



EMPLOYMENT TRIBUNALS

Claimant: Ms Eiluned Jones

Respondent: The Association of Voluntary Organisations in Wrexham (AVOW)

Heard at: Mold **On:** 7th, 9th, 10th, 13th & 14th May 2019

Before: Employment Judge Richard Powell

Members: Mr Fryer
Mrs Owen

Representation
Claimant: Mr McArthur, Representative
Respondent: Mr Ali, of Counsel

JUDGMENT

The Judgment of the Employment Tribunal is unanimously as follows:

1. On the 27th June 2017 the claimant made a protected public interest disclosure within the meaning of Section 43B to K of the Employment Rights Act 1996.
2. The claimant was not subject to a series of detriments on the grounds of her protected disclosure and her claims brought under Sections 47B and 48 of the Employment Rights Act 1996 are dismissed.
3. The principal reason for the claimant's dismissal was redundancy, a potentially fair reason within the meaning of Section 98(2)(c) of the Employment Rights Act 1996. The claim brought under section 103A of the Employment Rights Act 1996 is dismissed.
4. The claimant was unfairly dismissed contrary to Section 98(4) of the Employment Rights Act 1996.

REASONS

1. This is a claim presented by Ms Eiluned Jones in which she asserts she was unfairly dismissed and subject to detriments in the course of her employment with the respondent on the grounds of her protected public interest disclosure. She asserts that the principal reason for her dismissal was the disclosure. She also asserts her dismissal was procedurally unfair.
2. Within the bundle at pages A40 – A45 is the claimant's schedule of forty-three specific assertions of procedural unfairness which relate to an initial grievance raised against the claimant, subsequent grievances she raised with regards to the respondent's disciplinary procedure, disciplinary investigation process and later about a redundancy process which began in January 2018.
3. At pages A46 – A51 of the bundle is the claimant's schedule of alleged detrimental treatment on the ground of her protected public interest disclosure. There are sixty instances of alleged detrimental treatment but this schedule includes much of the foresaid list of procedural failures so to a degree a dual analysis is inevitable.

The Evidence

4. The tribunal has read nine witness statements for and on behalf of the claimant. Seven witnesses, including the claimant, gave evidence to support her case. The tribunal has read five witness statements for the respondent and those witnesses have all given evidence and were cross examined.
5. The tribunal has read through the entirety of the core bundle pages A1 – 405, further documents exhibited with witness statements, those parts of an "appeal bundle" to which we were directed and the content of a supplementary bundle (the "claimant's bundle") which was provided at the start of the hearing.
6. The tribunal have also had the benefit of considering a cast list and the written submissions presented by Mr Ali on behalf of the respondent and Mr McArthur on behalf of the claimant.
7. Before turning to the matters we are required to decide, we note two preliminary points which were subject to separate determinations, the judgments of which have been recorded separately.

8. On the first day of the hearing Mr McArthur made an application to amend the claim to add a further incident of a protected public interest disclosure on the 7th February 2017. That application was refused because it was effectively an application to assert a series of additional detriments which had not been pleaded and about which the respondent had no prior warning. Further, the factual matrix relevant to the proposed additional detriment claims had not been addressed in the witness statements and Mr Ali had no instructions on those points. To have allowed the amendment would have inhibited the case from being heard on this occasion.
9. A further submission was made by Mr McArthur on the first day to admit without prejudice material. This was eventually resolved without the need for the tribunal's intervention or the admission of such evidence. Inadvertently, some of that material, whether it be references in a witness statement, in documents or even the written submissions for the claimant, are still present before us.
10. We are entirely confident that we have not been influenced by the knowledge of the parties' efforts to conciliate the disputes now before us. It is common place for parties to conciliate, indeed the Early Conciliation process overseen by ACAS is mandatory for most cases coming before the employment tribunal.
11. However, in dealing with the detriment claims, as Mr McArthur helpfully pointed out at the end of this hearing, some of the allegations set out in the claimant's schedule are not pursued by the claimant, and will not be subject to our determination, because they rely on alleged actions which took place in the course of "without prejudice" negotiation.

Findings of Fact

12. Each of these factual findings represents the unanimous judgment of the tribunal and are facts which we consider have been proven on the balance of probabilities.
13. We first set out what we consider to be uncontentious facts.
14. The respondent is known by the acronym AVOW it is an umbrella organisation for diverse charitable projects in Wrexham and North Wales. These projects tend to be discrete enterprises; funded by external bodies which enable staff to be employed to work on a specific project. In addition to the individual project workers/employees, AWOW employs a small core staff who assist the trustees in the oversight and administration of those individual projects.
15. AWOW's small board of trustees make up the majority of the members of various management committees including the personnel and strategy committees.
16. Because the respondent has a small number of trustees and a small number of permanent employees, trustees may be engaged to conduct investigatory and decision-making tasks in disciplinary and grievance procedures.

17. The trustees are the final arbiters of the strategic decisions of the respondent.
18. The senior officers of the respondent are Mr Leece-Jones, the Chair of the trustees and a retired solicitor, Mr Gallanders, the Chief Operating Officer and most senior employee and Ms Milner the Business Support Manager who was responsible for IT, marketing, procurement, administration and the implementation of health and safety and HR advice received from the respondent's external HR consultants or employment law solicitors.
19. The respondent's work is much dependent on provision of funds from third parties for the inception and survival of any particular project which it supports and manages.
20. The character of each project is largely defined by the funding provided, the projects' performance targets, methodology and timeframes which are decided, or influenced, by the external body's funding of the project. In this case the respondent put forward a bid for funding from the Big Lottery and after scrutiny, funding was awarded on the terms set out within the respondent's bid.
21. Apart from the small core management and administration team, AVOW employed people to facilitate the aims of a specific project and their role, and its duration, was tied to the duration of the project for which they were employed.
22. Ms Jones commenced employment with the AVOW on 22 September 2014 as a project worker. She was selected to manage a new project, which became known as Dragon's Tale Productions. Ms Jones was employed to manage the project from its inception to its planned conclusion. Her contract of employment was signed on 1 October 2016 and had a defined termination date, to coincide with the project's conclusion, of 30 September 2019.
23. The project also had the benefit of assistance from a number of volunteers. They were not paid for their work but they stood to benefit from engagement on the courses and activities which the project was to provide to a range of potential beneficiaries.
24. The purpose of "Dragon Tale" was to engage with people who were at various stages of recovery from substance abuse in North Wales; to help them improve their health, wellbeing and social environment. The method used to entice and engage potential beneficiaries was the use of radio and recording activities.
25. Volunteers chosen were those who were likely to win the confidence of people who were the project's target audience. Many of the volunteers were people who had benefitted from assistance with their own recovery and were demonstrating that people could, with help, continue to be in recovery and maintain a substance free life. Each of these volunteers has a personal and private history which might have been highly relevant to their work in supporting the project.

