EMPLOYMENT TRIBUNALS

Claimant: Ms V Moss

Respondent: Age UK Leeds

Heard at: Leeds **On:** 7 to 11 October 2024

Before:
Employment Judge JM Wade
Mr W Roberts
Mr J Howarth

Appearances
For the claimant: In person (supported by Mr M Holland and Mr M
For the respondent: Mr KB Wilford, employment consultant

Note: The Tribunal's decision was announced to the parties on 11 October and the claimant requested written reasons. Rule 62(5) provides: In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how the law has been applied to those findings in order to decide the issues. For convenience the Judgment given on 11 October 2024 is also repeated below:

JUDGMENT

1. The claimant's complaint of whistleblowing detriment partially succeeds and is otherwise dismissed.
2. The claimant's section 103A complaint does not succeed.
3. The claimant's complaint of unfair dismissal succeeds.
4. The claimant's complaint of wrongful dismissal succeeds.
5. A remedy hearing has been arranged for 17 December 2024. A separate notice of hearing will be sent. The claimant has requested written reasons which will follow in due course.

REASONS

Introduction and issues

1. The claimant worked as a service manager for the respondent Leeds charity. A colleague raised concerns to her, which she then raised with senior management. She was subsequently dismissed. She brought complaints of

whistleblowing detriment and dismissal, and unfair and wrongful dismissal and a deductions from wages complaint.

2. The respondent employs around sixty people and its mission is to provide services to older people in Leeds.

3. The claimant had some legal assistance to start her claim. It was ordered at a case management hearing that the claimant's eight page issue list would stand as the matters to be decided by this Tribunal, notwithstanding some of the allegations/matters were repetitive. The Tribunal saw no basis to depart from that Order (save to collect allegations together). The headings in our findings below are the questions from that issue list applying the key: APID[number] = Alleged Protected Disclosure; ADET[number] = Alleged PID Detriment, ADIS [number] = Section 103A PID dismissal allegation, in each case taking the numbers from the claimant's list.

4. The Tribunal:

    4.1 made findings of fact to decide whether disclosures and detrimental treatment happened as factually alleged;
    4.2 Decided whether the disclosure were qualifying and whether any treatment was on the ground of any disclosures;
    4.3 Decided whether any of the detriment case succeeded taking into account limitation – the claimant commenced ACAS conciliation on 30 November, a certificate was issued on 29 December 2023 and she presented her claim on 29 January 2024 - detriments before 31 August were arguably out of time unless they were part of a series of acts;
    4.4 Decided the principal reason for dismissal;
    4.5 Decided whether the claimant's conduct amounted to gross misconduct (wilful and deliberate serious misconduct demonstrating the claimant would no longer be bound by her contract of employment – in short - repudiatory conduct);
    4.6 Decided whether the respondent acted reasonably in treating its reason – alleged gross misconduct – as sufficient reason to dismiss applying Section 98(4) of the Employment Rights Act 1996 – having found the principal reason was not whistleblowing.

5. We directed ourselves that we must not conflate the decisions we made in 4.5 and 4.6 – in the unfair dismissal case we must not substitute our view.

Evidence

6. We had a hearing file of around 600 pages and written statements from the witnesses. In the case of the claimant, this was a lengthy, thorough and considered statement reflecting her case in the issue list.

7. We heard oral evidence from the claimant and Mr Lawson, who was a member of the claimant's team at the material times. We did not hear oral evidence from Mr Holland, the claimant's son, because he did not attend on day two, finding matters difficult, and in any event his evidence went mostly to the effect

of these events on the claimant. He was also present at the claimant's workplace on 28 June 2023, an important date in the chronology. We indicated that if remedy came to be determined then we could consider hearing from him under oath at that time.

8. The claimant was not cross examined on much of the detailed detriment or dismissal allegations in the issue list, nor on whether her disclosures were protected disclosures. Instead the respondent's broad case on the chronology of fair dismissal and grievance processes was put to her.

9. We heard then from the following witnesses on behalf of the respondent:

    9.1 Ms Inglis - operations director, the claimant's line manager, who investigated the claimant's information about her colleagues and then investigated information she received about the claimant, recommending a disciplinary hearing concerning the claimant's conduct;
    9.2 Mr Anderson - chief executive officer, Ms Inglis line manager, who addressed the claimant's grievance;
    9.3 Ms Burnett, Income generation director, who took the claimant's disciplinary hearing and decided gross misconduct and a disciplinary penalty of demotion as an alternative to dismissal;
    9.4 Mr Allen, a trustee who decided the claimant's appeal against her dismissal;
    9.5 Mr Wakefield, the chair of trustees who decided the claimant's appeal against Mr Anderson's determination of her grievance.

10. The claimant was very nervous during this hearing and felt unable to ask the questions she had prepared for the respondent's witnesses. The Employment Judge read out the claimant's prepared questions for the witnesses on occasions. The Employment Judge also asked the witnesses to comment on the main allegations in the claimant's case (to the extent they were not included in the claimant's questions) in order that those witnesses had the opportunity to deal with those allegations fairly. The Tribunal also deployed its full industrial experience to ask its own questions to clarify the evidence of all the witnesses.

11. These reasons identify people who appeared as witnesses by their names, but otherwise identify others by a key which will be understood by the parties.

<u>The Law</u>

12. Section 47 B of the Employment Rights Act 1996 ("the ERA") relevantly provides at 47B (1) : "A worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure". Detriment means, objectively, adverse treatment about which the claimant can justifiably feel aggrieved, and on the ground that means materially influenced or contributed in a way which was more than trivial.

13. Section 43 B relevantly provides that, …"qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show..(a) that a criminal offence has been committed, is being committed or.....(b) that a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he or she is subject".

14. Section 48(1A) of the ERA provides that a worker may present a complaint to the Tribunal that he has been subject to a detriment in contravention of Section 47B. Section 48(3) relevantly provides: "An employment tribunal shall not consider a complaint under this section unless it is presented – before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates, or where that act or failure is part of a series of similar acts of failures, the last of them…".

15. As to unfair dismissal, the ERA relevantly provides:

94 The right

(1) An employee has the right not to be unfairly dismissed by his employer.

95 Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer if ...

> *(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.*

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show -

> *(a) the reason (or, if more than one, the principal reason) for the dismissal, and*
>
> *(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) -

> *(a) 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

(b) shall be determined in accordance with equity and the substantial merits of the case.

16. Hadijoannou v Coral Casinos Ltd [1981] IRLR 352, establishes the principle that it is rare for examples of "comparator" cases to be truly similar such that a dismissal will be found unfair for reasons of inconsistency. Such evidence may suggest manifest unfairness by inconsistency (for truly similar situations), or may suggest the real reason was not the misconduct alleged. At paragraph 25: "*We accept that analysis by counsel for the respondents of the potential relevance of arguments based on disparity. We should add, however, as counsel has urged upon us, that industrial tribunals would be wise to scrutinise arguments based upon disparity with particular care. It is only in the limited circumstances that we have indicated that the argument is likely to be relevant, and there will not be many cases in which the evidence supports the proposition that there are other cases which are truly similar, or sufficiently similar, to afford an adequate basis for the argument. The danger of the argument is that a tribunal may be led away from a proper consideration of the issues raised by [s 98(4) of the ERA]. The emphasis in that section is upon the particular circumstances of the individual employee's case..*"

17. Section 103A ERA relevantly provides that "An employee who is dismissed shall be regarded for the purposes of this part 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.

18. Timis v Osipov does not apply except against an individual perpetrator, see Wicked Vision v Rice [2024] ICR 675 – damages for injury to feelings/personal injury/financial loss can only be awarded against an individual who takes a decision to dismiss (rather than against the employing organisation).

19. Gross misconduct involves deliberate and wilful serious misconduct amounting to a repudiatory breach of contract – by her conduct the employee is demonstrating she will not be bound by the terms of the contract. That is an objective test. Where the employer knows of such conduct, it must, like the employee asserting constructive dismissal, not delay in accepting the breach and terminating otherwise it will be taken to have waived the right to terminate.

20. An unlawful deduction from wages arises where the amount paid on a particular occasion is less than the amount properly due (and no appropriate authorisation is in place for that deduction.) The amount properly due is usually the amount applying the terms of the contract of employment.

The Facts

21. The claimant was the Service Manager of the respondent's Ageing Well services and a member of its operational management team ("OMT"). She was employed pursuant to a contract of employment which included the following:

21.1 "*Your main static place of work is the Bradbury Building" (central Leeds);*
21.2 You acknowledge and agree that your duties may require you to work at any other establishment of the Employer or visit any clients…….throughout the UK and therefore you accept that you may be required to work at any of these locations as and when required by the Employer"
21.3 "The Employer operates a very strict policy on confidentiality….you are likely to obtain and use the Employer's confidential information…This information includes …Colleague information…this should not be divulged outside of the Employer's organisation to anyone…The employer will regard any breach of this section as a disciplinary offence and serious breaches may lead to dismissal without notice for gross misconduct"
21.4 "… you are entitled to receive…-1 month's written notice";
21.5 …"The Employee acknowledges receipt of…the Employee Handbook.. [and] further confirms the Employee has read the contents…and accepts that together they form the Employee's contract of employment".

22. The respondent operated a suite of policies within its handbook which included the following:
22.1 A grievance procedure containing an informal, formal and appeal stage;
22.2 A disciplinary procedure, setting out:

22.2.1 "*…our process for disciplining staff is applied fairly and consistently in relation to conduct…..*
22.2.2 *The policy outlined in this section is not designed to be a contractual process (and hence does not have contractual status).*
22.2.3 before contemplating disciplinary action…will generally undertake an investigation to ensure that there is a case which justifies progressing the matter to a formal disciplinary hearing…
22.2.4 where serious allegations are being investigated….you may be placed on paid suspension…
22.2.5 additionally, prior to the disciplinary hearing you will usually be provided with copies of all the evidence that will be relied upon as part of the disciplinary hearing
22.2.6 any subsequent disciplinary action will be imposed based on reasonable belief of the facts surrounding the matter
22.2.7 Possible disciplinary sanctions..Verbal Warning…for a period of six months; Written warning….for a period of 12 months; if the matter …is sufficiently serious…Final written warning…for a period of 12 months… Dismissal if the matter is sufficiently serious to bypass the issuing of previous warnings first and the dismissal is as a result of gross misconduct, then you will not be entitled to notice or pay in lieu of notice…

22.2.8 As an alternative to dismissal, in addition to issuing a Final Written Warning, we may impose…demotion to a lesser role, with a reduction in terms and conditions accordingly…"

22.2.9 Categories of Gross Misconduct

22.2.9.1 Serious insubordination of failure to follow a reasonable management instruction

22.2.9.2 Divulging confidential information to any unauthorised persons

22.2.9.3 …dishonesty, theft or fraud…

22.2.9.4 Deception, including but not limited to….

22.2.9.5 Deliberately or carelessly misleading us in any way…

22.3 A confidentiality policy which repeated the contract terms but did not itemise colleague information as confidential information and repeated, "*serious breaches may lead to dismissal without notice for gross misconduct"* and further provided: "*Our separate Confidentiality and Consent Policy contains our rules and procedures in relation to information held about clients, service users, volunteers and your colleagues and must be adhered to".*

22.4 A whistleblowing policy which said:

22.4.1 "*if you raise concerns that are in the public interest, you will be protected from reprisals or victimisation……...*

22.4.2 if you have concerns about…….fraud or any other misconduct you should bring the matter to the attention of your line manager or the Finance Director where appropriate…

22.4.3 anyone who… victimises an employee after a concern has been expressed will also be subject to disciplinary action

22.4.4 …..any complaint will be thoroughly investigated by a member of management and outside agencies may be involved as necessary. The results of the investigation will be advised to you, whilst protecting the confidentiality of others involved as far as possible"

Background

23. The claimant began her employment on 11th March 2019 as a Prosper Wellbeing Coordinator, on 22 February she was promoted to a senior wellbeing coordinator and on 4 July 2022 she was promoted to Service Manager for the Ageing Well services, which involved managing a team of around ten people.

24. The respondent has legal obligations to its funders and regulatory bodies, including the Charity Commission, employees, volunteers, and the public. The employees have legal obligations within their contracts of employment, including in like terms to those of the claimant above. Its trustees are ultimately responsible for the respondent's compliance with its obligations, albeit they delegate operational activity to employed management - the respondent's senior management team (SMT).

25. The claimant reported to Ms Inglis, Operations Director– they had a good working relationship and in December 2022 the claimant's probationary review described the claimant as excellent in many categories, including relationships with her team.

