



EMPLOYMENT TRIBUNALS

Claimant: **Mrs S Williams**

Respondent: **NHS Business Services Authority**

Heard at: London South

On: 10, 11 and 12 May 2017
In chambers 19 June 2017

Before: Employment Judge Freer
Members: Ms Y Walsh
Mr E Maw

Representation

Claimant: Mr W Brown, Solicitor

Respondent: Mr S Shah, Solicitor

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that the Claimant's claim of victimisation is unsuccessful.

REASONS

1. By a claim presented to the employment Tribunals on 19 January 2016 the Claimant claimed unfair dismissal, disability discrimination, and breach of contract.
2. The Respondent resists the claims.
3. The unfair dismissal and breach of contract claims were dismissed upon withdrawal. The claim of disability discrimination was dismissed at a preliminary hearing on the ground that the Claimant was not a disabled person at the material times pursuant to section 6 of the Equality Act 2010.

4. Therefore, this matter proceeds as a victimisation claim in respect of which the protected act relied upon is a written grievance dated 20 July 2015, which is not in dispute.
5. The Claimant gave evidence on her own behalf.
6. The Respondent gave evidence through Ms Gail Tarburn Head of Human Resources at London CSU; Mr Sarah Wainwright, Associate Partner at Kent and Medway CSU; Mr Nick Marsden, HR Business Partner; and Ms Catherine Pitcher, Senior Partner for HR, OD and Communications at South East CSU
7. The Tribunal was presented with bundle of documents comprising 583 pages and some additional documents during the course of the hearing as agreed by the Tribunal.

The Issues

8. The list of issues was agreed between the parties and is in the tribunal bundle at pages 148 to 154 and therefore will not be repeated in these reasons.

A brief statement of the relevant law

9. Section 27 of the Equality Act 2010 provides:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because—
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—
(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.”

10. Causation is shown where the protected act materially influences (in the sense of being more than a trivial influence) the employer's treatment of the Claimant

(see for example **Fecitt -v- NHS Manchester** [2012] ICR 372, CA on protected disclosures which adopted general discrimination principles). See also **Villalba -v- Merrill Lynch & Co Ltd** [2006] IRLR 437 where the EAT held, if a discriminatory influence is not a material influence or factor, then it is trivial.

11. The EAT in **The Chief Constable of Kent Constabulary -v- Bowler** [2017] UKEAT/0214/16 gave guidance on detriments in victimisation claims:

“Determining whether the treatment that B is subjected to amounts to a detriment involves an objective consideration of the complainant’s subjective perception that he or she is disadvantaged, so that if a reasonable complainant would or might take the view that the treatment was in all the circumstances to his or her disadvantage, detriment is established. In other words, an unjustified sense of grievance does not amount to a detriment; the grievance must be objectively reasonable as well as perceived as such by the complainant”.

12. The burden of proof provisions in the Equality Act 2010 are contained in section 136:

“(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision”.

13. The Tribunal, when considering the first step in subsection (2), will raise proper inferences from its primary findings of fact. The Tribunal can take into account evidence from the Respondent on the primary findings of fact at this stage (see **Madarassy -v- Nomura International plc** [2007] IRLR 246, CA). If there are facts to establish a prima facie case, then the burden of proof is on the Respondent to prove on a balance of probabilities that the Claimant’s treatment was in ‘no sense whatsoever’ on racial grounds.

14. The term ‘no sense whatsoever’ is equated to ‘an influence that is more than trivial’ (see **Nagarajan -v- London Regional Transport** [1999] IRLR 573, HL; and **Igen Ltd -v- Wong**).

15. The Court of Appeal in **Madarassy** above, held that the burden of proof does not fall on the employer simply on the facts establishing a difference in status (e.g. sex or race) and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.

16. Tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating on why the Claimant was treated as they were, and postponing the less-favourable treatment issue until after they have decided why the treatment was afforded. Was it on the proscribed ground or was it for some other reason? (per Lord Nicholls in **Shamoon –v- Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285, HL).
17. The Supreme Court in **Hewage –v- Grampian Health Board** [2012] UKSC has confirmed:

“, , , it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.”

Findings of fact and associated conclusions.