26. Dragon Tale's methods included training persons who took part (referred to as beneficiaries) to be able to work in radio production; interviewing, recording, editing the recorded material; the stories of the people in recovery, their families and others whose lives had been affected by substance addiction and the experience of recovery.
27. It is common ground that the AVOW suspended the claimant on 1 September 2017, terminated the Dragon Tale project in January 2018, dismissed claimant on the 16th March 2018 and refused her appeal against dismissal on 8 June 2018. Thus, the events which concern this tribunal relate to a period between September 2016 and June 2018.
28. From September 2016, the Dragon Tail project was "active" in the sense that preparatory work was being undertaken in readiness for its formal launch to the people of North Wales in February 2017. That preparation involved training the volunteers, devising schemes of support for potential beneficiaries, ensuring volunteers were DBS checked and ensuring a motor van had been adapted to function as a mobile recording facility
29. In late January 2017 an allegation of gross misconduct was made against one of the Dragon Tale Production employees. The allegation was communicated to AVOW's senior manager by the claimant.
30. The employee, who we shall refer to as "A" admitted the misconduct and was subject to a final written warning. In the course of the disciplinary hearing the employee's mitigation of his misconduct identified a reason to doubt he was safe to drive the respondent's motor vehicle (a van which was to be converted into a mobile recording studio); a major part of the role for which he had been employed. The respondent removed A from his driving duties.
31. After the claimant had become aware of this issue and the respondent's decision to remove A's driving, she raised A's fitness to drive with Mr Gallanders in early February 2017. She questioned whether A was safe to drive and what were the responsibilities of AVOW to the DVLA, AVOW's insurers and the general public.
32. On 27 June the claimant made a disclosure to the respondent about A's driving of his own vehicle to transport some of AVOW's equipment from an event back to AVOW's premises.
33. In early July, following a supervision meeting with the claimant, A raised a grievance about the claimant's alleged behaviour. A's grievance was investigated by two trustees in July and August 2017 and was upheld.
34. From 1 September the claimant was suspended pending the investigation of alleged gross misconduct.
35. Between September and December 2016 there were a number of grievances raised by the claimant which were addressed prior to an intended disciplinary investigation meeting that eventually took place on 1 December 2017.

36. The claimant appealed against the outcomes of a number of grievances so that, by the end of 2017, the disciplinary process and grievance matters had not reached a conclusion.
37. In early January 2018, the termination of the Dragon Tale project was recommended to the respondent by Mr Gallanders.
38. The respondent decided to terminate the project and consequently the claimant's role, which was tied to the project, came to an end. Her effective date of termination was 16 March 2018.

Findings of fact on disputed matters

39. Before setting out our conclusions we will record our assessment of the witnesses.
40. We found most, but not all, of the claimant's witnesses to be honest though none were entirely reliable.
41. The witness statements of those who gave evidence to support the claimant's case contained a great deal of personal opinion and statements of events which could not have been personally known to them i.e. events they did not see or hear themselves. Such evidence was not particularly helpful to the claimant.
42. Several of the statements contained vocabulary and terms of phrase which appeared to be quite different from the witnesses own language. We did not find their denials of third-party influence and assistance in the drafting of content of their statements to be candid. Generally, their accounts were partisan and their answers in cross examination defensive.
43. One of the claimant's witnesses, Mr Foulds, we found to be neither reliable or credible; statements were made which could not have been true, assertions about the claimant's grievance process were simply wrong. The witness avoided giving direct answers to questions and appeared to be partisan.
44. We also doubted the reliability of the significant aspects of the evidence of Ms Warner. The pertinent matters are addressed later in this judgment.
45. With regard to the respondent's witnesses, Ms Milner was very careful in her answers about her relationship with A but otherwise frank and reliable. Ms Freeman, Ms Griffiths and Mr Leece-Jones we considered to be candid and reliable witnesses. Ms Freeman was particularly convincing.
46. Mr Gallanders was ostensibly credible and largely direct in his answers but we note the earlier Judgment of the Employment Tribunal of 2011, which concluded that Mr Gallanders had been a far from reliable witness on that occasion, and we took that into account.
47. To return to our findings of fact:

48. Following A's return to work Dragon Tale Productions continued to work towards its purpose and its targets. By the 18th April 2017 the minutes of the AVOW personnel committee recorded the following in respect of Dragon Tale:

"The First steering group took place last week. There were some concerns within the Trustees about the management of the project following that steering group. [] suggested the four trustees on the steering group meet with [] to discuss further and take the issues to the Executive board if necessary."

49. Mr Gallanders' and Mr Leece-Jones' evidence corroborated that entry and they gave evidence that there were concerns about the management of the project and that project was not performing against target outcomes that were required to be delivered to secure subsequent tranches of the promised lottery funding.
50. Consequent to the 18th April 2017 meeting a further steering group meeting took place on the 13th of June 2017. The claimant, the Trustees and several volunteers attended. Also in attendance was Ms Rachel Lacey of Glyndwr University, she had been instrumental in the writing of the application for funding for the project and had expertise in this area.
51. The minute of the meeting [338-343] records a considerable list of outstanding actions, difficulties in implementation and concern that the project was not achieving any of the four key outcomes which had been agreed with the funder. Offers of help were made and a list of specific objectives stated. Many of the objectives were tasked to the claimant as the manager of the project.
52. On the 4th July 2018 Ms Lacey facilitated a workshop for all the project staff and volunteers to facilitate the project's ability to achieve its purpose.
53. It is probable that the claimant was unhappy with Ms Lacey's assessment of the performance of the project. In her grievance she made reference to a conversation with Ms Lacey wherein Ms Lacey admitted that she; "did not agree with what [she] was having to say" had been directed to make criticism by senior Avow managers. Ms Lacey was informed of this and asked for her comment, which she denied [122-3]. She stated:

"I have had concerns over the delivery and the lack fo Steering Groups for quite some time. It was for this reason I offered to deliver sessions as the project seemed to have lost track and have a very different focus to what was written in the original bid. I can confirm that the content I delivered was based on the original bid and written based on my own knowledge and understanding of the outcomes which simply weren't being delivered"

54. In interview, Ms Milner noted, shortly after the 4th July Workshop, [105] that the claimant was angered by Ms Lacey's assessment of the project's performance.