26. The respondent's senior management team (SMT) broadly comprised the chief executive, Mr Anderson, two operational directors of services run through operational team management (the OMT of which the claimant was a member), Ms Burnett as income generation/fundraising director, and a finance director. There were three people in the OMT. There was no full time human resources support, this was provided externally. Around 80% of staff were deployed on the ground directly providing services to older people.

27. In March 2020 Ms Inglis had recruited AB for a role which did not operate because of the pandemic – another manager then designed a role for AB and in September 2020 Ms Inglis took over that colleague's management directly. Ms Inglis management of AB was "light touch" because she was a director and very busy.

28. AB's role involved community activities and Ms Inglis did not have the time to get to grips with the detail of AB's activities. She was satisfied from their monthly one to one discussions that AB was working in the community. In 2021 AB's daughter (CD) volunteered for the respondent and in January 2022 she was employed full time as a Community Activity Officer within the same team as her mother. Again, Ms Inglis took over management of CD from another manager because that relationship had not gone well, and again her management was light touch.

29. AB and CD saw their roles as operating solely in the community. They were forthright about that in meetings, and did not welcome attending the office at all. Their records on the respondent's "Charity Log" of clients/services/activities were minimal, and they tended to operate paper records. The funding of their posts, unusually, did not require high levels of reporting or accountability.

30. On 12 October 2022 the claimant held a meeting of the Aging Well team, including AB. Each team member/project owner reported on their activity/issues. The meeting was carefully minuted. AB was recorded to have said: "*well don't know where to start, its been busy busy busy… receiving quite a lot of referrals…quite a few intergenerational workshops planned..community sculpture.. in partnership with Leeds Rhinos setting up chatty cafes there… exercise classes to my group…we have extended the work with Chapel FM, as the group would like to have a day out each week….we have quite a few chatty cafes now in [three locations] also done a lot of work with [group].*"

31. There was a discussion of "office cover". The claimant relayed the SMT request that one third of colleagues' time be spent in the office. A three day a week colleague, (XY), said she did two days in the community and one day in the office and that was perfect. AB said: "*I do not have time to sit in an office all day, my job is in the community, I cannot do my job if I am sitting in an office..*" The claimant explained the need to support reception staff, by having one

person from each service in the office each day for "walk in" older people who may need assistance, or words to that effect.

APIDs 1 and 2

The Claimant reasonably believed that the below concerns were in the public interest, as the Respondent is a well-known Charity in Leeds, and they did not relate to the Claimant's own private rights at work:

1. *The conversation with Ms Inglis on 12th October 2022, stating that two members of staff (AB/CD) were not running four Chatty Cafes (Meanwood Valley Farm, St. Edmonds, Stainbeck Church and Brackenwood), as they had declared, a protected disclosure?*
2. *The conversation with Ms Inglis on 25th October 2022, again stating that [AB/CD] were not running or involved in four Chat*ty Cafes, which they were claiming to be responsible for, a protected disclosure?

ADETS 1 and 2

What did Ms Inglis a) mean by, 'not wanting to open that can of worms' on 25th October 2022 and b) trying to laugh it off, roll her eyes or snap at the Claimant when issues regarding the disclosures were brought up? Were these detriments?

Was the failure to act by Ms Inglis a detriment?

32. After the 12 October meeting, one of the claimant's team, XY, told the claimant that she was 100% sure the activities brought up by AB and said to be run by AB and CD were not taking place. XY said she knew this because she lived in the area. The claimant relayed that same information that day to Ms Inglis. Ms Inglis said that AB and CD did not claim mileage, thereby saving the organisation money. She did not encourage the claimant to pursue the allegation. Ms Inglis had only approved one mileage claim for AB earlier that year and it contained journeys to and from one of the three "chatty cafe" venues mentioned by AB.

33. On 25 October the claimant met with Ms Inglis for a management task review. The claimant said to Ms Inglis re AB and CD:
    33.1 she still could not get from them a timetable of events;
    33.2 only one venue/group was known about;
    33.3 CD said they [the chatty cafes] were her mother's projects, although they were in daughter's calendar; and
    33.4 XY was *adamant that the other chatty cafes don't exist* .

34. Ms Inglis asked the claimant if she had spoken to AB or CD and when the claimant said she had not, Ms Inglis agreed saying, "don't want to open that can of worms".

35. Ms Inglis' explanation of this remark was that she considered it ill advised to accuse someone of lying without evidence - she had seen some evidence of the activities carried out by AB/CD.

Alleged PID 3
Was the conversation with Ms Inglis during the middle of February 2023, stating that the situation was getting worse (direct confirmation from [two chatty café locations] a protected disclosure?

36. XY continued to be upset about AB/CD's apparent lying about their activities. In February 2023 the claimant telephoned two of the venues where chatty cafes were claimed to be being run, having been provided with information from XY. She was told cafes were not being held by AB/CD at two of those venues.

37. The claimant again told Ms Inglis. Ms Inglis, we find, is mistaken in recalling she instructed the claimant to talk to AB. AB was, at that time, still being managed and having monthly meetings with Ms Inglis. We consider Ms Inglis knew she had to raise matters with AB and instead she was abrupt in telling the claimant to "leave it" – that is, she told the claimant not to contact third parties. She was unhappy that the claimant had taken steps to investigate matters herself (ie she had "opened" the can of worms, against Ms Inglis advice).

38. In her February monthly meeting AB gave Ms Inglis an update on her work, and Ms Inglis was satisfied with that update. Ms Inglis gave and recorded a direct instruction to AB that she was expected to come into the office one day a week, and that when AB did so she was not to use a particular car park but was to find parking herself – this was a rule for colleagues which AB was ignoring. AB continued to ignore this instruction.

APID 4
The conversation with Ms Inglis on 22nd March 2023 stating concerns over the non-existent Chatty Cafes, which [AB/CD] were still claiming to run and the concerns over them claiming mileage, a protected disclosure?

39. On 22 March 2023 the claimant had a one to one with Ms Inglis – she was due to take over the direct line management of AB around that time.

40. The claimant reported to Ms Inglis that AB and CD had asked the claimant about their mileage claims and the claimant had offered support but AB/CD had refused to come into the office to discuss them. The claimant saw from the one mileage claim on AB's file from 2022 that she had not deducted home to office mileage when claiming and that needed to be addressed if she, the claimant, was to approve any more claims.

41. We find Ms Inglis on this occasion did ask the claimant if she had raised matters, including the cafes, with AB/CD, and the claimant replied she hadn't - the claimant thought when AB was fully in her team she would address things then. She felt she had been told not to take things further in February, so she had not done so yet.

The fully merged team

42. The respondent's funding for projects including the Befriending Service (XY), Digital Inclusion (Mr Lawson/VW) and State of the Ark (AB/CD) ended on 31st March 2023. To avoid redundancies, the staff at risk were brought together to begin a new service under the claimant, called "Ways to Wellbeing". The scope of that service was directed by Ms Inglis and she had secured unrestricted funds from the Board to avoid redundancies at this time.

43. At a meeting of the claimant's team on 4 April 2023 there was much excitement about the new service. The claimant again reminded the team that the parking pass was not for routine attendances at the office – AB had been using it despite Ms Inglis' instruction. Again AB described the activities at the chatty cafes.

44. On or around 26 April the claimant raised the inclusion XY's home address in an email from the finance director as a data breach and Ms Inglis confirmed it would be investigated and offered an immediate apology to XY, and told the claimant she could share that with XY.

45. The claimant had discussed her concerns about AB/CD with PI, who had previously managed them, but given up and instead worked as a personal independence coordinator. She had asked the claimant about how she found things managing them and the claimant had told her of her difficulties. PI had then "blurted out" the concerns about the non existent cafes in front of senior management in the office. Ms Inglis then told the claimant she should not have shared her concerns with PI.

46. On 17 May at her one to one Ms Inglis told the claimant that a redundancy in the team was necessary and that another colleague had separately raised concerns about AB/CD with senior management. Matters were discussed under a heading "[AB/CD] Conduct Issues" and the claimant told Ms Inglis she had contacted organisations to verify activity (or not) of AB/CD. The claimant also raised concerns about another of her team members who she described as struggling for various reasons ("VW").

47. By this stage Ms Burnett was aware of the chatty cafe concerns (from PI). Ms Inglis wrongly believed that Ms Burnett had heard the claimant say negative things about members of her team in the office. Ms Burnett had not heard such things. She had heard PI "blurt out" the concerns about AB/CD.

48. Ms Inglis took advice from Mr Anderson. He suggested the claimant sit down with AB/CD and talk through her concerns once they have been properly documented and evidenced and Ms Inglis relayed that advice to the claimant.

49. The claimant was also told by an OMT colleague around this time that Ms Inglis had invited him to a disciplinary hearing over performance issues and he was concerned he would lose his job. The claimant became fearful about her own position.

50. PI told the claimant not to worry as she was a whistleblower and had nothing to fear. She also told the claimant she, PI, had passed on the concerns about AB/CD because fraud was being discussed in the office, and that she considered AB/CD's behaviour to be similar. The claimant then contacted Protect (the whistleblowing charity) and the CAB and ACAS and thereafter kept careful records.

APID 5: Did the email to Ms Inglis dated 30th May 2023 (six Chatty Cafes at Meanwood Valley Farm, Brackenwood, St. Edmonds, Stainbeck Church, Hamara Centre and Leeds Rhinos and other concerns) contain protected disclosures?

51. The claimant then provided a four page written note/chronology of the information she could give about AB/CD's work, and representations about their work, to Ms Inglis on or around 30 May/1 June 2023. She had shown it to others in the OMT before she did so to make sure it was accurate and reasonably written.

Were APIDs 1 to 5 qualifying disclosures?

52. We assess the claimant's state of mind beginning in October 2022. At that time, the management of CD – daughter - had moved to the claimant, but AB was still being managed by Ms Inglis.

53. The information conveyed orally at that time was that the cafes did not exist and the basis for that belief was the evidence of XY who lived in the area. The context was that the claimant was struggling to get information from AB/CD and they were not taking part in covering the office by working from the office as SMT wanted, instead saying they were "busy, busy, busy".

54. The claimant reasonably believed when sharing that information that it tended to show that AB/CD were at the very least in breach of their employment contracts. However, in telling Ms Inglis, we find from the context and the lack of witness statement evidence/contemporaneous evidence of state of mind, that the claimant did not reasonably believe she was doing so in the public interest **at that time**, but in the interests of her team, and particular XY, who was aggrieved that AB/CD were not being required to do their time in the office, and were apparently telling lies about the extent of their work.

55. We consider alleged APIDs 3 and 4 are of the same quality as alleged APIDs 1 and 2 above. The claimant's reasonable belief when she told Ms Inglis the further information about the non existent cafes, was not that she was providing that information in the public interest - she was doing so solely in the interests of fair dealing and operations and in her team.

56. The claimant did not include in her witness statement evidence about her reasonable belief at the time of each one of the alleged disclosures, albeit she expressed a general belief about them all. The respondent did not cross examine her about these matters but instead made submissions about the quality of information shared at the time. We apply the law in respect of each APID and we make that assessment doing our best with all the evidence before us, including the respondent's whistleblowing policy to which the claimant had access and to which she could have referred at all times (but did not do so).

57. After considering matters with hindsight the claimant believed she had been a whistleblower by oral conversations in October, February and March. That, in our judgment is insufficient evidence of her state of mind **at the time** and there was no contemporaneous evidence that the public interest crossed her mind at the time. Not every aspect of potential wrongdoing at work is necessarily reasonably believed to be mentioned in the public interest because it occurs in the charitable sector.

58. By the time of the email (APID 5) , the claimant did reasonably believe she was providing information about AB/CD in the public interest and that it tended to show breaches of their employment contracts and/or fraud. That had been identified in her discussions with PI and she had contacted the disclosure charity. She then set out as much detailed information as she could, including evidence indicating AB's claims about the cafes was untrue. In our judgment this was a qualifying disclosure.

59. It follows from those conclusions that ADETs 1 and 2 are dismissed, albeit the events form background to the subsequent events – we make no findings about "rolling eyes" or "laughing it off" by Ms Inglis – they were the claimant's impressions, which may well have been seeking to empathise with the claimant's coming challenge of managing AB/CD.

Investigating the Conduct Concerns about AB/CD

ADET 3: Following on from the disclosures on 30th May 2023, when Ms Inglis began to defame the Claimant's professionalism with other members of the Senior Management team, was this a detriment?