18. The Claimant commenced employment with the Respondent on 15 December 2014 as a Band 8A HR Business Partner.
19. On 6 February 2015 Mr Simon Hall, Deputy Chief Officer at Greenwich Clinical Commissioning Groups (“CCG”), contacted Ms Wainwright to inform her that he was not happy with the Claimant's work. (That conversation is confirmed in a confidential interview with Mr Hall on 29 December 2016 at page 407 of the bundle).
20. Greenwich CCG had requested staff to be taken off a contract previously and therefore Ms Wainwright did not consider this matter had substantial significance. As a consequence, the Claimant was reassigned to work on ICT, which was permissible under the terms of the Claimant's employment.
21. In early May 2015 Mr Charles Malcolm-Smith, of Lewisham CCG, raised some significant concerns he had regarding the Claimant's performance. These are summarised in an email to Mr Malcolm-Smith by Ms Wainwright dated 15 May 2015 (see pages 240 to 241 of the bundle).
22. That email states: "We discussed whether with the right support put in place you would feel that she could deliver what is required and unfortunately your view with this was not the case. I agreed to discuss this with Shona and to look for an alternative solution for the HR Business Partner role".
23. Ms Wainwright then sent an email to Mr Nick Marsden on the same date: "I recently met with Charles Malcolm-Smith from Lewisham CCG and they have raised some serious concerns regarding her support to the CCG. It will be helpful for me to understand before I meet with her the interactions you have had and any notes you have from your 1:1 meetings. Also dates that you have provided supervision as her line manager or where you have offered support to enable her to adjust to working in the CCG. Have you raised any

- concerns with her regarding her performance? I know we have a 1:1 scheduled for next week but if we can have a conversation on Mondays/Tues on this that would be helpful. I will need to take her off the Lewisham contract but before I do I need to get the context from you as her line manager and to ensure she has had appropriate supervision".
24. Although Ms Wainwright was not overly concerned about the complaint from Greenwich CCG, she considered that a complaint by Lewisham CCG was unusual and to receive two complaints was also unusual.
 25. This matter was not addressed as a performance problem with the Claimant and the file notes recorded by the Claimant states: "I had a scheduled meeting with Shona and discussed the feedback from Lewisham CCG. I advised Shona that Charles felt she was not at the right level strategically and based on her limited experience/knowledge of CCG's that the CCG needed a different type of support going forward. I explained that I had decided that as the CCG felt that they required a high level of strategic HR input for the work they were planning that I needed to reassign a different work portfolio to Shona. Shona asked me whether is about her 'face not fitting' and I explained that my conversation with Charles was not about her 'not fitting in' but rather a knowledge gap that could not be filled quickly without significant support and the CCG were not prepared to support this".
 26. As the Claimant was currently supporting the ICT business unit it was suggested by Ms Wainwright that she could change her reporting line to Mr Tim Widdowson, Senior HR Business Partner, as he was supervising the ICT HR input, but the Claimant stated that she would rather remain with Mr Marsden as her line manager. Following her meeting with the Claimant, Ms Wainwright spoke with Mr Marsden and asked him to keep a log of one-to-one meetings with the Claimant and a log of work progress.
 27. On 3 June 2015 the Claimant met with Mr Malcolm-Smith to receive some feedback. The notes of that meeting confirm the position as was relayed from Mr Malcolm-Smith to Ms Wainwright.
 28. The Claimant was absent from work through sickness from 05 June 2015 through to 06 July 2015.
 29. On 10 July 2015 the Claimant notified Mr Marsden that she was anticipating submitting a written grievance (see page 396Q). The Claimant submitted that written grievance by a letter dated 20 July 2015 (see pages 230 to 239 of the bundle).
 30. As stated above, it is not in dispute that this grievance is sufficient to amount to a protected act and is the single protected act relied upon by the Claimant in respect of her victimisation claim.
 31. On the 21 July 2015 there was an attempt at an informal resolution of the Claimant's grievance under the under Stage I of the Respondent's procedure.