55. Following the 4th July Workshop Mr Gallanders informed the Lottery that the project was significantly off track and was not meeting any of its defined targets.
56. In this same time frame (June to September 2017) an assessment was made of the claimant's written management report (dated 14th April) and her "Big Lottery Report" [330-335] for the period 1st October 2016 to 31st March 2017. The assessment compared the claimant's written assertions of what had been achieved with the evidence of the project's progress highlighted during the steering group meetings of 18th April, 13th June and 8th August 2017.
57. There were a number of possible contradictions between the claimant's descriptions of progress and the evidence which appeared to contradict the account given by the claimant. These, and other matters, were investigated by Mr Gallanders, with Ms Freeman's assistance, and later summarised in a document which was sent to Mr Leece-Jones on the 5th September 2017. The issues in the document formed part of the foundation for the respondent's decision to suspend the claimant from work on the 1st September 2017.
58. On the 19th July Ms R Lacey facilitated a second workshop with the same people and the same purpose.
59. On the 8th August 2017 the steering Group met and reviewed the progress which had been made since the 13th June [346- 351] and received the claimant's management report.
60. On reading the minutes it is apparent that the progress made since the 13th June was disappointing. By the end of August, the project was a year old and its overall progress was not achieving the outcomes AVOW had agreed with the funder.
61. On consideration of the evidence of Mr Gallanders, Ms Freeman, the reports cited and the email from Ms Lacey (above) balanced with the evidence of positive achievement given by the Claimant, and the four witnesses who had been engaged as volunteers whom she managed, we prefer the evidence of the respondent.
62. It is more likely than not that the project had been poorly managed. It is still more likely that the respondent had a genuine and sincere belief that the project had been poorly managed in the preceding twelve months.
63. Before turning to the events between 1 September 2017 and March 2018 We set out the following findings of fact.
64. On the 5th July 2017 A had one of his supervision meetings with the claimant. A left that meeting in apparent distress and went to Ms Milner, who was responsible for HR, followed by the claimant. A stated: "I can't do it, I just can't do it anymore". Rather than discuss A's statement in the claimant's presence he was taken to a café where Mr Gallanders later joined. A expressed his unhappiness with the way he felt the claimant treated him. A indicated he intended to resign and was persuaded not to do

so. Alternatives to resignation were suggested; trying mediation with the claimant or raising a grievance to find a resolution. A decided to raise a grievance but, in any event, he resigned.

65. On the 10th July 2017 A attended an exit interview which was noted and is within the bundle [100-110]. A is critical of the claimant's attitude towards him, her attitude towards AVOW and the competence of her management.
66. The claimant was informed of A's grievance but not the precise allegations until they were explained to her at the outset of her grievance investigation interview on the 26th July 2017 [Appeal Bundle 10-16].
67. Following that investigation, the decision maker, Ms Mary Walker upheld A's complaint and made two recommendations [45]. No right of appeal was offered to the claimant as the respondent's procedure [1-2] only provides the complainant with the opportunity to appeal a grievance decision.
68. The grievance recommendations were set out in a letter dated the 25th August 2017: that the claimant should have regular supervision with her line manager Mr Gallanders and that Mr Gallanders and the claimant should identify suitable management development training for the claimant [46].
69. Those recommendations were not implemented because the claimant was on annual leave at the date of this letter and soon afterwards suspended from her work.

1st September 2017 to the 31st December 2017

70. Following the claimant's suspension, the claimant wrote on the 3rd September 2017 setting out her perspective of the respondent's breach of her employment, civil and human rights, her right to 28 days' notice of any proposed date for hearing and the right to be accompanied by her legal representative.
71. The respondent replied that its intention was to hold an investigation meeting, not a disciplinary hearing, on the 8th September. The claimant replied with renewed assertions of her rights and the application of the ACAS code. She wrote of Mr Gallanders and Ms Milner: *"I am able to prove beyond any reasonable doubt that you and Victoria Milner jointly conspired in coercing "A" into making an allegation against me in the first place"* and for this reason the claimant refused to attend a meeting with either of them present.
72. The proposed investigation meeting was abandoned and Mr Leece-jones took on the responsibility of managing the disciplinary investigation. On the 7th September he informed the claimant that he was treating her letter of the 6th as a formal grievance. Mr Leece-Jones later invited the claimant to attend a grievance meeting with Ms Mary Walker, a trustee, on the 16th September 2017.
73. The grievance meeting took place on the 18th September [75-81]. The claimant stated that she had a statement from Ms Warner to the effect that A had been coerced into submitting the grievance.

74. Ms Milner was interviewed on the 20th September 2019 [93-96] and denied the allegation of coercing A to present a grievance, she produced a note of background information, copies of emails demonstrating her effort to inform the claimant that A intended to present a grievance against her and a copy of her notes of A's exit interview.
75. On the 22nd September Ms Walker received an email from A denying that he had been put under any pressure to submit a grievance against the claimant.
76. On the 25th September Ms Walker interviewed Ms Warner whose interview states, inter alia, that:

"I knew about the grievance against CJ before CJ. [A] told me directly when he came back from the café where he'd been with JG and another for three hours."

"[A] told me he wrote it at home and that he put it in on Thursday afternoon".

