consider that these exchanges took place on 7 February 2019, not necessarily in a formal meeting setting but in exchanges in the office. In particular we note that what the claimant is said to have said during the exchanges that Mr Guggilapu refers to as a meeting chime with the claimant's evidence about events at this time.

197. We do not consider that Mr Guggilapu fabricated the meeting on 7 February 2019.
198. The claimant complains that Mr Guggilapu questioned the claimant's mental health in his email of 7 February 2019. We note that Mr Guggilapu stated of the claimant: "I'm really concerned about this situation and well-being of Rose. This needs to be looked at Senior Management level (*sic*) and I would be asking for HR support here."
199. In our view there are two aspects to what Mr Guggilapu is saying, first was his concern about the claimant's behaviour and secondly, concern for the claimant. We consider this was a genuine and reasonable expression of Mr Guggilapu's concerns. We do not consider that in doing so that the claimant was subjected to a detriment.
200. We do not consider that this was an attempt to deflect attention from management failures.
201. D20: *Investigated without being told: My manager recommending in an email dated 07/02/2019 that I be investigated by the senior management because he found my behaviour challenging, threatening and aggressive in this meeting that never took place.*
202. D21: *Falsely accused of an aggressive behaviour, reporting me to the senior managers and HR managers seeking help claiming that I was aggressive in that meeting on 07/02/2019 yet the meeting never took place.*
203. D24: *Falsely accused of being aggressive in a meeting that never took place 07/02/2019, manager having a meeting with Senior HR Rozeena and Sophie Philips and recommending that I be investigated by senior management.*
204. Mr Guggilapu spoke to Dr Raja Natarajan about the claimant, following this conversation Mr Guggilapu was advised to summarise his concerns in writing and he did so in the e-mail on 8 February 2019. This email resulted in steps being taken to commence an investigation into the claimant. The claimant was unaware of this at the time. The commencement of an investigation in circumstances where the claimant is of the view that there is no justification could amount to a detriment. However, in circumstances where one employee makes an allegation against another member of staff the employer should take steps to ascertain the facts and the commencement of an investigation may be necessary. The view of the Tribunal is that there was no detriment in the steps taken by the respondent to look into matters after receiving the claimant's email of 8 February 2019.
205. The claimant says that the allegations made about her behaviour by Mr Guggilapu were false. The Tribunal has two versions of the interactions between the claimant and Mr Guggilapu. The description of the claimant's behaviour and the impact it had on Mr Guggilapu is disputed. The Tribunal, having heard the evidence of Mr Guggilapu and the claimant, are not satisfied that the account Mr Guggilapu gave was false as the claimant alleges. In writing as he did Mr Guggilapu was representing matters as he honestly thought they were, even if he was wrong about this we do not consider that he was being deliberately false.

206. D22: *Verbally aggressively confronted and falsely accused: physio Amber Hiron aggressively and verbally confronted me face to face in front of everyone, in an open plan space office at 9:30 after my manager falsely advised her in a meeting to watch out for me as [the claimant] ...had reported her to Patients Advice and Liaison Manager Trevor Lyalle and also to the high powers Email 08/02/2019 10:12 regarding patient AJ who was in her care.*

207. There is a dispute between the claimant and Ms Hirons about an event on 8 February 2019. The claimant says that she was approached, aggressively, by Ms Hirons and told that Mr Guggilapu had said:

“Rose if you feel that you don’t want to contact patients on behalf of the clinicians then you should say so instead of reporting them to PAL and the higher powers”.

208. Ms Hirons denied that she had aggressively confronted the claimant she wanted to ensure that the claimant felt she could speak to her if she felt she was being asked to do something she did not want to do Ms Hirons recalls the conversation being calm, straight forward, and not confrontational.

209. The Tribunal are satisfied that the protected disclosure has had no impact on this incident, we considered that Ms Hirons was a plausible witness who was telling the truth when she said that she did not know that the claimant was uncomfortable about contacting patient AJ. Bearing in mind that the claimant’s relationship with Mr Guggilapu at this time was at a very low point from his perspective it is in our view possible that he did say to Ms Hirons something that was reported to the claimant which is now not recalled by Ms Hirons. In our view there is no breach of contract and to the extent that there was any comment that is capable of being a detriment to the claimant we are not satisfied that it has any relationship with the claimant making a protected disclosure.