- There was a meeting between Mr Marsden, Ms Gail Tarburn and the Claimant.
32. Notes of that meeting are at pages 242 to 243 of the Tribunal bundle. Those notes set out confirmation that the Claimant's contract provides that she may be required to work from any additional locations within the CSU, an outline of the areas of concern raised by Lewisham CCG and under the heading "reputation/integrity" it states: "We confirmed that the decision to reallocate HR BP provision for Lewisham CCG was not a reflection in any way on Shona's reputational integrity as a HR professional. Rather it was a considered Management response to the needs and request of the client and the fact that the CSU was now committed to providing a different type of HR service in response to CCG's on-going requirements. This could not be accommodated by having to HR BP working at the CCG's with different skill sets". The notes also set out ongoing support to be provided to the Claimant.
 33. The Claimant's grievance sets out a number of areas of concern and numbered paragraph 9 states: "Unfair discrimination. In the absence of any formal procedure/assessment of my skills and experience I worry that I have I may have been the victim of "unfair discrimination" due to my age and or for health reason. The new information given to me at the "Return to work" interview was said to me after I had sent in my medical certificate and after my period of sickness absence".
 34. The Tribunal concludes from a natural reading of that paragraph that it does not amount to a direct complaint against the CCG, as was argued by the Claimant.
 35. The Claimant's grievance hearing took place on 14 August 2015 and the notes of that meeting are at pages 297 to 306 of the bundle. The invite letter to the meeting informed the Claimant of her right to be accompanied, but she chose to attend the meeting unaccompanied.
 36. The Claimant was provided with an outcome letter to that grievance dated 21 August 2015 at pages 312 to 318 of the bundle. It is a detailed letter that sets out the evidence obtained after the grievance hearing and then addresses each of the nine grievance issues. Elements of the grievance were partially upheld.
 37. With regard to the complaint of unfair discrimination the letter records: "Not upheld - the panel were very concerned about this issue were keen to explore this fully. You confirm that you withdrew the concerns about unfair discrimination in relation to a health reason. When we discussed your concerns in relation to age you indicated that this was in relation to the implication that you may have been 'too old to learn' when you have been a business partner for two years and have got transferable skills. Whilst you were unable to provide specific evidence to support this you said it was more something that you worried about as you don't feel protected. The panel could not find any evidence to substantiate your concerns about unfair discrimination in relation to age and did not therefore uphold this aspect of

- your grievance". Tribunal concludes that this paragraph accurately sets out the Claimant's approach to the allegation during the grievance hearing.
38. With the regard to the Claimant's change of manager, Mr Marsden was the Claimant's manager from when she joined the Respondent. Mr Marsden stopped one-to-one meetings with the Claimant when her grievance was entered, but he continued as line manager until the grievance outcome on 21 August 2015. Mr Marsden ceased holding one-to-one meetings with the Claimant because the Claimant had informed Ms Wainwright that she did not feel comfortable continuing them with Mr Marsden given the concerns that she had raised about his behaviour at a return to work meeting. That is confirmed in an email from the Claimant to Ms Wainwright dated 27 July 2015.
 39. The Claimant had been absent from work from 31 July 2015 to her return on 17 August 2015. The Tribunal concludes that although Mr Marsden was not undertaking one-to-one meetings with the Claimant, he remained her line manager up to the period when Ms Tarburn took over that responsibility from 28 August 2015 (for example, the Claimant submitted an annual leave request to Mr Marsden on 20 August 2015-see page 311D).
 40. Ms Tarburn ceased to be the Claimant's line manager on 20 October 2015 from which date Mr David Bell took over.
 41. Around 30 July 2015, Ms Evelyn White, Project Director for PTS, telephoned Ms Wainwright to register her unhappiness for the Claimant to continue on the PTS project when the Claimant returned back to work from her sickness absence. Ms Wainwright was also aware that Mr Ian Ayres, the Accountable Officer for West Kent CCG, made a complaint to Mr Darryl Robertson, Managing Partner, about the Claimant's input at a PTS Project Board Meeting that was confirmed took place on 12 July 2015. The events from which the complaints arose occurred prior to the Claimant's protected act.
 42. The Tribunal was taken to an email exchange on 20 October 2015 at pages 325 to 328 of the Tribunal bundle. The Tribunal in particular is referred to an email from Ms Wainwright to Mr Bell dated 20 October 2015 at 14.54 which states: "Alternative to you discussing it with her is that we make a formal case and performance manager but will take longer".
 43. It was suggested by the Claimant that the reference to 'will take longer' was a reference to her dismissal. However, the Tribunal concludes having read that email and placed it in context, it is not a reference to the Claimant's dismissal because discussing the matter with the Claimant would have not been under the Respondent's disciplinary code and therefore the discussion would not have been a shorter route to securing the Claimant's dismissal.
 44. Also, an email at page 325, of the same date, from David Bell to Ms Cathy Pitcher states: "Just to clarify my understanding of what we agreed at the meeting on 8 October in relation to Shona... I would meet her informally (which I have arranged for Thursday afternoon this week) to let her know that