The record of Ms Warner's account does not state that A expressed he was coerced. However, she does surmise that he was manipulated:

"I knew they were using him. He had six therapy sessions. I have known him a long time. He resigned before the grievance and was persuaded to come back to work"

77. Ms Freeman was interviewed on the 29th September. She was critical of the claimant alleging that the claimant had, prior to the workshop, claimed to have written the bid for funding. She was equally critical of A and of the respondent's decision not to dismiss him in January 2017.
78. There was a short delay in Ms Walker's completion of her report due to illness and a wedding. The claimant received the report on the 13th October 2017 [132-136].
79. On the evidence before us, as it was before Ms Walker, her conclusions appear rational and reasonable.
80. On the 19th October 2017 the claimant presented an additional grievance and appealed the decision of Ms Walker in respect of the allegations she made against Ms Milner and Mr Gallanders. At point 10 of her appeal she expressed her judgment on the respondent:

"It is entirely reasonable, in the circumstance, for me to both assume and believe that given the clear intent against me, I can never get a fair or equitable treatment from my line managers or the charity trustees and that any grievance or disciplinary hearing will be (in line with apparent corporate intent) biased and skewed against me from the outset."

81. The claimant concluded by expressing her refusal to attend any hearing, whether; "investigatory, disciplinary or otherwise" unless such meetings

were “undertaken by external persons and must involve both ACAS representation and oversight”.

82. On the 31st October 2017 the claimant was certified as unfit to attend work due to work related stress [157].
83. After enquiry, Mr H-Jones understood that ACAS did not offer a service to become involved in internal procedures other than mediation and that ACAS presence at internal procedures is not a requirement of the ACAS code. He appointed Mrs R Williams, a former Trustee of AVOW, to chair the grievance appeal and proposed the 22nd November as the date for the appeal hearing. [161-3].
84. The appeal meeting ended with Ms Williams’s decision to undertake some further enquiries before reaching a decision.
85. In the meantime, on the 9th November 2017 in an email to HMPS staff about the future of Dragon Tale Productions with HMP Berwyn, Mr Gallanders wrote this paragraph [182]:

“The on-going issue re the manager is an employment matter that is running its course through appropriate channels. All aspects of the project were brought to the attention of the Lottery prior to the current employment matter.”
86. The claimant was upset and offended by the statement and raised a grievance citing the text as evidence of an on-going course of harassment by the respondent’s senior managers.
87. On the 27th November 2017, whilst awaiting the outcome of Ms William’s deliberations, the claimant objected to her participation in the appeal process. Citing the Latin maxim: nemo iudex in sua causa, the claimant submitted that, whilst Ms Williams was no longer a Trustee, she had been an active Trustee on the date of the claimant’s suspension, and although not involved in the decision to suspend, she was: “one of the participants to my suspension (albeit vicariously).” [186].
88. On the 1st December 2018 the claimant attended, without a representative or colleague, a disciplinary investigation meeting with Mr Leece-Jones [196-215]. There was no outcome by the end of the meeting. However, she was able to discuss the issues which the respondent had, in the suspension letter, encapsulated within the word “fraud”.
89. Ms R Williams provided the claimant with a written outcome to her grievance [224-234]; a few elements were upheld and the absence of receipt of audio recordings was addressed pragmatically; by the provision of a copy of the recordings. On the 12th December 2017 the claimant wrote to reject the appeal conclusions in their entirety [235].
90. In this same period Dragon Tale Productions continued without the claimant’s management. The claimant has adduced evidence from five witnesses surrounding the post suspension period. The volunteer witnesses describe a positive and successful period prior to the claimant’s suspension

and the subsequent period as one which lacked management, a lack of understanding of the project by the AVOW senior managers and a lack of support for the volunteers.

91. The respondent's witnesses, Mr Leece-Jones, Ms Freeman and Mr Gallanders' describe making their best efforts with a project which was far from being on track and a suffering from a degree of disengagement from the volunteers.
 92. We have had the benefit of reviewing the steering group meeting minutes and action points of the relevant period [AB 84-103]. These record Mr Gallanders, Ms Lacey, Ms Freedman and to a lesser extent, Mr Leece-Jones dealing with the detail of the project and demonstrating an understanding its performance, the factors inhibiting improvement and the potential problems facing the project; a lack of DBS certificates, poor engagement from potential beneficiaries, poor retention of beneficiaries, Lottery funding being withheld following a complaint made directly to the Big Lottery, amongst others.
 93. The claimant's pleaded case asserted that the respondent intentionally ran the project down to suit the respondent's unspoken purpose; the claimant's dismissal. The claimant's oral evidence moderated that approach; in cross examination she acknowledged it was more likely incompetence and a lack of understanding, rather than a malicious motivation, which damaged the project's' prospects in the autumn of 2017.
 94. On balance we have reached the conclusion that the respondent's motivation was to save the project; as it had started to do in June and July 2017 with the steering group's scrutiny and Ms Lacey's workshops. The problems were deep seated; volunteers were not trained, some were not DBS checked, there were inadequate numbers of volunteers and inadequate numbers of people in recovery coming forward to take part in, or being retained by, the project.
 95. We found Ms Freeman's evidence persuasive; there were deep seated problems with the progress of the project in its first year. These problems were exacerbated by the two occasions when the Lottery withheld funding in the winter of 2017/18. And further exacerbated by a decline in the engagement of the majority of the small pool of volunteers.
 96. On the balance of probabilities, the respondent's evidence persuades us that the respondent's actions, and its intentions, were solely related to assessing, and saving the project until the prospects of success were perceived as too low to warrant continued effort.
- 1st January 2018 – 16th March 2018
97. On the 1st January Mr Gallanders completed a report for the Trustees to consider [241-244] which recommended that the Trustees should end Dragon Tale Productions with the Lottery's consent.