ADIS 11: Had Ms Burnett made false allegations about the Claimant before she became the Disciplinary Manager?

ADET 4: Still following on from the email of 30th May 2023, throughout June 2023, when Ms Inglis blocked the Claimant from making decisions about which activities to be carried out (arts and crafts), was this a detriment? Did the Ways to Wellbeing team begin arts and crafts activities when the Claimant was no longer there?

ADET 5 After a meeting on 19th June 2023, Ms Inglis had planned to talk with [AB/CD] she told the Claimant to go home and work from there as she was not needed. Was this a detriment?

ADET 6 By Ms Inglis informing AB and CD on 19th June 2023, that the Claimant had made accusations about them, a detriment?

ADIS 4 Was Mr Anderson implicated in AB's and CD Investigation?

ADIS 5 Did Ms Inglis put the Claimant in such a situation, to fail?

ADIS 6 Did AB and VW a) give Ms Inglis malicious and vexatious complaints about the Claimant? b) Was there any substance to their complaints? c) Were they professional in nature? d) Did Ms Inglis use these complaints to discredit the Claimant's professionalism and/or management capabilities?

ADIS 7: When the Claimant became new in post, as the Ageing Well Manager on 4th July 2022, why did Ms Inglis insist on continuing to manage AB for a further ten months, when she was part of the Ageing Well team?

ADIS 8 Did VW have a hidden agenda?

ADIS 15 Was there a note taker when Ms Inglis carried out the Investigation with Ms Lawson and Ms Coates?

60. The claimant's account of concerns was reviewed by some of her OMT colleagues and three members of SMT: Mr Anderson, Ms Inglis and JK. Mr Anderson identified that the allegations - wrongly claiming to be running cafes - was potentially serious and dishonest, albeit there could be some exaggeration. He considered matters needed investigating. He was not "implicated" in the investigation into their conduct – their misconduct was not his misconduct - he considered an investigation needed to take place and he and director JK gave advice to Ms Inglis about the investigation into AB/CD, including that she should take HR advice.

61. JK asked the most number of questions in her review of the claimant's note. She suggested that matters should have been addressed much sooner - this was not a criticism to be fairly levelled at the claimant, given AB reported to Ms Inglis.

62. Ms Inglis, in her comments on the claimant's note, asked whether a matter had been raised with the colleagues, and criticised the note for containing "emotive" language. Generally the claimant's note was balanced and contained her observations/knowledge of the two colleagues' work and behaviours. The claimant concluded with, "*they are reluctant to follow AUKL Policies and Procedures, therefore with the beginning of W2W I find this extremely worrisome and above all there are serious trust issues*". This was not emotive

– it was fair comment given the apparent lying about community projects, but Ms Inglis considered some sections could have been expressed in a more measured way.

63. Ms Inglis was then on leave. A difficult meeting of the claimant's team took place on 5 June, largely because of the awkward behaviour of AB/CD, but also because of VW's struggles with digital services. AB complained to director JK about that meeting, and JK told Ms Inglis about it.

64. When Ms Inglis returned from leave she attended the weekly meeting of the claimant's team on 12 June and during that meeting there was a challenge to AB about her activities (or lack of).

65. On 13 June, AB provided a written complaint about the claimant to Ms Inglis, including that AB was not happy with a duty day in the office and needed "a clearer rationale/explanation if this is what she is being asked". Ms Inglis had given a clear direction this was required months before and AB was still not doing it.

66. Ms Inglis then began a careful investigation into the concerns about AB/CD. She took no action in relation to AB's complaint about the claimant, other than to let JK/Mr Anderson know about it.

67. Ms Inglis took a lengthy statement on 14 June from the claimant to clarify any matters in her note – she did not ask the claimant if she had her permission to name her as the source of the investigation into AB/CD. It is not within the minutes, which were carefully prepared by Ms Inglis, and on balance we consider Ms Inglis mistaken – the claimant was adamant she was not asked and she did not give permission and we accepted that evidence. The claimant did not fully grasp in their discussion that it was going to be Ms Inglis who would take on raising those matters with AB/CD. Ms Inglis subsequently identified other witnesses and interviewed them. She did not have notetakers present during these interviews but completed the minutes herself.

68. On 15 June VW also put in a lengthy complaint about the claimant. Ms Inglis did not defame the claimant to the other SMT at this time but she did mention that two complaints had now been received from AB/VW. She also did not set the claimant up to fail – she had no interest in doing so – she did have an interest in AB/CD being properly managed, given that she had been unable to to do so given calls on her time.

69. The reason Ms Inglis chose to continue managing AB for ten months (or so - July 2022 to April 2023 – ADIS 7) was because she knew AB would be difficult with the claimant and she wanted to stagger that challenge - AB had ignored instructions from Ms Inglis and would not doubt be equally challenging to the claimant.

70. It is not necessary or fair for the Tribunal to determine the workings of the minds of AB/VW in submitting their complaints, or whether those complaints were vexatious or evidence of a hidden agenda. It was a fact they made

complaints and VW was struggling with some aspects at work. Ms Inglis did not use the complaints to discredit the claimant – she did not have time and was focussed on investigating the misconduct of AB/CD.

71. For these reasons ADET 3 is dismissed and the answers to ADIS 4 to 8 and 11 tell us little about the principal reason for the claimant's dismissal – the reason for a dismissal is the facts known and beliefs held which cause dismissal. Our findings about ADIS 4 to 8, and 11 form part of the context in which the claimant's dismissal later comes. Ms Inglis mistakenly believed Ms Burnett had heard the claimant make negative comments in the office about AB/CD and that informed her view that the claimant was not objective.

72. Ms Inglis did then meet with AB/CD on 19 June at the end of a wider team meeting. She suggested the claimant go home while those meetings were conducted and she told AB/CD that the claimant was the source of the allegations – that is why she suggested the claimant go home, so there would not be the possibility of ill feeling spilling over. Telling them the claimant was the source and had made accusations, when in fact she knew that the original source was XY, was detrimental to the claimant, and it was because the claimant had submitted her note – made her protected disclosure – PID 5.

73. Ms Inglis' "reason why" was that she had the claimant's permission – for the reasons above we are against Ms Inglis in our finding about that. More likely she told AB/CD because it was the email from the claimant which required the respondent to investigate, and it deflected ill feeling away from herself to say it was the claimant who was the source. Ms Inglis had decided with Mr Anderson and JK, to take over the investigation rather than permitting the claimant to investigate AB/CD.

74. Telling AB/CD that the claimant was the source of the allegations - ADET 6 – was clearly disadvantageous to the claimant in context. A team member had brought the information to the claimant and she had verified it and passed it on. She was trying to manage a difficult merged team, AB/CD appeared to be unmanaged and unaccountable and resistant to her management, and they did not need to know the source of the information at the investigation stage. The original source was XY, and there were other witnesses and evidence.

75. AB/CD would potentially, in due course, have access to the full investigation report should disciplinary action be taken, but revealing the source at that time, in these circumstances, was detrimental treatment influenced by the claimant's written disclosure PID5. Ms Inglis did not tell AB/CD that XY was a source or reveal other sources of information. Without XY these matters may well have not come to light at this time. For reasons including those above <u>ADET6 would succeed subject to limitation.</u>

76. Taking over and sending the claimant home were for the claimant's welfare, recognising there had been awkward meetings and the claimant had hoped to be at home for an appointment that day anyway. Ms Inglis also considered the claimant may not be objective, and she had taken advice from the respondent's HR advisers about matters, including that AB had raised a

complaint about the claimant. Telling the claimant to go home and that she was not needed was not detrimental treatment. ADET 5 is dismissed.

77. As well as meetings with AB/CD on that day, Ms Inglis gathered information and evidence, including from XY, the original source, and contacts at venues/events, and she produced a time line and a matrix analysing the allegations, and a report. Her report concluded, after a number of interviews with AB/CD:

    77.1 AB – inappropriate use of parking – no mitigation
    77.2 CD - failing to update managers on an event;
    77.3 No work being carried out on an event, contrary to impressions given;
    77.4 Non delivery of another event;
    77.5 Embellishment of café activities over more than a year with AB/CD admitting no regular ongoing social activities were delivered by them at three venues where they had said they were doing so.

78. In her lengthy report, there were many other matters covered, some where plausible explanations had been given, but on the original allegation regarding the cafes and parking she considered the explanations "less satisfactory" and that questions remained and that these matters were serious and unanswered. She also recorded in her report that previous opportunities to act were missed by her and the claimant. In sharing blame with the claimant in her report she was being less than fair as regards AB because she, Ms Inglis, was managing her at the time. Ms Inglis had also been clear and given directions to AB, which AB had ignored.

79. Ms Inglis said, "the risk to our organisational reputation in embellishing the work we do in partnership with other organisations" [was significant]. She also confirmed AB/CD had apologised for failings, and admitted the limited nature of the cafés, after some prompting – it had taken several interviews to have admissions from them.

80. By the time of the investigation report, AB had provided a fit note saying she was unfit to work until 21 August and CD until 23 July 2023.

81. Ms Inglis met with JK on 26 June and notwithstanding the misconduct she had found by AB/CD, they agreed no disciplinary action would follow, ostensibly on the basis that there was no deliberate or malicious wrongdoing, although they considered matters "borderline". A conclusion of no deliberate wrongdoing, was, in our judgment, close to a perverse finding, on the matters of fact established in Ms Inglis' report. No witness for the respondent could explain that perversity, save to repeat, that "it wasn't deliberate", said without conviction.

82. Ms Inglis then prepared letters to AB/CD with the subject heading: **No action following investigation (and work related stress)** in the case of AB. The letters said: "*I am writing following the investigation…..having listened to your explanation and my subsequent investigation, I can confirm I consider it to be satisfactory and no further action will be taken against you".*

83. The “satisfactory” conclusion was contradictory and perverse in light of the investigation findings.

84. She also sent letters to AB about her concerns about the claimant, saying they would all meet on their return to work.

85. On the morning of 28 June the claimant suggested an arts and crafts group, and that she was happy to do it herself, Ms Inglis was dismissive as this had caused a stand off in a previous team meeting when nobody had volunteered. Ms Inglis was under pressure: she was implementing a redundancy, managing absence and performance, and managing the conduct issues in the claimant’s team. ADET 4 is also dismissed – the fact that arts and crafts were later done after the claimant had left does not mean that Ms Inglis’ handing of this was detrimental treatment at the time about which the claimant can justifiably complain; it was also not influenced by the claimant’s disclosure.

86. Ms Inglis then met with the claimant to have a reflections session on 28 June and the reasons why she had decided not to take disciplinary action against AB CD, and how the claimant could manage them going forward. At first the claimant appeared to accept the position, but then challenged it and was very upset and asked what she should tell the team. Ms Inglis said she should say “the investigation had concluded and they were working with AB/CD on a return to work date”.

87. In summary, ADIS 4, 5, 6, 7, 8, 11 and 15, are either not made out in fact, or they do not suggest the principal reason for dismissal was the claimant’s PID 5. The fact of a note taker subsequently for the claimant (but not for the AB/CD investigation) is a matter which informs reasonableness and consistency and is part of the circumstances generally. ADETS 4 and 5 are dismissed, and ADET 6 would succeed subject to limitation.

Investigating Conduct Concerns about the Claimant

ADET 7 Was the letter inviting the Claimant to an investigation by Ms Inglis on 13th July 2023, a detriment?

ADET 8 Was the Claimant’s investigation conducted by Ms Inglis on 17th July 2023, a detriment?

ADIS 2: Did Ms Inglis (Claimant’s line manager) invent a reason and/or have an agenda to put the Claimant through a disciplinary procedure, which would ultimately amount to a dismissal?

ADIS 10 Should the Respondent have permitted Ms Inglis to conduct the Claimant’s Investigation, due to her implication?

ADET 9: Was the email received from Ms Inglis, inviting the Claimant to a Disciplinary hearing on 19th July 2023 with Ms Lisa Burnett, a detriment?

ADIS 11 Had Ms Burnett made false allegations about the Claimant before she became the Disciplinary Manager?

ADIS 13 Did Mr Anderson tell the Claimant, that "it's not about the breach of confidentiality, it's what you said" in the Grievance and Disclosure hearing on 11th August 2023?

ADIS 18 Was there a note taker in the Claimant's Investigation?

ADET 19 Was the failure by Ms Inglis to interview Ms Hargreaves in the Investigation, a detriment?

88. After the "reflections" meeting with Ms Inglis on 28 June 2023 the claimant was very upset. She had to go to another meeting and deal with a new staff member and then, when it was quieter at the end of the day, when she believed nobody was present, she called XY from the lobby area.