- I will be starting a performance management process if I did not see significant improvements in the next four weeks, based on the issues raised by CCG's and with the PTS project. I have agreed with Gail to take over as Shona's manager; Gail is going to let her know before the Thursday meeting, so that the news comes from her current manager. If it was necessary to move to a formal process, I will proceed with that and move to dismiss as soon as possible".
45. The Tribunal finds that the reference to the meeting on 08 October 2015 was not a reference to the meeting between Ms Wainwright, Ms Tarburn and Mr Bell that had occurred on that date. That meeting had only discussed the Claimant's line management which had arisen because the Claimant was working in the PSU with IT and Mr Bell had oversight for IT.
 46. The meeting referred to in that email was a meeting between Ms Pitcher and Mr Bell in which the Claimant's performance management was discussed. That meeting followed on from an HR Executive Meeting in which both were present. Ms Pitcher's reply to that email was: "Yes that's my understanding. Have you been given sufficient information to be able to start the discussion on Thursday?"
 47. The Tribunal concludes it is clear from that email that there was no move immediately to dismiss the Claimant. There would only be a move to a formal process *if* there were no significant improvements during the four-week period. The Tribunal accepts Ms Wainwright's evidence that she did not discuss dismissal with Mr Bell.
 48. With regard to the delay in addressing the matters raised by Ms White, the Tribunal finds when Ms Wainwright received the telephone call from Ms White setting out the complaints; the Claimant was off work through sickness and returned to work on 17 August. Ms Wainwright was off work on annual leave during the last two weeks of August and the Tribunal accepts the Respondent's evidence that the organisation was in what was described as "financial turnaround" and therefore the usual day-to-day work became somewhat neglected due to the far more pressing circumstances relating to general finances. Ms Wainwright fairly accepted there was a delay in the process for those reasons and that was ultimately her fault.
 49. On 22 October 2015 there was a one-to-one meeting between Mr Bell as the Claimant's new line manager and the Claimant. It was at that meeting Mr Bell informed the Claimant that due to concerns that had been raised by the CCG's and the PTS he would be assessing her performance over the next four weeks and that if he was not satisfied following this informal stage he would be starting formal performance management proceedings.
 50. In his statement to the Respondent Mr Bell states: "Shona told me that no one had ever explained to her that she was not meeting required standards before that day and that it was a complete shock. I was disappointed to hear that, but confirmed that I will be making my own judgement now that I was her manager. I confirmed that if we did move to formal proceedings, I would need

Sarah and Gail to document their concerns so that they could be shared with Shona".

51. With regard to the list of issues and the alleged unfavourable treatment Tribunal finds the following:

(1)

52. The Tribunal concludes that with the first Greenwich CCG complaint Ms Wainwright was content simply to move the Claimant and no other performance issue arose. The Lewisham CCG complaint was also not treated as a performance issue when it was first raised, but Ms Wainwright asked Mr Marsden to complete a log of work progress.
53. At the end of July 2015 a significant PST complaint had arisen from Ms White and that complaint arose from a meeting that occurred on 12 July 2015, pre-protected act. The complaint was registered with the Respondent on around 30 July 2015.
54. The Claimant submitted her grievance on 20 July 2015 at the time the Respondent was in what it describes as 'financial turnaround' (see for example pages 310B and C and 323D). The Tribunal finds that this situation existed; it was at the level of concern contended for by the Respondent, and resulted in day-to-day matters being delayed.
55. As a consequence of the Claimant submitting a grievance, which involved allegations against her line manager, there were difficulties in Mr Marsden line managing the Claimant. He continued as line manager but, due to the Claimant's expressed discomfort, he did so without undertaking any one-to-one meetings. Ms Tarburn was put in place as the Claimant's line manager in a temporary position after the grievance was completed on 21 August 2015. These actions were not done because of the Claimant's grievance, but as a consequence of it.
56. As a result of all these matters, the Tribunal concludes that the reason why the Claimant was placed on an informal capability process by Mr Bell on 22 October 2015 was genuinely due to a combination of the complaints that had arisen over that year, with the PTS complaint being the more serious. The matter had not been addressed until October due to the cumulative nature of the complaints, the absences of the Claimant and Ms Wainwright, the financial turnaround and the necessary changes to line management responsibilities consequent to the Claimant's request.
57. Accordingly, the Tribunal finds that the Claimant being placed on informal capability process and the delay in addressing the matter was not influenced by the Claimant's grievance.