98. The proposal was considered by the trustees on the 9th January 2018 [257-8]. The trustees voted to end the project and Mr Leece-Jones informed the Lottery by a letter dated the 16th January 2018 [262].
99. On the same date the respondent wrote to the claimant informing her that her entitlement to contractual sick pay was reduced to half pay from the 1st January 2018 [251]. The claimant replied raising a grievance that the reduction to half pay was an act of victimisation [252] and later that day indicating her return to work the following day. However, the claimant was still suspended from work at that time.
100. On the 17th January 2018 the respondent wrote to the claimant indicating that the role of manager of Dragon Tale Productions was at risk of redundancy consequent to the trustee's decision to end the project. The claimant declined to attend a consultation meeting until the respondent had investigated, to her satisfaction, the grounds for her suspension and the related elements of her prior grievances.
101. Consequently, the respondent appointed an external solicitor to; "review the disciplinary, grievance and redundancy matters impacting on your employment" [285].
102. The disciplinary and grievances meeting took place on the 1st February 2018 between 11.10 and 16.50. By the end of the meeting, based on the notes before the tribunal [361—367], the particulars of the claimant's complaints were less than certain, documents were outstanding and there was a proposal for an informal resolution for the claimant to consider. Accordingly, the meeting was adjourned and eventually fixed for further consideration on 2nd March 2018 [375-7].
103. Unfortunately, the claimant's view of the value of a further meeting with Mr David Jones diminished and she declined to attend [380-1]. Mr D Jones thereafter prepared a report on the information before him and his perception that the claimant's articulation of her arguments was less than clear.[388 -394].
104. The claimant was informed of her dismissal on the 16th March 2018. The respondent stated that the reason for her termination was redundancy.
105. The claimant appealed the decision to dismiss her on the grounds of redundancy. Her argument asserted that respondent had manipulated the project during her absence and manufactured a redundancy situation on the ground of her protected public interest disclosure of the 27th June 2017.
106. Ms Sarah Griffiths was appointed to determine the claimant's appeal. She did so and in a detailed decision [402 -405] she set out her findings of the slow progress of the project, the recorded deficiencies which came to light following a review in the summer of 2017, the efforts made to re-invigorate the project in the autumn of 2017 and noted the statement, which we have concluded is the same statement that we have considered [Chris Harris 273-4] which noted the disengagement of the volunteers and the constraining scope of the project.

107. Ms Griffiths concluded that the 27th June 2017 disclosure was not the reason for the claimant's dismissal.

Discussion and Conclusions

108. The first dispute between the parties is whether the claimant's statement to the respondent on the 27th June 2017 amounted to a protected disclosure.

109. Section 43B of the Employment Rights Act 1996 states:

"In this Part a "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 one or more of the following—

- a. ...,
- b. ...
- c.
- d. that the health or safety of any individual has been, is being or is likely to be endangered,
- e. ...
- f. ..."

110. The key dispute raised by the respondent was set out in paragraph 6 of Mr Ali's written argument; that the claimant's statement did not amount to "information".

111. In Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436 CA, Sales LJ (as he then was) provided the following guidance:

"...30. the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. Langstaff J made the same point in the Judgment below at [30], set out above, and I would respectfully endorse what he says there. Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other. Indeed, Ms Belgrave did not suggest that Langstaff J's approach was at all objectionable.

31. On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute "information" and amount to a qualifying disclosure within section 43B(1), not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision."

112. Based on a combination of the evidence from the claimant and Ms Milner's statement (paragraph five) We have concluded that the claimant communicated to her employer words to the effect that A had been driving his vehicle on the public road again. Further, that Ms Milner understood that statement of fact to be a reference to A's use of his own van to carry equipment for the respondent on the 24th June 2017. The claimant also gave evidence that she had challenged the respondent as to why it had allowed A to drive does, not in our judgment detract from the fact that her "statement" and her questions all conveyed information to the respondent; that A had been driving a vehicle on the public road for the benefit of the respondent when the claimant believed he was not fit to do so.
113. The respondent has not disputed the claimant's assertion that she reasonably believed in her statement.
114. The requirement that the disclosure be one that, in the reasonable belief of the worker in question, "is made in the public interest." was considered by the Court of Appeal in the case of Chesterton Global Limited (t/a Chestertons) v Nurmohamed [2017] EWCA Civ 979, in which it was held that there may not be a white line between personal and public interest, with any element of the former ruling out the statutory protection: where there are mixed interests, it will be for the us to decide, as a matter of fact, as to whether there was sufficient public interest to qualify under the legislation (paragraphs 36 and 37).
115. This issue was not disputed by the respondent and, whilst there is evidence in the bundle of a degree of antipathy between the claimant and A prior to the date of the disclosure, we are satisfied that the claimant reasonably believed that an employee of a local charity, driving a vehicle on the public road to convey the charity's equipment when he was not safe to do so would be a matter of public interest. In reaching this conclusion we have considered the claimant's subjective perception and whether, in her circumstances, that was objectively reasonable. We have concluded that her belief in the information and the public interest was reasonable.
116. For these reasons we have concluded that the claimant made a protected public interest disclosure to her employer on the 27th June 2017

The principal reason for the claimant's dismissal

117. The claimant had more than the requisite two years' continuous service to bring a claim for unfair dismissal and the burden of proof fell upon the respondent to prove that the reason or principal reason for the termination of her employment was a potentially fair one.
118. Mr Ali's argument set out in paragraphs 6 to 14 of his written submissions argue that the disclosure of the 27th June 2017 was a matter of no consequence to the respondent because, unlike the claimant, the respondent was aware that A's GP had previously advised A was probably fit to drive his own vehicle and he had volunteered to help move some of

the respondent's equipment, he had not been instructed to do so. In short, the claimant's statement was of not significant.