89. VW eavesdropped on that conversation. When the claimant saw him she ended the conversation and asked to have a word. She asked him how he was, he asked about the new service "if AB/CD did not come back". The claimant said not to worry, it would be sorted out and she was sure people would help. She saw him out and met her son at the door to travel home. She let Ms Inglis know she had spoken to VW and that he was okay.

90. A week later on 5 July, VW reported to Ms Inglis allegations about what the claimant had said during that overheard conversation with XY and/or the conversation with him – they were colourful allegations which put the claimant in a bad light.

91. Ms Inglis made a note of those alleged comments by the claimant. They included that the SMT were scared of a Tribunal and that was why Ms Inglis had not taken action, and that the claimant was unhappy about the investigation outcome, had provided evidence, and Ms Inglis had decided not to act.

92. On 6 July Ms Inglis gave at least three months' notice to terminate her contract because of a raft of HR issues amongst those for whom she was responsible, including AB/CD. She had had enough. She worked her notice diligently and did not tell her staff at that time that she had resigned.

93. On 12 July she conducted her usual and thorough one to one meeting with the claimant and they agreed action items. The meeting included how difficult the claimant was finding VW, including his being unwilling to travel to the office for a meeting. It also included open discussion of the claimant's unhappiness about AB/CD. Ms Inglis did not raise VW's or AB's complaints about the claimant with her.

94. Nevertheless, on 13/14 July Ms Inglis apologised for a "nasty letter" which would be coming to the claimant, in which she was invited to a formal meeting

on 17 July 2023 to discuss an allegation of "information of a confidential nature relating to team members being shared with other employees".

95. Breach of confidentiality was the notified charge, or concern, but the real or main issue for Ms Inglis, who resigned, and other SMT members with whom she discussed the allegations, was the alleged criticism of her, and the SMT decision not to take disciplinary action against AB/CD.

96. We make this finding as likely from all the circumstances, including accepting the claimant's evidence that in a later grievance meeting Mr Anderson told the claimant: "It's not about the breach of confidentiality, Vicki, it's what you said".

97. We have treated the notes of the "confidentiality" investigation meeting with Ms Inglis with caution: they were not the manuscript notes of the notetaker, but typed notes done later by Ms Inglis and checked with the note taker (the usual approach would be to have the note taker type the notes). The claimant did not accept they were accurate in a subsequent grievance.

98. Nevertheless, even applying caution, four alleged comments/allegations were put to the claimant by Ms Inglis. Initially the claimant did not remember the telephone conversation when she had been upset on the 28th with XY – it was nearly three weeks earlier. During the meeting she asked for a note of exactly what was alleged and this was provided after an adjournment after lunch. The claimant denied everything put to her several times and hoped to sort it out later – she denied a conversation on the telephone with XY, or with VW.

99. Ms Inglis appeared to the claimant to be angry both before and after lunch that day and she asked the claimant whether the claimant was unhappy about the outcome (of the AB/CD) investigation and when the claimant confirmed she was, Ms Inglis asked how that could be rectified. The claimant asked for copies of the investigation into AB/CD. Ms Inglis said she was not sure whether she could provide that (and it was not provided to the claimant).

100. The claimant then telephoned XY who reminded her of their conversation, and told her she would confirm, when asked, what had been said to her, which was limited to the claimant saying she was unhappy with the outcome of the investigation.

101. Faced with the evidence of VW, and the claimant's denials, Ms Inglis did not interview XY to gain further evidence of what was said. We find Ms Inglis was less objective than she would otherwise have been because this was not just a breach of confidentiality – it was mostly about the claimant's criticism of her and the SMT decision on AB/CD.

102. She wrote to the claimant on 19 July inviting her to a disciplinary meeting on 25 July with Ms Burnett and she explained that the allegation - information of a confidential nature relating to team members being shared with other employees - was very serious and may amount to gross misconduct which could result in dismissal.

Conclusions on this collection of allegations.

103. The claimant cannot justifiably complain that the letter inviting her to the investigation meeting on notice was detrimental – the alternative was to discuss the matter with her without notice. The outcome would have been the same - she would not have remembered the conversation with XY/VW and likely would have denied everything.

104. Even if we are wrong and an informal approach would not have produced a denial, because the claimant would not have been so worried, Ms Inglis was advised to do this formally, as she had with other colleagues in similar circumstances (but not with AB/CD to avoid collusion). Taking a formal route at this stage was not influenced by the claimant's previous disclosure – it was simply because of the reported conduct of the claimant's telephone call to XY, alleged comments to VW, and advice Ms Inglis received. ADET 7 is dismissed.

105. The only "agenda" or purpose of Ms Inglis was to investigate alleged comments which she and the SMT considered undermined them, and were a potential breach of confidentiality. She had no agenda to dismiss the claimant or gather information which would lead to the claimant's dismissal. She had already, herself, resigned.

106. The investigation on the 17th was no doubt unpleasant for the claimant. She can not reasonably complain about the allegations being considered a breach of confidentiality which needed to be investigated. Ms Inglis' anger was likely because of the claimant's unwise and persistent denials. The interview was not detrimental treatment, but if it was, it was not influenced by the disclosure, but by the claimant's reported conversations and denials of those conversations. ADET 8 is dismissed.

107. Ms Inglis conducting this investigation (ADIS 10) tells us nothing about the principal reason for dismissal – Ms Inglis had resigned – she was advised to investigate and she did that, as she had investigated AB/CD' conduct. Her investigation of AB/CD appeared clear and straightforward (it was the action following that which was arguably perverse, and in that JK played a role). It was to be expected that Ms Inglis' investigation of the allegations against the claimant would be straightforward (and had the claimant accepted/remembered some conversation had taken place, it is likely matters would have taken a different course).

108. There was limited management capacity and these were new allegations to be investigated. Ms Inglis was not "implicated" in the claimant calling XY when she was upset – that was the claimant's choice, albeit unwise. Ms Inglis was, allegedly, personally criticised by the claimant, and a different manager may have been able to be more objective in this investigation.

109. The finance director had no dealings in these events (it appears) and in our judgment that would have been a reasonable option for the respondent. "Should the respondent have permitted Ms Inglis…." is not how we approach the question. Was it outside the band of reasonable responses of a reasonable employer in these circumstances – all the circumstances – to do so? In our

judgment, that is an assessment best made on a review of all the findings from the beginning of a disciplinary process to the end.

110. ADET 9 – being called to a disciplinary hearing - this was because the claimant simply denied everything that was alleged. It was detrimental treatment, but it was not influenced by the previous disclosure – it appeared to Ms Inglis that the claimant was being untruthful - because she knew the claimant was unhappy about the AB/CD outcome and the alleged comments therefore struck her as likely true - and a disciplinary hearing was an opportunity to address that. ADET 9 is also dismissed.

111. As to the failures in the investigation by Ms Inglis – not interviewing XY. Ms Inglis did not think to interview XY – we accepted her evidence about that – it was an omission, which a reasonable investigation would have addressed, but it was not because of the claimant's previous disclosure – it was because of her being allegedly criticised by the claimant and the claimant's wholesale denials – anger and loss of objectivity. The obvious step of interviewing XY to corroborate (or not) what VW had alleged, did not occur to her. This gives rise to no inference that the real reason she did not interview XY was because she saw some opportunity for the claimant to be blamed or dismissed, which was the claimant's case, and XY's evidence might have prevented that. ADET 19 is dismissed (as are ADETs 7, 8 and 9).

112. Ms Burnett knew something about the AB/CD situation because it had been blurted out by PI – ADIS 11. Ms Burnett had not made untrue comments about the claimant to Ms Inglis – Ms Inglis had misunderstood those reports about PI's comments and attributed them to the claimant. Ms Burnett, amongst a very restricted field of potential managers to take a disciplinary hearing, was a reasonable choice at this stage.

113. ADIS 2, 10, 11, 13, and 18 are either not made out in fact, or, aside from ADIS 13, tell us nothing about the principal reason for dismissal. ADIS 13 does, in our judgment, tell us the principal reason for disciplinary action/demotion.

APID 6: Did the email to Mr Iain Anderson dated 20th July 2023 informing him of a cover up and an investigation into the Claimant being a direct result of whistleblowing, contain protected disclosures?

APID 7: Did the Grievance and Disclosure hearing with Mr Anderson on 11th August 2023, where he was informed of a 'cover up', contain protected disclosures?

ADET 10: Following on from the Grievance and Disclosure hearing with Mr Iain Anderson on 11th August 2023, Mr Anderson:

a) insisted that the Disciplinary hearing went ahead,

b) he promised the Claimant an outcome before her holiday on 19th August 2023, which he failed to do,

c) he also refused to send any investigation notes/minutes and failed to interview a witness. Are these detriments?

ADIS 9 Did any member of the Senior Management team and Trustees involved in the Claimant's case, other than Ms Inglis, interview VW?

ADIS 28 What did Mr Anderson mean by telling the Claimant that she was very brave, at the end of the Grievance and Disclosure Hearing on 11 August 2023?

ADIS 14 Was Mr Anderson a) an Independent Chair b) implicated in Ms Lawson and Ms Coates Investigation?

114. The claimant was unwell in the night on 20 July and called her GP the next day. She was advised she was unfit for work for three weeks because of stress at work.

115. The claimant raised a grievance/complaint to Mr Anderson on 20 July, in which she:
    115.1 carefully set out the chain of events as she saw it;
    115.2 complained that the investigation notes into AB/CD had not been provided to her;
    115.3 complained that Ms Inglis was conflicted as she had managed AB/CD for a long time;
    115.4 Conveyed her astonishment that the staff (AB/CD) were to be welcomed back;
    115.5 Explained the impact on her health of these events at work and that she has started to forget things;
    115.6 Set out the disciplinary investigation and that she now knew how the allegations had come to light having had the notes recorded by Ms Inglis – a conversation overheard by VW;
    115.7 Explained the notes of the investigation were not accurate;
    115.8 Explained her account of what she had said to VW and that Mr Anderson had also been present when she came up to relay that conversation to Ms Inglis on 28 June;
    115.9 Explained that VW knew nothing of her concerns about AB/CD;
    115.10 Reiterated Ms Inglis' conflict of interest; and
    115.11 She concluded saying she did not know if she could carry on, that she did not apologise for whistleblowing, and that she considered the older people of Leeds deserved better.

116. The disciplinary process was then suspended pending the investigation of this grievance.

117. On or around 11 August 2023 PI contacted Mr Wakefield, chair of trustees, about these events, considering that both she and the claimant had been the subject of a whistleblowing cover up. He replied politely.

118. The claimant's grievance meeting with Mr Anderson took place on Saturday 12 August (the delay was due to holidays and the claimant wishing to have a companion, which was accommodated).

119. The claimant provided a further detailed written statement about her concerns, which included her information that Ms Inglis had said she didn't want to, "open that can of worms", that she had not had any sight of the investigation into AB/CD, that she had lost trust in Ms Inglis, and that she could imagine funders being happy about how money was spent and how few people were supported.

120. In preparation Mr Anderson categorised all the claimant's concerns into: 1) her concerns about AB/CD were not investigated adequately; 2) unfair treatment of her; and 3) her ideas for the service were blocked. They had a documented discussion on each area - the notes were manuscript – the three areas discussed appeared to minimise the very clear points the claimant was making. Nevertheless, the claimant's companion told her she had done well and explained everything. She and her companion signed the manuscript notes which again recorded the "can of worms" comment. We repeat that Mr Anderson did make the comment alleged in ADIS 13 (it's not about the breach of confidentiality, it's what you said) during this meeting

121. At the conclusion of the meeting the claimant and Mr Anderson discussed how the matter was to be resolved. Mr Anderson said he would look at independent support on how colleagues can work together, with consent for reconciliation and how the team could function effectively – which indicated he may review matters. The claimant said she was not able to backtrack on AB/CD and she wanted an acknowledgment that she was trying to do the right thing.

122. We find Mr Anderson also said, "you're very brave" to the claimant. The claimant was not cross examined on this allegation and nor was Mr Anderson. Bearing in mind a subsequent email about mediation (see below), and how Mr Anderson put matters in that, we do not consider his comment was sinister or detrimental (which was the claimant's case), but a reflection on the claimant's principled stand.

123. Mr Anderson said he would try to give the claimant an outcome before she went on holiday on 19 August – the end of next week as he described it.