210. D23: *Deliberate Refusal by Patients Advice and Liaison Manager Trevor Lyalle to respond to my email requesting him to confirm and clarify that I had not contacted him regarding patient AJ safety concerns with who the manager had misled the physio that I had reported her and the clinicians to them Email: 08/02/2019 10:12.*

211. On 08 February 2019 after speaking with Mr Guggilapu the claimant emailed Mr Lyalle, she copied it to Mr Guggilapu. The email read:

“Hi Trevor could you please clarify that I have not contacted you regarding the above patient. My manager has advised one of our physios that I have contacted you and made a formal complaint regarding the above patient. Kind regards Rose”.

212. The claimant’s complaint is that Mr Lyalle did not reply, she calls this a detriment and a breach of contract.

213. In his evidence Mr Lyalle accepts that he did not send a reply he says there was no particular reason that he did not send a reply: regrettably, the claimant’s email just slipped through the net due to the volume he receives. He denied deliberately refusing to respond to the claimant’s email. There was no

connection with any protected disclosure.

214. The Tribunal accepted the evidence given by Mr Lyalle, there was no breach of contract and the failure to reply to the email was not a detriment because of the claimant making a protected disclosure.
215. D25: *Deliberately conspiring with the Freedom to Speak Up Guardian Elaine Williams and the National Guardian's Office to cause me detriment, breaching anonymity and confidentiality. Serious patients' safety concerns not addressed or investigated, misleading email from the CEO to me in an email that one of his directors will contact me in a couple of days. Email 20/04/2019.*
216. The Tribunal have heard no evidence at all that supports the conclusion that there was a conspiracy between, Mr Emms, Ms Williams and the National Guardian's Office.

Breaches of contract

217. The claimant has set out a number of matters upon which she relies as amounting to breaches of contract, B1 to B13. These matters have all been addressed above in the section on detriments. For the reasons set out above the matters set out at B1 to B9 do not amount to a breach of contract.
218. The claimant also complains as follows:
219. B10 (a) *Internal grievance process panel members Stuart Overhill Hr manager and Alison Reed investigating officer declined to look at the evidence presented in an email and patients medical record and the reason given was that the panel members are not clinical, and they do not know how the Rio system works. (b) Internal grievance panel refused to interview Eleanor Ives advanced nurse practitioner and Lesley Dyson senior therapy assistant as requested by myself and the senior clinical team interviewed as part of the internal grievance process.*
220. B11 *Falsely advised by my manager Gotham Guggilapu that I could leave work on the 29/03/2019 as I have some leave days left. Two weeks later after I had left I received a letter to say that I was to face disciplinary action for unauthorised absence.*
221. B12 *Falsely claiming and misleading outcome letter of the internal grievance process that a meeting was arranged and I had met Elaine Williams (Freedom to speak up Guardian) and Gotham Guggilappu (Service manager) in February of 2019, where I felt that I was being harassed. The fact of the matter is that there was no meeting, between me, Elaine Williams and Gotham Guggillapu. This was a fabrication.*
222. B13 *Appeal hearing for my grievance process the HR Stuart Overhill falsely claimed, misleading the panel members that I had never contacted him with a concern and the first time I ever contacted him was on the 30/04/2019 I reminded him that I had contacted him twice prior to that as seen in an email and letter, I also contacted him.*

223. The claimant sent an email of resignation of her employment on 11 March 2019 giving 4 weeks' notice of termination of her employment. The claimant's employment ended on 11 April 2019. The claimant did not work from 29 March 2019 onwards.
224. The matters raised by the claimant in B10, B11 and B13 arose after the claimant had not only resigned her employment but after the claimant's employment had come to an end. There is no connection between these matters and the claimant's employment. If the claimant were able to show a breach of contract in respect of this matter it would not have been matter in respect of which the claimant resigned her employment with the respondent. The matters complained of in B12 while referencing a matter that occurred before the claimant's employment came to an end, the alleged breach of contract also occurred after the end of the claimant's employment.

Conclusions

225. The effect of our conclusions on the facts in this case as set out above is that the claimants claims of Unfair Constructive Dismissal (section 98 ERA 1996), Automatic Unfair Constructive Dismissal where the reason (or, if more than one, the principal reason) for the dismissal is that the claimant made a protected disclosure (section 103A ERA 1996) and Detriment on the ground that the claimant has made a protected disclosure (section 47B ERA 1996) are not well founded and are dismissed.

Employment Judge Gumbiti-Zimuto

Date: 2 June 2023

Sent to the parties on: 6.6.2023

GDJ

For the Tribunals Office

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