119. The claimant's case, is reflected in her witness statement [paragraph's 24.1 to 24.6]; that the respondent tried to cover up A's conduct and tried to suppress and conceal the issue, to remove the claimant from her managerial position which necessitated terminating the Dragon Tale Productions project.
120. To determine this dispute, we start by considering the events which lead up to the disclosure.
121. Firstly, at the end of January 2017 "A" was disciplined for smoking cannabis in the company of a person in recovery, in the course of that disciplinary process A made an admission to suffering from a physical or mental disability which affected his ability to safely drive.
122. Consequently, the respondent barred him from driving his own vehicle; a mobile recording studio. That ban was in place before "A" returned to work on 7 February 2017. It was A who communicated some of what has been said in the disciplinary process to members of the Dragon Tale Productions team.
123. The claimant became aware of that discussion and the disciplinary outcome. The claimant was evidently angered by the respondent's decision not to dismiss "A".
124. The disciplinary outcome and "A"'s admission led to a discussion between the claimant and Mr Gallanders.
125. The content of that discussion is broadly reflected in a script the claimant prepared (within AB bundle at page 6) wherein at paragraph 1 she raised concerns about the health and safety and the legality "A" undertaking driving duties following his disclosure that he had suffered from "seizures" and whether a risk assessment should be undertaken as well as a review of the management of the Dragon's Tale project if "A" was unable to fulfil his role as the project's principle driver.
126. On 13 February 2017 the respondent wrote to Occupational Health asking for a report about the claimant's ability to drive safely. An undated document in the appeal bundle refers to occupational health advice that the claimant: "*should not drive for the time being*" and indicating that a report from A's GP was necessary.
127. On 12 May 2017 A's GP stated in an email to the respondent that A should be fit to drive at his own risk but he should inform DVLA of his health and its possible impact on his ability to drive. This advice was known to Ms Milner in her HR capacity but not to the claimant.
128. On 24th June A, using his own vehicle transported some of the respondent's equipment from a Volunteers' Day event to the respondent's premises.

129. On 27 June 2017 the claimant made her disclosure to the respondent. At the time of the disclosure she was not aware that A's GP had informed Ms Milner that A was probably fit to drive his own vehicle. Ms Milner also knew that A had been stopped from driving for the respondent as soon as the respondent had become aware of A's past seizures and that the ban remained in place despite the opinion of A's GP.
130. We also find that subsequently Mr Gallanders, Ms Mary Walker, Mr Leece-Jones and the external appeal decision maker, Ms Sara Griffiths, were informed of the disclosure prior to their respective decisions in relation to grievance and disciplinary matters.
131. Firstly, we considered the degree to which Ms Milner or Mr Gallanders were, consciously or unconsciously, influenced by that disclosure. We consider Ms Milner first because she had a limited involvement in the claimant's employment after the suspension of the 1st September 2017 and because the claimant's case asserts a particular relationship between Ms Milner and A as the foundation for asserting that it was likely that the disclosure would lead Ms Milner to victimise the claimant.

The relationship between Ms Milme and "A".

132. There were a series of sources of evidence relevant to this issue. One was Mr Folds who asserted that Ms Milner had personally admitted this relationship to a volunteer. A second source was the volunteer Ms Warner who gave evidence that she had shared comments made by A; that he and Ms Milner had a personal relationship. Other witnesses related statements that they heard amongst the volunteers but none of them, save Ms Warner, asserted hearing an express admission.
133. We have already noted that Ms Milner made what we thought was very careful responses when asked about the relationship with A; she answered "not during his period of employment".
134. We found Mr Folds to be quite unreliable witness and did not find his evidence to be credible.
135. With regard to matters which were reported by others and discussed amongst the volunteers we have no clear original source for these statements. With the reports of admissions by A we find it difficult to have confidence in the statements attributed to A for the following reasons:
1. Several of the volunteer witnesses gave evidence that A was a dishonest person. We have no reliable means of distinguishing which parts of the statements attributed to A are honest and which parts might be dishonest. A has not been party to these proceedings.
 2. In Ms Warner's statement at paragraph 16 she states that A admitted an intimate relationship with Ms Milner. In paragraph 19 Ms Warner asserted A admitted that he had been coerced into raising a grievance against the claimant. We have a written statement in a document from A contradicting that statement and which corroborates Ms Milner's account on that issue. We have noted in

our findings of fact that Ms Warner's account to the grievance investigation of the coercion of A to raise a grievance was not that A had admitted being pressured; rather that she had surmised as much from her perception of events

3. We were concerned that Ms Warner was a somewhat partisan witness.

136. All of which leaves us with no particular basis to have confidence that statements attributed to A, by the claimant's witnesses, are reliable evidence for us to consider in these proceedings.

137. We have reached a conclusion that it is more likely than not that Ms Milner may have had a particular empathy for A by the time he came to her in tears in early July 2017 and then raised his grievance but we do not conclude that there was an intimate relationship.

138. We have reached that because the amount of time that she spent with him on the day on which he raised his grievance seemed more than one might expect for a purely professional relationship. However, we have to think about this issue in a wider context.

The reaction of Ms Milner and Mr Gallanders to the 27 June disclosure.

139. The claimant's disclosure of the 27th June 2017 was received in the context of Ms Milner and Mr Gallanders' prior knowledge; based on the medical opinion of A's GP opinion of 12 May 2017. They considered that the claimant was not involved in wrongdoing and nor were his actions, in driving his own vehicle and providing ad hoc assistance to move equipment a short distance in his car, likely to be any risk to anyone. They also knew that the respondent had removed A's driving duties promptly and that it continued to bar A from driving the respondent's vehicles.

140. We have considered the lengthy cross examination of the respondent's witnesses as to whether the respondent should have contacted the DVLA, rather than trust A to do so, or to have tried to investigate whether A had done so himself. The respondent had no evidence that A's driving had put any person at risk prior to February 2017.

141. On the evidence before us the respondent has proved that neither Ms Milner and Ms Gallanders bore any conscious or unconscious antipathy towards the claimant or any frustration which was related to her disclosure.

142. There were however frustrations relating to the management of the Dragon Tale Productions.

143. The claimant's pleaded case alleged that the respondent had manipulated the management of Dragon Tale Productions from the date of her suspension 1 September 2017 through to the end of December 2017. Thus, when on 1 January 2018 Mr Gallanders wrote a paper recommending the termination of the project and the return of funds to the big lottery it was the culmination of a conscious course of conduct to put the project in such a

precarious position that that Mr Gallanders' presentation would be persuasive.