124. On 17 August Mr Anderson wrote to an external mediator: *We currently have an ongoing grievance/disciplinary matter within one of our teams which also relates to an allegation of misconduct which has been investigated to conclusion. This has resulted in animosity and issues of trust and confidence in the team which in my assessment would benefit from external mediation".*

125. He also interviewed XY about the investigation of the concerns about AB/CD but not about the claimant's disciplinary allegations: what was said by the claimant to her on 28 June. XY explained her concern about the outcome of the AB/CD investigation and her own knowledge of their misleading and false information, and failure to deliver activities.

126. Mr Anderson did not take a statement from Ms Inglis at that time – August – but before she left at the beginning of October he had asked her to document her decision making in the disciplinary issue and her handling of the investigation, and she provided detailed information over three pages or so.

127. In his mediation email Mr Anderson linked the grievance/disciplinary concerning the claimant as one issue. His subsequent communications to the claimant sought to separate them again.

128. Mr Anderson delivered a grievance outcome by posting a letter to the claimant which arrived on 30 August 2023. The outcome was:

    128.1 He did not uphold the claimant's position that the investigation into malpractice by AB/CD was inadequate or that Ms Inglis was conflicted (he did not provide the claimant with the investigation and report);
    128.2 He considered there was no merit in the allegation of unfair treatment by disciplinary action against the claimant – which was then to be undertaken by Ms Burnett;
    128.3 And he did not accept that the claimant's ideas were being blocked, but he set out why there were specific reasons to demonstrate digital inclusion and why arts and crafts activities did not have funding.

129. Mr Anderson did not comment or engage with the claimant's criticisms of AB/CD and her further information that volunteers were engaged to "free them up" - she remained of the view that they were not making a sufficient contribution to justify their employment.

130. Mr Anderson did not provide a copy of the AB/CD report with this outcome letter, nor did he provide his notes of the information from XY, nor did he provide the claimant with the signed notes of the grievance meeting after the meeting, albeit they were signed by all on the day.

<u>Further conclusions on this group of allegations – not addressed in the findings</u>

131. ADIS 14. Mr Anderson was not "implicated" in the AB/CD investigation (see above - repeats ADIS 4 – their wrongdoing was not his wrongdoing). He did not notify the regulator about the allegations about AB/CD, but that does not suggest he was implicated - he said that he did not consider the regulator and we accepted that evidence.

132. He started the grievance as independent as he could be, bearing in mind this was a relatively small charity with limited resources. His involvement to date was the review of the claimant's May disclosure. He had himself identified AB/CD behaviour as potentially dishonest and serious.

133. Ms Inglis did not run the decision to take no disciplinary action past him at the time – but rather it was agreed with JK – the other director. We find it likely, though, that he endorsed that decision, backing the JK judgment to take no further action – it was a serious matter and unlikely he would not have

intervened if he had a different view (see also Mr Allen's evidence below). He was the chief executive with accountability to the Trustees. His approach to mediation showed he considered the AB/CD matter closed and he knew of the outcome.

134. As to whether the claimant made further disclosures, she clearly provided information to Mr Anderson directly during this grievance (both written as above and during the meeting) which she reasonably believed she was providing in the public interest and that tended to show, again, breach by AB/CD of their employment contracts/fraud, and/or that she was being victimised as a whistleblower in breach of the law by the disciplinary proceedings, and/or that the AB/CD matters were being deliberately concealed or covered up. She had added to her May written disclosure and APIDS 6 and 7 were further protected disclosures.

135. As to ADETs 10 a) and c) these made out in fact: Mr Anderson decided the disciplinary should go ahead – he could have provided a different outcome – and he refused to send the any investigation notes/minutes and failed to interview XY or VW about the disciplinary allegations against the claimant. In the circumstances these are detrimental treatment of the claimant by him about which she can reasonably complain.

136. As to ADET 10b) - failing to provide the outcome before the claimant's holiday as he said he would hope to do, - this is not, objectively, detrimental treatment of the claimant. If we are wrong, it was not on the ground of the disclosures. Mr Anderson simply took a decision that it was better for the claimant to have the outcome after her holiday - likely because the outcome was unfavourable to her – it is the outcome that is unfavourable – if he had sent an unfavourable outcome before the holiday, the claimant would still have had an unhappy holiday.

137. As to his refusal to send any investigation notes/minutes, in truth there was no explanation for that from Mr Anderson other than "oversight". That might have been the case immediately after the meeting, but as time went on and certainly before the claimant's final appeal (see below), it is not a reliable explanation. The claimant sought the full notes and information/evidence from all processes from Mr Anderson in writing. He had, by then interviewed or asked Ms Inglis for further information, but he had not given the claimant the opportunity to challenge that information and there was a great deal of it with which she did not agree and which she documented in preparation for this case.

138. In a reply on 8 November 2023, he said, in effect, the grievance matter was separate, but he still provided no notes of his meeting with her, or his further investigations with Ms Inglis. Mr Anderson further said the claimant already had information from the original disciplinary hearing, and again did not provide anything further in that respect.

139. On 10 November 2023, the claimant tried again with Mr Anderson, saying she wished to have "*all the evidence from the disciplinary …the full investigation plus any witness statements… the investigation reports from ..grievance and*

*grievance appe*al". Again the relevant information was not provided to her (nor subsequently, despite a DSAR). It is only through these proceedings that the claimant has been able to see the full information – the AB/CD investigation, evidence of Ms Inglis, evidence from XY, when that was gathered, the full evidence from VW, and the claimant's own evidence given in the grievance and grievance appeal.

140. It is clear from this chain of events that Mr Anderson made deliberate decisions not to provide the notes and evidence requested. He made that decision again on or around 10 November 2023. We find he made these decisions consistently and deliberately.

141. We note the "can of worms" comment was not addressed by Mr Anderson (neither in the grievance, nor in subsequent questions to Ms Inglis) nor otherwise – the claimant's concern about concealment or cover up was, in the round, not addressed by him. It was not a reasonable grievance outcome to simply say to the claimant that Ms Inglis' investigation was thorough and the conclusions sound and there was no cover up, when the claimant had provided a wealth of new information and the impression of "cover up" was reasonable. There is a balance to be struck between respect for colleagues' confidentiality, and acting reasonably and independently in a transparent, fair process.

142. The simple position was, had the claimant seen been provided with the notes and evidence for her own grievance, her position would have been strengthened, because the lack of investigation before outcome would have been apparent.

143. Mr Anderson had not challenged the decision to take no disciplinary action against AB/CD - he endorsed the decision that lying to colleagues was to be regarded as "not deliberate or malicious". Mr Anderson could have adopted or instructed a similar approach to the claimant expressing herself, arguably unprofessionally, at a time when she was upset – that her disagreeing with SMT was not "deliberate or malicious". He did not do so.

144. Nor did he did interview XY/VW about the disciplinary charge against the claimant or direct that they be interviewed, despite knowing, through the grievance, that the claimant's case was that she had been told to tell her staff, and her case that VW had an agenda to cause her trouble. Instead, he permitted a less than full investigation to progress to a disciplinary hearing and did not investigate with Ms Inglis the cover up allegation (at all), and only investigated the decision making after the claimant's grievance outcome.

145. In the round, we find the most likely explanation for this collection of decisions adverse to the claimant by Mr Anderson, is that he acted on the ground of the disclosures, wishing to close them down, and particularly the latest concealment/cover up disclosure. These complaints succeed (ADETs 10a and 10 c). They are in time, because they are deliberate conduct by Mr Anderson extending over a period, the last of which was in November 2023, within the primary limitation period.

146. There was no further interview with VW before the claimant's dismissal (ADIS 9). A failure to investigate over the course of a disciplinary procedure could generate a finding that the principal reason for dismissal was the making of disclosures, but we address this in our finding on that issue below.

APID 8: Did the Grievance and Disclosure Appeal hearing with Mr Keith Wakefield on 14th September 2023, contain Protected Disclosures?

147. On 31 August – the day after receiving the grievance outcome - the claimant appealed Mr Anderson's decision and a date was set for the appeal on 14 September with Mr Wakefield.

148. The claimant met Mr Wakefield on 14 September and he listened to the claimant's thoughts, which he considered she was expressing very passionately. He stopped her when she sought to raise the issue that Ms Inglis was conflicted, saying that had all been covered and he was looking for something new.

149. She explained that Mr Anderson had asked her when the "can of worms" comment was made and she provided the detail to Mr Wakefield from her notes. She also explained that Mr Anderson had not provided the notes of the grievance meeting to her. Mr Wakefield asked her to send him all notes and documents which were relevant and he would take them into consideration. He also said " I think I should do a little investigation" about new matters raised.

150. Mr Wakefield obtained a clear understanding that the claimant wanted the disciplinary allegations against her withdrawn, that if VW was present she would ask him about what he had alleged, and that she considered it a wholesale cover up that AB/CD had "got away" with not providing activities, which caused embarrassment to the respondent, and yet she was being disciplined. The claimant asked Mr Wakefield to talk to Mr Lawson, who was very upset by matters, and Mr Wakefield said he would also talk to XY at the claimant's request. He ended by saying "this seems to be a substantial case which has not been thoroughly investigated" - in simple terms, that comment accords with the Tribunal's assessment of matters at that stage.

151. Pausing there, again we have concluded that Mr Wakefield had information directly from the claimant in her written appeal and during the appeal hearing which she reasonably believed she was providing in the public interest and that information tended to show, again, breach by AB/CD of their employment contracts/fraud, and/or that she was being victimised as a whistleblower in breach of the law by her disciplinary proceedings, and/or these matters were being deliberately concealed – that there was a cover up. This is not mere allegation, it is information about a substantial chain of events in which the claimant was clear and genuine and reasonable in her beliefs, and was providing that information reasonably believing she did so in the public interest.

152. The claimant was not unreasonable in that belief that she acted in the public interest because she also acted in her own interest – wanting the removal of the disciplinary proceedings as one outcome to the grievance.

ADET 11 Following on from the Grievance and Disclosure Appeal hearing on 14th September 2023, Mr Wakefield a) refused to take any further evidence from the Claimant on 27th September 2023 (which was before the outcome received on 6th October 2023). This was proof that Mr Lewis had an agenda, b) he did not interview a witness and c) insisted that the Disciplinary hearing went ahead. Are these detriments? Mr Wakefield told the Claimant to take this to Mr Anderson.

ADET 12 The Claimant emailed the above evidence and complained about the content to Mr Anderson. Mr Anderson did not acknowledge the email, is this a detriment?

ADET 13 Did Mr Anderson fail to a) put anything in place for the Claimant on her return to work on 9th October 2023, b) Was there a return to work? (which is a requirement in the Respondents Absence Policy), c) was there a phased return to work offered? (which is offered to all staff returning after a long period of sickness), d) Was mediation put in place, as promised? and e) Were the Claimant's staff told not to make contact with the Claimant. Are these detriments?

ADET 20 Was the failure to interview Ms Hargreaves by Mr Anderson and Mr Wakefield, a detriment?

153. Around the time of the grievance appeal, the claimant was still unwell, signed unfit until 8 October. On 19 September the claimant's team were told by Ms Inglis that Ms Inglis was leaving the following week and that they should therefore raise matters with another colleague or JK – nothing untoward about that direction when the claimant was ill.

154. On 26 September, director JK required a manager in her team to attend a disciplinary hearing to address allegations the team member had deliberately misled management; and "had caused worry and concern within her team". These matters were also said be very serious and that they may amount to gross misconduct. The outcome for the particular manager was a written warning – the misleading management conduct was not found to be deliberate, but found to be "poor management". The disciplinary hearing was conducted by the finance director.

155. On 27 September, in accordance with the opportunity he had given her, the claimant sent Mr Wakefield copies of all her one to ones with Ms Inglis which included concerns she had about VW, as well as the concerns raised by VW about the claimant, and meetings between Ms Inglis and CD.

156. On 29 September Mr Wakefield replied - "unfortunately I have concluded my role in the appeal process but I have sent your emails on to [Mr Anderson]". On the same day a letter from Mr Wakefield dismissed the claimant's appeal.

157. Mr Wakefield had not considered the claimant's one to ones – which went to the issue of whether Ms Inglis was conflicted, and the early raising of the issue of AB/CD's misrepresentations – nor had he spoken to XY, nor had he considered whether VW's reports could be reliable – that he "had an agenda" in the claimant's words. Nor had Mr Wakefield carried out any further enquiries other than to ask Mr Anderson and Ms Burnett about matters. He then accepted what "the officers" as he described them, said, and dismissed the appeal. He took no steps to investigate matters which would be supportive of the claimant's grievance. He was satisfied with what he was told. It was not for him to go around repeating work. The alleged fraud/victimisation of a whistleblower was also not reported to the Board of Trustees.