(2)

58. The Claimant applied to do training in August 2015 (see page 311). That request was not refused by Ms Wainwright, but was never processed.
59. The reply from Ms Wainwright was: "Yes let's discuss as part of your ongoing CPD going forward. We are in the process of setting objectives and personal development team so when we have those meetings we can discuss in more detail".
60. Those discussions did not take place, which the Tribunal concludes was due to the uncertainty over the Claimant's line manager moving forward. The Claimant not chase the matter with Ms Wainwright.
61. Training for the financial year 2015/2016 was to be reduced to a minimum from around September 2015 (see pages 323C and D relating to "non-pay spend"). Also, the Claimant acknowledged in her email of 18 August 2015 that she was "not sure if there is still money available in the training kitty".
62. The Tribunal was taken to an email from Ms Roddis, Principal Associate in Human Resources to the Claimant dated 23 March 2016, which states: "Stats showing percentage of HR staff who were funded to undertake external training in 2015 equals 12.19%".
63. Also, an email between the same participants of the same date states: "All the training was approved in 2015 financial year and as a combination of one-off events/training and training for a professional qualification over the financial period in which approval was given".
64. What is not clear from that email is what the 2015 financial year relates to, whether it is 2014/2015 or 2015/2016. The evidence from the parties did not assist.
65. The Tribunal concludes that the Claimant was not *denied* access to training as alleged and that the delay in addressing the training request was a combination of financial difficulties and line manager uncertainty.
66. With regard to the issue of a mentor, the first instance where the Claimant had asked for a mentor is at a stress risk assessment on 28 August 2015 (see page 323 of the bundle) with the comment "understand landscape credibility". It should be noted that this meeting took place a month after the Claimant's grievance was submitted and the mentor suggestion is recorded under "agreed action". This therefore militates against a failure to implement a mentor being as a consequence the Claimant's grievance.
67. The Tribunal accepts Ms Tarburn's evidence that she said that she encouraged the Claimant to attend monthly staff briefings and HR Team meetings as she thought that would be helpful in providing a greater understanding CSU's, which is also confirmed in the content of the stress risk assessment meeting notes.

68. There is no evidence of the Claimant chasing the Respondent over being allocated a mentor.
69. The Tribunal reaches the same conclusion as it did above with regard to training, this matter did not get actioned prior to the Claimant's resignation because of line management difficulty for the Claimant and a focus on the financial turnaround position. It was not influenced by the Claimant's grievance.

(3)

70. It was the evidence of the Respondent that Ms Lorraine Smith, HR Business Partner, retired in November 2015. Her post was not replaced. This fact is accepted by the Tribunal and was not materially challenged by the Claimant.
71. Also, should that position have become available, it would it would have been advertised generally as appropriate. It would not have been a position simply made available to the Claimant. Accordingly, the Tribunal finds as a matter of fact that the Claimant was not is denied access to apply for a vacant post.

(4)

72. This matter relates to alleged criticisms by Greenwich CCG and the PTS project.
73. The Tribunal repeats its findings that the Greenwich CCG complaint was not raised with the Claimant at the time because Ms Wainwright did not consider it to be a significant performance point and it could be remedied by the Claimant being removed from that contract to maintain client relations.
74. As stated above, the PTS complaint was raised with the Claimant after a delay relating to circumstantial difficulties.
75. The issue of Greenwich CCG became part of that overall assessment as the PTS complaint was the third complaint that the Respondent had received that year in respect of the Claimant.
76. Accordingly, information was not withheld from the Claimant that had affected her future career with regard to Greenwich CCG. This event happened prior to the Claimant's protected act. The complaints were raised with the Claimant upon the PTS issue arising and were done so as an informal capability matter as soon as was reasonably practicable for the Respondent. The Tribunal concludes that decision was not influenced by the Claimant's grievance.

(5)

77. The Tribunal notes the grievance outcome response by the Respondent where it is accepted that the Claimant could have been provided with more information in a more timely fashion with regard to the complaint by

Greenwich CCG. However, those events occurred pre-grievance and therefore cannot amount to victimisation.