144. That, however, was not the claimant's answer in cross examination to questions from Mr Ali where she accepted that it was more likely that the decline of the project in the autumn of 2018 was a consequence of senior AVOW managers' incompetence and/or complacency.
145. The claimant also placed reliance upon the record of internal meeting which took place on 12 December 2017 (found in the appeal bundle pages 84 – 88) which paints a more positive prognosis for the future of the project than that painted by Mr Gallanders on 1 January 2018; some eighteen days later.
146. The tribunal notes no report was contributed to the 12 December 2017 meeting by the volunteers and the character of that meeting was one of statements of future hope and possibilities. Mr McArthur, on behalf of the claimant, associated those possibilities with three months of potential funding for the project and submits that there was clearly a three-month window of opportunity which the respondent avoided to ensure that it could effect the claimant's termination through redundancy when the project was concluded.
147. We balance that with the respondent's denial that there was any sham and the respondent had continuing concerns about the management of the project which are first evident on 18 April 2017.
148. We have already set out our findings of fact concerning the competence of the management of Dragon Tale Productions.
149. We have reached the conclusion that there was a sound foundation for believing that the claimant's March/April written presentation of the project's progress had been exaggerated.
150. We have preferred the evidence of the respondent concerning the difficulties the project faced prior September 2017. We have accepted Ms Freeman's evidence of the substantial problems which already existed in October 2017 and, based on the respondent's witness evidence and the minutes of the Steering Group meetings, we do not find that the respondent was "running down" the project after the claimant's suspension.
151. We look therefore, at the document dated 12 December 2017 in the context of continuous concerns from the trustees and senior management from April through to December of 2017, the ongoing concerns about the viability of the project, the two occasions when the funding was withheld due to anonymous complaints about the respondent to the Lottery and the report of 1 January 2018.
152. In those circumstances we have reached the conclusion that the respondent has disproved the assertion of any malicious motive or conscious manipulation of the Dragon Tale Productions project. It has disproved the assertion that "whistleblowing" was part of the respondent's

conscious or unconscious mindset in the management of the project of the recommendation for its closure.

153. We are satisfied that the respondent has proved that the sole reason for the claimant's dismissal was the respondent's belief that the role of Manager of the Dragon Tale project would cease to exist because the respondent believed that project had no realistic prospect of success and should therefore be terminated.
154. Turning then to the fairness of the redundancy process. A reasonable employer in our judgement will follow the principles in the case law to which we are briefly going to refer. There is no specific ACAS code on the redundancy.
155. The first point we make is the consultation. A reasonable employer, where it is practicable, will follow the pertinent aspects of the guidance set out in the case of Williams v Compair Maxim Ltd 1982 IRLR 83.
156. A reasonable employer will usually consult with an employee upon the ways in which a proposed redundancy might be ameliorated or mitigated. Thereafter, if there is a pool of employees likely to be affected by proposed redundancies, the criteria for selection should be discussed and further, if an employee's role is selected for redundancy, they should have an opportunity to challenge their selection and lastly, an opportunity to discuss suitable alternative employment.
157. The claimant was either absent through reason of suspension or through ill health until the last date of her final sickness certificate which expired on 9 January 2018. However, throughout that period the claimant had shown herself to be thoroughly capable of communicating directly and through her sister or Mr McArthur and had demonstrated that she was able to attend meetings such as the substantial disciplinary investigation meeting of 1 December 2018.
158. In our judgement it is clear that contemplation of the potential termination of the project was an issue as of 12 December 2017 because in the early part of the meeting there is reference to the "red or amber" status of the project and how it might progress. Termination of the project was certainly clearly an issue by 1 January 2018.
159. A reasonable employer would have consulted with the project manager about the ways in which the risk of closing the project could be reduced or the ways in which the project could be managed to give it a better chance of survival. In either of those ways the respondent failed and no explanation for that failure has been offered.
160. This procedural failing is not merely academic; we do not try to assess to what extent it would have affected the process or the duration of the claimant's employment; that will be an issue to be determined on another occasion.
161. Secondly, if the claimant had been selected for redundancy along with her colleagues then she was also likely to have been in the same "pool" as Ms Freeman who, in the absence of the claimant, stepped up with Mr

Gallanders to take over the management of the closure of the project. The claimant was not consulted upon that as an option. However, in the circumstances of the unresolved grievances, incomplete disciplinary hearing and the unambiguous statements from the claimant of her distrust of her line managers, it is far from probable that she would have taken up such an opportunity.

By reason of the above, we have concluded that the claimant was unfairly dismissed contrary to Section 98(4) of the Employment Rights Act.

Procedural failings

162. Our conclusion that the claimant's dismissal was by reason of redundancy raises the need to consider the degree of relevance, of the claimant's forty-three procedural complaints to a dismissal by reason of redundancy.
163. The procedural unfairness issues must logically relate to the reason that we have found for the dismissal and, while some of them could have a penumbral association with the redundancy, most of them relate to the grievance process raised by A, the management of Ms Jones' own grievances and the progress of the investigation into the misconduct allegations made against her; allegations which did not lead to a decision to dismiss the claimant on the grounds of conduct.
164. Starting with page 40A:

Allegation 1: A's grievance resulted from coercion by the Chief Operating Officer and the Head of HR.
165. We have addressed this issue in our findings of fact. We do not find that A was coerced as alleged.

Allegations 2 to 5; the claimant's suspension exceeded 15 days, there was no basis for the suspension and it was not a neutral act, the Suspension hearing was held on four days' notice.
166. The respondent accepts that the claimant's contract of employment, at paragraph 9.3, states that she cannot be suspended from work for more than fifteen days and that her period of suspension substantially exceeded fifteen days. The contract also says that the time frame can be extended.
167. The duration of the suspension, and the claimant's sickness absence have been clearly associated with the alleged creation of redundancy situation. We have addressed these matters earlier in this decision.
168. The claimant states that her suspension hearing was arranged for 4 September which gave her less than the stipulated days of warning for a meeting, that is true but it is also true that the meeting did not take place on 4 September. Because the meeting was delayed far beyond 4 September, the potential unfairness was avoided.

Allegation 6: the grounds for the allegations of gross misconduct levelled against me were made in summary on 5 September despite me repeatedly asking to move forward I received no evidence until 13 January after the disciplinary matters had been heard by the trustees on 1 December.