158. Mr Wakefield had a good friend who ran one of the venues where AB had lied about "chatty cafes' taking place. He told the Tribunal he said he had seen AB/CD there on an open day, appearing to suggest AB/CD had not lied about their activities. He then accepted his observation did not suggest Ms Inglis' conclusion that they had not run chatty cafes was wrong. Nevertheless, his evidence gave the impression that he doubted the Inglis report conclusions and was partial towards AB/CD.

159. As to the appeal outcome and alleged unfairness of the disciplinary process, Mr Wakefield said that the claimant had the opportunity to challenge that in a hearing with Ms Burnett; as to the action taken viz a viz AB/CD, he said he agreed it was the most suitable way forward, and he did not accept any deliberate prevention of the claimant taking her ideas for the Ways to Wellbeing service forward, even though there was not time to discuss those matters in their meeting.

<u>Conclusions about the grievance appeal</u>

160. Pausing there, as to ADET 11 a) to c), the claimant is reasonably entitled to be very aggrieved about the handling of this grievance appeal. Simply put, Mr Wakefield did very little, having given the claimant an expectation that he would investigate the evidence she provided to him. Why did do so little? Was he influenced by the claimant's whistleblowing – did he act on the ground of that?

161. Mr Wakefield's oral evidence on "the reason why" had the ring of truth about it, disappointing as this will be to the claimant. He did so little because he did not see it as an unpaid Chair of Trustees role to do anything further – as he put it - "my job was the appeal [meaning conducting the meeting] – we have [Mr Anderson and Ms Inglis] - paid professionals to do that investigation – I was quite satisfied with the outcome of the investigation". He also appeared to have his own views of the merits of the misconduct allegations against AB/CD.

162. It is rare that a Tribunal concludes that an appeal process is a "rubber stamp" of management's decisions, but in this case, that is exactly the effect of Mr Wakefield's approach. He was not influenced by the claimant's disclosures – they had no bearing on his thinking – he failed to act because of his approach to his role as Chair of Trustees and his apparent knowledge of AB/CD. ADET 11 is dismissed.

163. Mr Wakefield did forward the "VW agenda" information to Mr Anderson, but Mr Anderson considered it took matters no further. Mr Anderson did not fail to acknowledge an email from the claimant attaching VW documents - there was no email from the claimant to Mr Anderson with these documents. ADET 12 is dismissed because it is not made out on the facts.

164. ADET 20 is repetition – the failure to interview XY by Mr Anderson succeeded as a part of the conduct within ADET 10c. The allegation failed as conduct of Mr Wakefield, for the reasons above – it was not on the grounds of protected disclosures. To the extent that ADET 12 is further non-action by Mr Anderson on the substance of the claimant's complaints, the failure to interview VW is encompassed by our conclusions on detriments 10 a) and c). VW was still not interviewed despite the further information sent to Mr Wakefield.

165. On 4 October the claimant was again invited to attend a disciplinary hearing on 10 October.

166. The claimant returned to work on 9 October, choosing herself to work from home initially. Had she attended the office, matters might have been different, She had made enquires with Mr Anderson about support/mediation during her return to work but he replied with a suggestion that they do not focus on return to work/mediation until after the disciplinary process was concluded. He also let the claimant know that JK was supporting the team given Ms Inglis' had left and a three way meeting would be required going forward. She indicated she was happy with that position.

167. ADETs 13 a) to d) are dismissed – the claimant did not physically return to work and at the time was content with Mr Anderson's approach. Her sense of grievance within ADET 13 a) to d) has developed with the lens of hindsight. ADET 13 (e) is addressed below.

<u>ADET 14 During the Disciplinary Hearing with Ms Burnett, (which was postponed until the Claimant's return to work), the Claimant felt bullied and harassed, when Ms Burnett said, a) "you must really think hard about complaining about AB and VW, as it would have serious repercussions for you, they'll think you'll never let it go". The Claimant was b) told to work at home. Are these detriments?</u>

ADET 15 Did Mr Anderson, Mr Wakefield or Ms Burnett talk to, or interview [VW] regarding a) his behaviour towards the Claimant, (Vicarious liability) and b) relating to his allegations to Ms Inglis a detriment?
ADET 16 Was the fact that the Claimant received a) instant demotion, and b) that Ms Burnett told her that she did not need to look at the evidence or take it into account, as the fact that she spoke to Ms Hargreaves was enough, classed as detriments?
ADET 18 Was the absence of any duty of care to the Claimant's mental health and wellbeing and causing isolation, detriments?
ADIS 29 Was Mr Anderson and/or Mr Wakefield truthful or was Ms Burnett untruthful when Ms Burnett insisted to the Claimant that both Mr Anderson and Mr Wakefield had spoken with Ms Hargreaves, as a witness regarding the Claimant's Disciplinary Hearing?
ADET 22 Was every day on less pay a detriment?
ADET 23 Was causing the Claimant a) anxiety, b) insomnia and c) depression, d) worsening of other health conditions, detriments?

168. Ms Burnett held the claimant's disciplinary hearing on the breach of confidentiality charge on 10 October. She prepared questions in advance and the claimant answered all these questions straight forwardly. The meeting was mostly good natured and considered, although at times there was argument about whether XY had been interviewed.

169. Ms Burnett had indicated in the disciplinary hearing that she would check the grievance and appeal notes - Ms Burnett believed XY had been interviewed by Mr Anderson and Mr Wakefield and told the claimant that, and the claimant was clear she had not been interviewed in relation to events on 28 June and she provided a statement to that effect from XY. Having discovered the claimant was right, Ms Burnett interviewed XY on 16 October. We find Ms Burnett did not read the grievance meeting notes or grievance appeal notes – bearing in mind the claimant had still not been provided with a copy of the grievance notes.

170. At one point the claimant told Ms Burnett about the complaints about her from VW/AB, and that she wished to complain about those formally. Ms Burnett did say – "take your time to think about that as they will think you'll never let it go" -- they, referred to VW/AB - Ms Burnett also did not want upset in the claimant's team to continue by further complaints.

171. The claimant did not explain during the disciplinary hearing that Ms Inglis had told her to tell her team about the AB/CD situation on 28 June (albeit she had told Mr Anderson that). She was not asked that question, and there were a lot of other questions to address. At the end of the meeting there was discussion

of a need for Ms Burnett to reach an outcome and let the claimant know urgently – she said it would be by email and there was discussion of the claimant being back at work. Ms Burnett told the claimant to work at home, catch up on emails etc and not to pressurise herself – or words to that effect. She acted in that with concern for the claimant's welfare.

172. The claimant emailed Ms Burnett additional information on 11 October.

173. That 11 October letter included saying she had told VW broadly what Ms Inglis had told her to tell the team, namely, "there has been an investigation and that it has now come to a close, [AB] and [CD] are welcome back, but unfortunately I do not know when that will be". She also asked whether Age UK expected her to manage the three colleagues [AB/CD/VW] going forward due to their false allegations against her and asking for external mediation before she took any further team meetings. The claimant pointed out again that Ms Inglis had not interviewed XY.

174. The claimant remained working at home communicating with colleagues by email, but not attending online meetings because she remained very worried and upset by these events. JK had told the claimant's team members who were in work on or around 9 October to continue to report to another manager, who had been looking after them in the claimant's absence. On 12 October JK confirmed that instruction by email to those who were not present on 9 October. Mr Lawson, who accompanied the claimant to the disciplinary meeting, forwarded that email to the claimant on 20 October.

175. The claimant was working through emails but she also worrying about her position. JK did not tell staff not to contact the claimant – but she did tell them to report to another manager and that the other manager was continuing to "look after them". We did not hear from JK to explain why she did not copy in the claimant to these arrangements at this time. Doing our best from the chain of events, the claimant had communicated her upset and state of mind about conducting team meetings in her email of 11 October, rather than telling Ms Burnett she did not want to remain at home and wanted to fully return – if that was her position. In those circumstances we consider the arrangement itself was not, objectively, detrimental to the claimant. If it was, Ms Burnett had told the claimant the same information, acting for her welfare, rather than on the ground of the May disclosure. Neither Ms Burnett nor JK were present to hear or see the later disclosures and it was now six months after the May disclosure. ADET 13 e) is also dismissed.

176. On 16 October XY was asked by Ms Burnett to say what was said in the call on 28 June. XY said, "*Vicki called me. She was overwhelmed and upset with the outcome of the investigation...did Vicki tell you what the outcome was..Yes she said there was no further action to be taken against [AB CD]. She was obviously upset and could not believe the proof we had provided had not been enough to warrant further action.* She was also asked if she had any further conversation with anyone else about the AB/CD investigation and aside from

her meeting with Ms Inglis, she indicated she had not used the word "investigation" but had discussed AB/CD being off work with VW.

177. After that Ms Burnett invited the claimant to a meeting at which she would, "discuss the answers to her questions and the outcome". She did not read the grievance appeal notes either, and she reached her decision on the basis of the claimant's conversation with XY.

178. The claimant came into work on 23 October for her reconvened meeting and Ms Burnett read from a script saying "*you have breached confidentiality by speaking with a member of your team about another staff members proceedings. By your own admission you spoke with this employee about the outcome of the investigation into a matter regarding another member of your team which is not only a breach of confidentiality but also a breach of trust*". She went on *that trust with the team and charity was beyond repair, she had considered termination but with service and previous history you will receive an action short of dismissal, being demoted from role and given a final written warning for 12 months on file*.

179. The claimant said she would be appealing. Ms Burnett said, "record nothing from [VW] in this decision", by which she meant, the claimant had admitted telling XY of the outcome to the AB/CD investigation on 28 June and that she was disappointed about the outcome – corroborated by XY - and that was the basis for the disciplinary sanction, rather than anything VW had reported overhearing.

180. The claimant then sought an adjournment and when she came back, having clarified Ms Burnett's decision, she explained Ms Inglis had told her to tell everyone, and Ms Burnett said, that was "news to her" and not what she was told on the last occasion. Ms Burnett is right about that – the claimant thought Ms Burnett would have known it from reading the minutes of the meeting with Mr Anderson, Ms Burnett had said she would do after their last meeting – read the notes but she had not done so. The claimant had said to him she had been told to tell her team, and what to tell them, by Ms Inglis. Ms Inglis also confirmed that to be the case in this hearing and would have done so if asked by Mr Anderson or Ms Burnett at the time. The claimant had not said this in her further written information to Ms Burnett.

181. They then appeared to argue on the basis that the claimant told Ms Burnett to go through the notes because she had also told VW. Ms Burnett said the decision would not have changed because "it is based on the XY situation" - this is the allegation that Ms Burnett did not need interview VW or read the grievance notes because she had spoken to XY.

182. Ms Burnett also said "mediation" had not been mentioned (for the claimant) and that it would be for the other members of the team. The claimant asked if she handed in her resignation would that be "on my pay" and Ms Burnett said it would be unless she went through the appeal process. There was further back and forth conversation, with breaks, and the claimant relayed that ACAS had

said pay could not be reduced without signing a new contract. Ultimately the meeting ended with matters to be set out in writing, the gist was, the claimant could accept demotion or she would be dismissed.

183. The demoted role was in Wetherby and was as an enhance coordinator – on lower pay – around £28, 974 (£30, 278) compared to £30,720 (£32,103) – the figure in brackets reflects that all roles were subject to a 4.5% pay increase around this time. These details were sent to the claimant between 23 October and 25 October, together with an invitation to a further meeting.

184. On 24 October the claimant again became unwell worrying about the position she was in. She wrote to Ms Burnett to explain why she felt so unwell and what her position was - essentially that the disciplinary outcome and decision was confusing and unclear. Her fit note was due to expire on 21 November. She did not want to attend a further meeting given her health.

185. On 25 October the outcome decision letter was emailed to her, it included: "*in breaching confidentiality and sharing your opinion on such sensitive and confidential matters regarding your team members, it is my belief that you have damaged beyond repair the relationship regarding your team, resulting in a total loss of trust from not only your team but the management team at Age UK Leeds also. As your actions amount to gross misconduct you would normally be summarily dismissed. However I have taken into consideration your long service with Age UK Leeds and clean disciplinary record and have decided to demote you to the position of Enhance Co-Ordinator as an alternative to dismissal. …Salary £28974 per annum. The company has the legal authority to impose this alternative sanction under its contract of employment with you".*

186. Her colleague and member of her team, Mr Lawson, had resigned after attending the claimant's disciplinary hearing outcome with her. The claimant emailed indicating an appeal against the disciplinary outcome to Mr Anderson, and subsequently asked for more time to submit details. Mr Anderson provided a date for a trustee, Mr Allen, to hear the appeal – 28 November – by a letter dated 14 November. XY also resigned around this time.