78. The Claimant was informed in some detail about the Lewisham CCG matter and indeed met Mr Malcolm-Smith for feedback.
79. With regard to the PTS issue, the Claimant was informed by Mr Bell regarding the general sense of why the Claimant was being placed on an informal performance review.
80. It was accepted by Ms Wainwright in her evidence that she had not informed the Claimant about concerns raised by Ms White and Mr Ayres. Her evidence was that this was due to the fact that the Respondent was in financial turnaround and her focus had been on retaining customers. The matter was passed to Mr Bell to manage when he took over line management responsibilities.
81. On balance, the Tribunal accepts the evidence of Ms Wainwright and concludes at her failure to set out the allegations made by Ms White about the Claimant in respect of the PTS was due to surrounding circumstances and was not influenced by the Claimant's grievance.

(6)

82. 6.1 – The Tribunal finds that the Claimant did receive help with the PTS tender as evidenced by the discussions in the Sage 1 Informal Resolution meeting on 21 July 2015 under 'ongoing support'. Assistance was offered to the Claimant, for example as contained in an e-mail from Ms Wainwright to the Claimant dated 29 July 2015 offering support and 30 July 2015: "I have advised Evelyn that you are unwell and will be off work. We will agree internally how we take forward any outstanding actions relating to the PTS project. I hope you start to feel better soon".
83. 6.2 - The Claimant did not have any one-to-one meetings following a return to work on 6 July 2015, but this was due to a change in line management responsibility arising in consequence of the Claimant's request.
84. 6.3 - The Claimant did not have a return to work meeting when she returned to work from sickness absence on 17 August 2015. The Claimant had received a return to work meeting on 06 July 2015 and the Stage 1 informal resolution meeting on 21 July 2015 discussed ongoing support upon the Claimant's return to work. The Tribunal concludes that the lack of a return to work meeting on 17 August 2015 was not influenced by the Claimant's grievance.
85. 6.4 - Ms Tarburn did follow up on some of the actions following the stress risk assessment as set out in paragraph 5 of the grievance interview notes with Ms Tarburn on 30 December 2015.

86. 6.5 – Ms Marielza Bradshaw was line managed by Ms Lorraine Smith and as a consequence they would discuss work across their desks. Ms Tarburn encouraged then to use the available “pods” to have discussions.
87. 6.6 - There is no evidence of Mr Bell having said what is alleged to the Claimant on 22 October 2015 and it is denied by Ms Wainwright. Further, Mr Bell had not seen any details of the Claimant’s grievance until that afternoon after the meeting with the Claimant when he read the grievance outcome letter. That was accepted by the Claimant in evidence.
88. The notes of the interview with Mr Bell dated 15 December 2015 as part of the Claimant’s grievance confirms that in the one-to-one meeting on 22 October 2015 he simply acknowledged that the Claimant had worked under a number of managers which had made it difficult for her to establish a working relationship with them.
89. 6.7 – The Tribunal finds as fact that Ms Wainwright did not cancel the Claimant’s PDP meeting scheduled for 23 October 2015.
90. 6.8 – The Tribunal finds as fact that Ms Tarburn provided Mr Bell with the outcome letter of the grievance and did so in his capacity as the Claimant's new line manager.
91. 6.9 - The Tribunal received no specific evidence from the Claimant on this matter apart from in relation to the surrounding allegations that have been addressed above. In any event, the Tribunal concludes that the Claimant was not isolated from the team as alleged by Ms Tarburn as was demonstrated to the Tribunal by a number of e-mails as both a team member and praising her work (see for example see pages 347, 348, 335, 336, 323A and B).
92. 6.10; 6.11; 6.12; and 6.13 – The Tribunal concludes that the Claimant has not proved on a balance of probability that these events occurred as alleged. The Tribunal prefers the evidence of Ms Tarburn and Ms Wainwright. Further there are no facts to infer that these events were in any way linked to or influenced by the Claimant’s protected act. The Claimant also stated in evidence that things were getting better between herself and Ms Tarburn up to the time of the risk assessment on 28 August 2015, which includes a period after the protected act was made on 20 July 2015
93. 6.14 – The Tribunal refers to the interview with Mr Tim Widdowson on 15 December 2015 at paragraph 5 which sets out his explanation for saying that everyone had to “tiptoe around” the Claimant. That explanation was accepted by the Claimant as being possible. There is no material evidence to link this comment to the fact of the Claimant’s protected act.
94. 6.15 - The Tribunal has not received any material evidence supporting the allegation but more importantly, as with the majority of matters raised in issue (6) there is no evidence to suggest any influence between those events and the Claimant's grievance. The Tribunal received no evidence to suggest that Lorraine Smith or Mariella Bradshaw knew about the Claimant's grievance or