187. The claimant also told JK that she was starting counselling and experiencing panic attacks – she asked for Ms Burnett to email the answers to her questions about pay and resignation.

188. On 9 November the claimant received an email from Ms Burnett confirming that if the claimant resigned with immediate effect because she did not accept the demotion, that would be a dismissal; if the claimant wanted to work her contractual notice, that would be at the demoted pay.

189. The claimant was then put on the demoted pay, albeit her payslips, being in arrears, took some time to reflect that. As recorded above, she continued to try to seek the notes and full evidence from Mr Anderson to make her final appeal against the disciplinary sanction, but she remained unwell.

<u>Conclusions on the detriment allegations concerning Ms Burnett</u>

190. Ms Burnett believed that the claimant had told XY the outcome of the AB/CD investigation, and that the claimant was unhappy about it. The grounds of her belief were the evidence that had been provided to her by the claimant and XY - the claimant accepted she had gone beyond Ms Inglis instructions in what she said to XY, and XY's account was the same or very similar – Ms Burnett approached this on the basis that Ms Inglis had not authorised anything at all to be said, and the claimant had therefore breached confidentiality.

191. Ms Burnett did not know of the contents of APIDS 5 to 8, because she did not read or hear those communications. Her decision to demote was not on the grounds of the disclosures made, and nor was her conduct of the disciplinary meetings or her decision not to interview VW.

192. We accepted Ms Burnett's oral evidence, which was straightforward. She was mistaken about whether XY had been interviewed about 28 June, but she was not dishonest in that belief and she sought to put it right by interviewing XY herself. To the extent that these allegations of detrimental treatment by Ms Burnett are made out in fact, and some of them are, they were not on the grounds of disclosures but on the basis of her belief in a breach of confidentiality by the claimant.

193. At the point that she made her decision Ms Burnett did not know that Ms Inglis had told the claimant to tell her team - "that's news to me", was the way she put it when the claimant explained, after she had announced her decision.

194. In all the circumstances, albeit we found that protected disclosures did not influence Ms Burnett's decision or conduct of the disciplinary proceedings, we have concluded the demotion decision was manifestly unsafe and unsound. Firstly, the grounds of her belief in a serious breach of confidentiality were not reasonable grounds arrived at after a reasonable investigation:

    194.1 Ms Inglis took VW's information at face value and interviewed the claimant; Ms Inglis lost some of her objectivity and was faced with denials from the claimant; she did not look for further information from the horses' mouth – XY - but put the matter forward for disciplinary decision – there was no investigation report, and no analysis of confidentiality at that time;

    194.2 Despite the claimant's representations through the grievance process nobody interviewed Ms Inglis, who accepted before the Tribunal that she had told the claimant to tell her team: "the investigation had concluded and they were working with AB/CD on a return to work date" - her evidence, had she been asked, would have been to confirm that. The significance of this had nonetheless been understood by Mr Anderson - "it's not about confidentiality it's what you said", but that was not addressed Ms Burnett.

    194.3 Similarly nobody interviewed VW to test whether he had a reason to cause trouble for the claimant – his comments had undoubtedly caused

management to lose objectivity about these events – they were the reason Ms Burnett also appeared to have lost her objectivity. She could not be sure, or even consider it likely, that the things VW alleged had been said, but the allegations considerably prejudiced her against the claimant. The reasonable employer would have enabled the claimant to put her case to VW, or done that as part of a reasonable investigation.

194.4 Ms Burnett recognised that the instruction from Ms Inglis was potentially important, but she confirmed her disciplinary decision in writing, without checking with Ms Inglis, when she could reasonably have paused matters to check.

194.5 Ms Burnett said she had read notes, when she had not.

195. Secondly, Ms Burnett decided the claimant's admitted conversation with XY was "gross misconduct", that is, deliberate and wilful very serious misconduct – a demonstration that the claimant would not be bound by her contract of employment. Ms Burnett failed to address her mind to whether the claimant had acted deliberately in this way – rather than unprofessionally in commenting on the AB/CD outcomes, when upset.

196. Ms Burnett said, during her evidence, she would not have called a member of her team for support when upset as the claimant did. Consideration of her own approach is no substitute for considering whether the conduct in question is capable of being gross misconduct. We note the finance director made that assessment for another colleague, who was alleged to have acted to mislead management, and found the misleading was not deliberate or gross misconduct; equally the "deliberate issue" was addressed for AB/CD - and they were considered not to have acted deliberately or maliciously. Ms Burnett did not consider whether the claimant's conduct was deliberate and very serious before reaching a gross misconduct conclusion.

197. Thirdly, the contractual position between the parties is not clear. On the one hand the respondent's handbook, including the disciplinary policy are said to form part of the contract of employment; on the other the disciplinary process is said not to be contractual – see 22.2.2 above. In short, the respondent's right to impose demotion is unclear.

198. Do these criticisms, which inform our Section 98 (1) analysis, give us reason to re-visit whether Ms Burnett acted on the ground of protected disclosures? They do, because the claimant's case was clearly that Ms Burnett was told to impose this sanction by Mr Anderson and we need to consider whether our conclusions give us any basis to infer that – and reject Ms Burnett's evidence. We return to that. She was asked, in terms, whether she was being told or directed in the disciplinary hearing by Mr Anderson and her evidence was, that she was not. She was being advised by HR consultants and they suggested the demotion penalty, agreeing breach of confidentiality was gross misconduct. In short, while we have found her decision to be unsound and unfair for the

reasons above, that does not, against her oral evidence and the chronology, give us a basis to find she acted on the ground of disclosures.

199. Ms Burnett was prejudiced against the claimant, but the prejudice was because of VW's allegations of what had been said, which she had read, and later the evidence of XY, which confirmed the claimant had commented on the AB/CD outcome implicitly criticising Ms Inglis. Ms Burnett believed the relationships within the team were broken, and removal of the claimant from that team was the right outcome.

200. Every day on demoted pay was detrimental treatment of the claimant, as the demotion decision was; similarly, the impact on the claimant's health from this decision, but, again, Ms Burnett did not act on the ground of disclosures.

Detriment limitation

201. We then reflect on our findings and ask whether ADET 6 was part of a series of detrimental conduct with Mr Anderson's 10(a) and 10(c), the last of which was presented in time. What amounts to a series is a matter of fact for the Tribunal. The detriments share a disregard for the claimant's position as a whistleblower: she made disclosures about wrongdoing in the public interest, trying to put right a wrong to which a member of her team had alerted her. Neither Mr Anderson nor Ms Inglis considered the respondent's whistleblowing policy, and whether they acted in accordance with it in this treatment of her, which we have upheld as detrimental and on those grounds. Albeit they each acted in a particular context, we find that their actions properly share that disregard of policy. They amount to a series, for that reason, because of the quality of the decisions, and their close relationship in the management chain. ADET 6 also succeeds.

202. Whether these matters influence remedy, will involve an assessment of whether, but for the upheld protected disclosure detriments (6, 10a) and 10c), the disciplinary decisions would have happened.

From Ms Burnett's decision to dismissal

203. The claimant's fit note expired on 22 November. JK told her she could take some holiday if she wished or undertake training in the new role. On 24 November the claimant said she had not accepted the demotion and said she was working under protest pending her appeal. On 23 November the claimant had made a subject access request.

204. Through a diary mistake, the claimant did not attend the scheduled appeal hearing on 28th November.

205. Mr Anderson was in touch with the claimant seeking to reassure her about colleagues' knowledge about the reason for a changed role, if she accepted it.

He was, in effect, seeking to persuade her to accept the demoted role. On 29 November the claimant confirmed she did not accept it, and did not want to wait for another appeal date because things were all too much. She continued to be unwell. Mr Anderson again offered a further opportunity for an in person appeal or alternatively if she submitted her email in writing, it could be considered objectively on paper. She replied, "if Michael is happy to read my appeal, then please send me his email address".

206. Mr Anderson then, on 29 November, confirmed immediate dismissal of the claimant, saying, as she had not accepted alternative sanction, she was summarily dismissed, saying that was effective on 23 October 2023. He indicated a right to appeal that decision by letter to him and the claimant asked if she could now email an appeal against the sanction to Mr Allen. Mr Anderson then confirmed the claimant would be paid until that day, 29 November and that if she submitted an appeal it would be forwarded to Mr Allen.

207. On 7 December 2023 the claimant emailed Mr Anderson a thoughtful letter for Mr Allen, setting out grounds of appeal against her summary dismissal over three and a half pages, and commencing with an apology for failing to attend on 28 November.

208. On 14 December 2023 Mr Allen sent her his decision in an outcome letter:

"Having read your letter and considered the facts, I am satisfied that the outcome (action short of dismissal) was justified under the terms of the relevant policy. In particular I refer to your admission to sharing the outcome of a confidential investigation into two colleagues with other members of staff. This is a clear breach of confidentiality and Age UK Leeds policy.....

..you raise a number of new issues, which if true are a matter of concern, but which would need to be investigated separately and have no direct bearing on the decision made by the disciplinary panel.

Reading your letter, it is clear you do not recognise that you have done anything wrong or accept the outcome of the disciplinary process. Since being notified of the outcome you have failed to attend work and failed to follow reasonable management instructions. On this basis I believe it is reasonable for Age UK Leeds to terminate your employment under the terms of the disciplinary process."

209. Pausing there, it is clear Mr Allen did not investigate the "news to me" evidence, that the claimant had been authorised to share some information by Ms Inglis. Nor did he address at all the failures of investigation, or failures to consider whether the conduct was deliberate and serious – that is – to examine the basis on which Ms Burnett's decision was manifestly unsafe.

210. In his oral evidence Mr Allen said:

210.1 He was assured the "chatty cafe" matter was a closed issue and had been properly investigated and concluded;
210.2 The claimant appeared to link the two – that matter and her disciplinary/dismissal but that was not for him to consider because..
210.3 Ms Inglis and Mr Anderson were happy that no further action was required on the chatty cafe issue;
210.4 He believed the claimant was disciplined for "going and having a lengthy conversation about the outcome of the [AB/CD] process.."sharing her views with members of staff she should not have done"
210.5 He could not identify the confidential information the claimant should not have shared;
210.6 He did not believe he was saying anything different to Ms Burnett's decision on penalty.
210.7 His role was to remain objective.

211. Mr Allen's conduct of the claimant's appeal, was of the same quality as that of Mr Wakefield's conduct of her grievance appeal. He did little beyond seek assurances from Mr Anderson. He relied on management and did no further investigation. He concluded dismissal was reasonable, also on the basis that the claimant had not attended work or followed reasonable management instructions (which was at a time when the claimant was advised she was too unwell to work) and about which there was no opportunity for the claimant to comment. In their statements neither Mr Anderson nor Mr Allen gave any evidence that not attending or management instructions played a part in their thinking – dismissal simply followed because the claimant did not accept demotion.

212. We come to consider the claimant's Section 103A case, but before doing so it is pragmatic to answer, in summary form, the remaining questions she has raised as follows. Our conclusions are in italics.

ADIS 2 Did Ms Inglis (Claimant's line manager) invent a reason and/or have an agenda to put the Claimant through a disciplinary procedure, which would ultimately amount to a dismissal? *She did not have an agenda. She did not bring false allegations, she acted in good faith on information which had been reported to her by VW. It was her disbelief of the claimant's denials (of any conversation) which caused the subsequent disciplinary hearing to be convened.*

ADIS 17 Did Ms Inglis manipulate other members of the Senior Management team by a) questioning the Claimant's professionalism and b) by bringing false accusations? *In simple terms, she did not; she relayed complaints she had received from VW/AB to SMT in passing; she did not bring false allegations, she acted on information which had been reported to her by VW.*

ADIS 18 Were all the Senior Management team involved in the Claimant's disclosures? *We have found disclosures 1-4 were not protected disclosures. Of*

disclosures 5-8, JK, Mr Anderson and Ms Inglis saw disclosure 5 (as did some operational managers); Mr Anderson further saw disclosures 6-8. As to involvement, only Ms Inglis and JK directly decided not to take disciplinary action against AB/CD, and Mr Anderson subsequently endorsed that decision.

ADIS 19 Had the Senior Management team (mainly Mr Anderson) already decided that the Claimant would be demoted and/or dismissed before the Disciplinary hearing? *No, we accepted Ms Burnett's oral evidence about this. She concluded gross misconduct and asked the HR advisers about alternatives to dismissal, which is "where demotion came from".*

ADIS 20 Was the Disciplinary Hearing Manager (Ms Burnett) the sole arbitrator? *Yes – she made the decision with external HR advice.*

ADIS 21 If the Claimant's disclosures had being acted upon adequately, would the Claimant have been in the position she was in? *We repeat our conclusions about what amounted to protected disclosures. Disclosure 5 was acted upon with a thorough investigation. Earlier robust management of AB/CD may have prevented events unfolding as they did. These are matters which are part of the Tribunal's consideration of the Section 98(4) question – they do not inform the decision about the principal reason for dismissal.*

ADIS 22 Was there a failure to investigate the a) Grievance and Disclosure Hearing and b) Grievance and Disclosure Appeal Hearing, adequately? *Yes.*

ADIS 23 Did Ms Inglis investigate Ms Lawson and Ms Coates adequately? *Yes – it was not the investigation which could be criticised, but the decision not to take disciplinary action, which the Tribunal considered was approaching perversity.*

ADIS 24 Was the Claimant guilty of what had been charged different from the Investigation? *The core allegation – breach of confidentiality – was not different. The details of which conversation were alleged to amount to a breach of confidentiality were changed. Allegations from VW were said to be abandoned by Ms Burnett, although we have found they caused her to be prejudiced against the claimant nonetheless. These conclusions also inform our wrongful dismissal decision – see below.*

ADIS 25 Who caused the toxic environment within the Ways to Wellbeing team? *This is not the description the Tribunal has used to describe this team: meetings were difficult; AB lied, and AB and CD misled the team about their activities; AB did*

not comply with reasonable instructions. The claimant was doing her best to achieve the aims and objectives which Ms Inglis had set, and AB/CD did not help with that.

ADIS 26 Was the Claimant's Investigation reasonable in the circumstances, as no attempt was made to interview the only witness other than [VW]? (Burchell Test)

XY was not interviewed until Ms Burnett interviewed her. We have found the failure by Mr Anderson to interview XY or instruct her interview amounted to protected disclosure detriment by him. This is part of our principal reason assessment.

ADIS 27 Was the Claimant put through a corrupted process?

VW gave to Ms Inglis an account of comments made by the claimant which were sufficiently colourful that it was reasonable to investigate them. Whether it was reasonable for Ms Inglis to investigate is a matter which goes to reasonableness (Section 98(4)), but it does not help us with the principal reason for dismissal – in short – the allegations made by VW were such that it was reasonable for them to be investigated by someone, and Ms Inglis had no agenda against the claimant at that time. Whether VW acted maliciously, if that is what is meant by this question, was not something which the respondent investigated.

ADIS 28 What did Mr Anderson mean by telling the Claimant that she was very brave, at the end of the Grievance and Disclosure Hearing on 11 August 2023?

This is addressed in our findings above – it was an acknowledgment of the claimant's courage to stand up against wrongdoing – it was not delivered in a sinister way.

ADIS 29 Was Mr Anderson and/or Mr Wakefield truthful or was Ms Burnett untruthful when Ms Burnett insisted to the Claimant that both Mr Anderson and Mr Wakefield had spoken with Ms Hargreaves, as a witness regarding the Claimant's Disciplinary Hearing?

This is addressed above. Ms Burnett believed XY to have been interviewed – she was not dishonest but had misunderstood matters when she said XY had been interviewed by both Mr Anderson and Mr Wakefield – not least because XY had been interviewed by Mr Anderson, but not about the disciplinary allegations. This does not inform our principal reason for dismissal assessment.

ADIS 30 Was the Claimant's professionalism ever in doubt by the Senior Management team before her written disclosures on 30th May 2023?

It was not.

ADIS 31 Did any of the Senior Management team and the Trustees involved ever look for evidence that pointed away from the Claimant's guilt?

Ms Burnett interviewed XY after the disciplinary hearing. This was the limit of the respondent's investigations of the claimant's disciplinary case.

ADIS 1 Was the Claimant automatically unfairly dismissed under s103A ERA 1996?
ADIS 3 Was the Claimant's protected disclosures the overriding and principal reason for dismissal ?
ADET 17 Due to continuing acts, was the instant dismissal without notice a detriment? (Timis v Osipov)

213. Dealing with ADET 17 first, against the chain of events and conclusions above, the respondent's dismissal of the claimant cannot also be a detriment - the claimant did not bring proceedings against named colleagues.

214. As to ADIS 1/ADIS 3, the principal reason for the claimant's dismissal is to be found in the facts known and beliefs held by the employer **which caused the employer to dismiss**. Among the facts known were: Ms Burnett had made a finding of gross misconduct; it was clear in her decision that if demotion was not accepted by the claimant, Ms Burnett's decision was dismissal. The claimant had refused the alternative sanction of demotion (which Mr Anderson had sought to persuade her to take up); she had earlier provided a raft of information including in the grievance and appeal (which we have found to be protected disclosures); that information included her belief in concealment of AB/CD misconduct and her reasons why; Mr Anderson had not removed the disciplinary proceedings, had not interviewed XY or VW about the 28 June allegations, and had not provided the claimant with documentation - we have found these actions by him be on the grounds of her disclosures, including the failure to provide documents as late as November.

215. From these matters, we have to identify what was the principal reason for the claimant's dismissal, applying the common sense of this Tribunal, and taking account of our answers to the questions posed by the claimant. The overarching chronology, albeit involving some detrimental treatment of a whistleblower, is not such as to displace the clear answer. The claimant's reported conversation on 28 June, which was her conduct, "what she said" or was believed to have said, was the principal reason for her dismissal, taking into account all the circumstances of this case. This a reason within Section 98 (2) and we come to apply Section 98(4).

Was the Claimant unfairly dismissed under s98(4) of the Employment Rights Act 1996?
This is addressed below
Was the Claimant's Investigation in line with the ACAS Disciplinary and Grievance Procedures?

This is a remedy point, to be addressed at the remedy hearing – the claimant must point to the provision of the Code (rather than the guidance) which she says was not reasonably observed.

Was the Claimant's Disciplinary in line with the ACAS Disciplinary and Grievance Procedures?

See above

Did the Respondent follow their own Whistleblowing and Absence Policies and Procedures?

The respondent's whistleblowing policy has not been followed because the claimant has suffered the detriments 6, 10 a) and c) on the grounds of whistleblowing. The absence policy (failure to carry out a return to work meeting) in the circumstances does not help the Tribunal in all the circumstances of this case, address the claimant's allegations about dismissal.

Was the Claimant's Disciplinary hearing held in a professional capacity?

The claimant was taken through a list of questions prepared by Ms Burnett and there were discussions of the main issues; it was conducted mostly professionally. The extent to which matters broke down into disagreement was not helpful.

Were the Hearing notes fit for purpose?

The hearing notes of the first disciplinary meeting were lengthy. The notes of the second meeting at which the outcome was delivered were not verbatim but they captured the main points relayed.

Did the Claimant's Investigation and subsequent Disciplinary satisfy the requirements of the Burchell test?

We have addressed this in our findings about Ms Burnett's decision and further below.

Statute's part 20 of the Employments Rights Act 1996 – a) Did the Respondent act unreasonably? b) Was the Disciplinary a fair procedure and c) was it outside the range of reasonable responses?

See below.

Was the Claimant's Investigation and Disciplinary out to 'prove' guilt?

See below.

Was the Claimant's Dismissal consistent with how other members of staff are treated?

See our conclusions about the manifest unfairness of the Burnett decision above.

Did any member of the Senior Management team and Trustees involved in the Claimant's Investigation, Grievance and Disclosure, Grievance and Disclosure Appeal and Dismissal Appeal have any training and /or experience in HR procedures?

Mr Wakefield was a previous union training; training for others was unclear.

Did the Respondent act reasonably in all the circumstances in dismissing?

See below.

216. The twelve questions above were those posed by the claimant in her issue list. We reminded ourselves of the statutory test:

Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) -

(a) 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

(b) shall be determined in accordance with equity and the substantial merits of the case.

217. We repeat our conclusions as to why the demotion sanction was manifestly unsound and unjust. Dismissal for Ms Burnett's belief in gross misconduct is, for these reasons, contrary to equity and the substantial merits of the case, including applying Burchell (see above). It is outside the band of reasonable responses of a reasonable employer in all these circumstances, which include that this was a charity employing around 60 people, with access to external HR support.

218. Between Ms Burnett's decision and the dismissal communicated by Mr Anderson, there was no further investigation, to address the investigation deficit - consideration of whether the claimant had acted deliberately, whether Ms Inglis had given any instruction to tell the team and whether the claimant had in fact breached confidentiality, whether VW had acted maliciously, the claimant's mitigation for sharing her view with XY – in short, the main points of the claimant's case.

219. The Tribunal is not applying the standard of a perfect investigation, but rather a reasonable one where the main points of the claimant's defence are looked at and considered, as well as points against her (Sainsburys v Hitt).

220. It is clear that despite assurances that he would investigate, Mr Wakefield added nothing to the investigations undertaken. Mr Allen, similarly, undertook no further investigations or analysis to understand if the dismissal decision was reasonable – he relied on management's assurances.

221. We have deployed the full range of the Tribunal's industrial experience in assessing whether the respondent acted within the band of reasonable responses, both in its investigation of the claimant's conduct, and in its imposition of penalty. These are, in the Tribunal's experience, a very unusual chain of events, which posed challenges for all concerned. Nevertheless, in all the circumstances and for the reasons above the claimant's unfair dismissal complaint is well founded and succeeds.

Was the Claimant wrongfully dismissed under the Employment Rights Act 1996?
Has the Respondent repudiated the Claimant's contract by not paying the notice period?

222. The claimant's case was of wrongful dismissal. The questions above are the claimant's formulation of the relevant questions. The Tribunal asked and answered a further necessary question: did the claimant engage in deliberate and wilful serious misconduct demonstrating she would not be bound by her contract of employment on 28 June 2023, either in conversation with VW or in her conversation with XY.

223. We had no oral evidence from either VW or XY. We had two versions of the information collected from VW by Ms Inglis and we know he waited a week to describe the comments made by the claimant. XY was not interviewed until much later – October 2023 - but she relayed a version which had the ring of truth about it – it was not wholly supportive of the claimant: *Vicki called me. She was overwhelmed and upset with the outcome of the investigation...did Vicki tell you what the outcome was..Yes she said there was no further action to be taken against [AB CD]. She was obviously upset and could not believe the proof we had provided had not been enough to warrant further action.*

224. The Tribunal had been told to tell colleagues that the investigation had been concluded and the colleagues were to be welcomed back – or words to that effect. She went beyond that in her conversation with XY, in being clear she did not agree with the decision not to take further action, and "could not believe it".

225. She was, in that conversation, communicating with the person who had first raised the wrongdoing, and that context was important – those who raise concerns have an interest in the outcome of an investigation.

226. The claimant was also in an understandable state of upset. This communication with XY was at the end of the working day. In all these circumstances we do not consider it was conduct demonstrating the claimant would not be bound by her contract of employment. We find she "kept to the script" with other members of her team, after this, including with VW.

227. In reaching these findings we take into account that there was no clarification with him, through further interview, to be clear which comments were alleged to have been made to him, and which overheard, and how that came to happen – or the claimant's case of what she had said to him. In the round, we prefer the oral evidence we heard from the claimant, who was cross examined on her case and we considered her reliable.

228. For these reasons the claimant was wrongfully dismissed – the respondent was not entitled to summarily terminate her employment for gross misconduct because she did not engage in a repudiatory breach of her contract of employment. We deal with the impact of the disciplinary policy below.

<u>Has the Respondent made an unlawful deduction of wages? S. 23 (1) ERA 1996</u>

<u>Did the Respondent unlawfully refuse to show/give the Claimant a new contract?</u>

Did the Respondent unlawfully not show or give a statement of any notifications, containing particulars of deductions, until the Claimant emailed Mr Simon Harris in a confused state, and still not understanding her salary after being paid?

229. We did not decide the claimant's unlawful deductions from wages complaint during the hearing. The parties, and in particular the respondent, did not have time to address the difficulty of its provisions (the contractual status, or not, of its disciplinary policy terms), which the Tribunal identified in its deliberations. We will give that opportunity and address these remaining further questions above, at the remedy hearing, if the parties are not able to reach agreement. They are, largely, remedy matters.

Employment Judge JM Wade

Date: 2 December 2024