acted the way they did to her because of that grievance. The Claimant has failed to show a causal link between the alleged detriments and her having made the written grievance on 20 July 2015.

(7)

95. 7.1 – Mr Bell did tell the Claimant the concerns that had been raised about her performance. However, this action was not unreasonable as Mr Bell was informing the Claimant why she was being placed on an informal capability process. Objectively considered it does not amount to a detriment. At that stage Mr Bell did not know of the details of the Claimant's grievance. Further, the Tribunal concludes that there was no evidence to infer that Mr Bell's action of reasonably providing the Claimant with information on why the decision to place her on an informal capability process had been made was because of the fact of the Claimant's grievance.
96. 7.2 and 7.3 – These allegations were denied by Ms Tarburn and Ms Wainwright. There is no mention of those matters in Mr Bell's statement to the Respondent. The Tribunal finds on balance that they were not said, but even if they were, there is no evidence to demonstrate that the statements were linked in any way to the Claimant's grievance.
97. 7.4 - Ms Pitcher denied the allegation and the Tribunal concludes that there is no corroborative evidence. The Claimant had left the Respondent's employment by that time and had presented her claim to the employment tribunals. Accordingly, the Tribunal concludes that it is inherently unlikely that Ms Pitcher would have said the comment as alleged.

(8)

98. These matters have been addressed above. The Tribunal finds that Mr Bell simply outlined to the Claimant why he was placing her on an informal performance review. Mr Bell sympathised with the Claimant over the changes in management which had made forming working relationships more difficult. No other details were outlined at that meeting and the Claimant terminated her employment the day afterwards on three months' notice. As a consequence, the performance review did not take place. Therefore, it cannot be assumed Mr Bell would not have provided the Claimant with full information and performance objectives in due course.

(9)

99. Mr Bell set out his version of events in his internal statement to the Respondent dated 15 December 2015 at paragraph 8. The Claimant's evidence on this matter was not particularly clear. Even if those circumstances can amount to a detriment, which is questionable, there are no facts to demonstrate that it was said because of the Claimant having made her grievance, rather than the Respondent genuinely believing that there were performance issues which, should the Claimant not perform as requested within the suggested four-month period, could lead to a formal process.

(10)

100. The Managing Work Performance Policy is out at pages 155 to 160 of the bundle.
101. Part 2 addresses procedure. The Tribunal finds that Mr Bell complied paragraph 1.1.
102. 1.2 states: "It is important to provide the employee with an opportunity to express their opinion and for the line manager to consider external factors, which may be contributing to the poor performance".
103. However, the meeting between Mr Bell and the Claimant on 22 October 2015 was one where the Claimant was simply informed that she was going to be placed on an informal performance review and the broad reasons for doing so.
104. No detailed conversation had taken place in that meeting and therefore the Tribunal concludes that it cannot be assumed that this process would not have taken place had the Claimant not resigned from her employment the following day. Accordingly, the Tribunal concludes that the Respondent had not failed to follow its own policy.
105. The Claimant's grievance outcome conclusion by Mr Berg was that the Claimant's performance could have been more proactively managed at an earlier stage. However, any failure to manage the Claimant's performance more proactively in respect of the earlier CCG matters all arose prior to the protected act and therefore cannot amount to victimisation. The Tribunal finds that addressing all the performance matters after the PST complaint were delayed due to the financial turnaround, absences, and changes to line management functions in respect of the Claimant.
106. Although the Tribunal has addressed the individual matters that have been alleged in the list of issues, the Tribunal has also been very careful to step back and look at the facts, circumstances, and context as a whole. Having done so, the Tribunal concludes that there are not primary findings of fact from which the Tribunal could decide, including by inference, that the Claimant has been subjected to a detriment because of the protected act.

Employment Judge Freer
Date: 05 October 2017