169. The tribunal's conclusion is that, having read the notes of 1 December 2017 the meeting between Mr Leece-Jones and the claimant, the meeting was not a disciplinary hearing. It was an investigation meeting it did not determine the merits of the disciplinary allegations and it did not lead to a conclusion of the disciplinary process. In our judgment receipt of the evidence in January 2018, prior to an intended disciplinary hearing in February 2018, was a correct procedural step prior to the disciplinary hearing. In these circumstances, there was no procedural breach. The claimant was not dismissed by reason of her conduct so this allegation has no real bearing on the fairness of the dismissal.
170. *Allegations 7 & 8*; the claimant makes reference to the claimant's subject data access request dated 3 September 2017 and the failure to comply with that within forty days. This is essentially a restatement of complaint 6 which we have addressed above.
171. Allegations such as 9, 31 and 37 assert that the claimant's grievances were dealt with by trustees who were, by their position as trustees of the respondent, "judges in their own cause" as Mr McArthur set out in his argument supported by authorities dealing potential bias in the civil and criminal justice system. A related point was the respondent failure to appoint ACAS to oversee the internal hearings and to appoint paid professionals to conduct the disciplinary and grievance hearing on the 1st February 2018 and the appeal hearing of June 2018.
172. We bear in mind the ACAS Code of conduct in relation to grievances, the code does not require a small employer with a limited number of employees to appoint a completely independent person to determine grievance and disciplinary hearings. It is expected that employers will manage grievances and disciplinary matters in a reasonable manner; taking into account the administrative resources of the employer.
173. The conduct of appointing trustees to determine the grievances is what the tribunal would reasonably expect. We have noted elsewhere that ACAS do not provide direct oversight of employer's internal procedures.
174. With regard to the appointment of Ms Griffiths as the Appeal Officer and the involvement of Mr Jones as an officer determining matters, we acknowledge that those persons had a commercial relationship with the respondent but it is not in breach of the duty upon an employer to employ a third party who has a degree of relevant technical knowledge and relevant profession standing.
175. *Allegations 22, 25, 26,32,38 and 39* relate to the claimant's assertion that the redundancy was a sham or the of the redundancy process was procedurally unfair; matters which we have addressed earlier in this judgment.

176. *Allegations 15, 41, 42 and 43* relied upon the conduct of parties' interactions which occurred in the course of without prejudice discussions or the offer to engage in such discussions and were not relied upon by the claimant.
177. *Allegation 14 states*; "in response to several requests to allow me to return to work following a finding of no case to answer of 1 December the respondent then changed its position on 10 January and stating the investigations were to continue".
178. We have stated that, our judgment the meeting of the 1st December 2017 was not a disciplinary hearing; it was an investigation meeting which did not determine the disciplinary allegations nor did it conclude that "there was no case to answer".

The detriment claims

179. We find that mention was made of the "public interest disclosure" at each stage of the grievance hearings and in the course of the disciplinary investigation.
180. Turning then to the schedule of detriments. These run to sixty items albeit a number of the specific statements, in our judgement, described the consequences of the alleged detrimental treatment rather than a specific detriment.

Allegation 1

181. The first is the pressure allegedly placed upon A to raise a grievance against the claimant. We have concluded no such pressure was placed upon A.

Allegation 2

182. The claimant alleges that she was not notified of A's grievance allegations and neither was she given an opportunity to address or comment upon them. She was unfairly accused without any right of reply.
183. We firstly note that Ms Milner sent an email to the claimant on the afternoon of 7th July to inform her of the grievance which was not delivered and, she, then sent a second email to the claimant later the same day. We also accept, it was evident from the text message between the claimant and Mr Gallanders [43], that the claimant had not received that by 13th July and there is no evidence that it was produced to her thereafter. We have already expressed our judgment that Ms Milner and Mr Gallanders were, on their evidence which we have accepted, not influenced by the claimant's disclosure.
184. We also note the minutes, which the claimant has confirmed is an accurate record, of the grievance investigation meeting held on the 26th July 2017. In

the course of that meeting the claimant addressed the complaints made against her by A.

185. We therefore concluded that it is right that the claimant was not notified of the allegations until 26th July but thereafter she did address them and denied all of them. We find as a fact that the claimant was informed of the allegations and had an opportunity to reply before the respondent reached a decision on the merits of the grievance.

186. More importantly, we do not consider that the failure to provide the information by the 13th was related to the claimant's disclosure; Ms Milner had made two efforts to provide the information and she was not the manager of the grievance process once a trustee had been appointed to manage the grievance process.

187. Up to the date of the provision of the allegations (the 26th July before the claimant gave her response) there is no evidence before us to warrant a conclusion that the trustees were aware of the protected disclosure; it is first referenced during the claimant's response to the grievance allegation.

188. We thus satisfied that the late disclosure of the allegations was wholly unrelated to the claimant's disclosure on 27 June for the reasons we have stated.

Allegation 3

189. The next allegation is that Mr Gallanders and Ms Milner subsequently either carried out the investigation into A's grievance or directed the conduct of the investigation arising from the grievance, in doing so they were acting as judges in their own cause and had an unfair input into the process of the grievance.

190. We accept that Ms Milner and Mr Gallanders were witnesses to the investigation. However it is evident that Trustees were engaged in conducting the interviews and it was trustees who reached the decision to uphold the grievance Neither Milner nor Gallanders were "judge in their own cause" and there is no direct evidence before us to suggest they directed the course of the investigation.

191. On the evidence we do not find that that detriment is proven.

Allegation 4

192. The allegation asserts that Mr Gallanders and MS Milner decision on the grievance. In our judgement on the balance of probabilities it was two trustees who reached the conclusion, not Gallanders and Milner, to uphold the grievance. This detriment is not proven.

Allegation 5

193. The claimant alleges; "*despite asking on numerous occasions for the details of the grievance made against me I was told that as the claimant had left, I was not entitled to know the content, allegations or nature thereof I was*

simply told I had to comply regardless of any grievance that I felt. This position by AVOW flies in the face of any natural justice”.

194. We first note the grievance procedure of AVOW which does not cater for a provision of a copy of the grievance details to the person subject to the grievance. We note that the intention of Ms Milner was to provide the grievance because it was attached to the “bounce back” emails she sent to the claimant and we note that it is evidence that the details were disclosed to the claimant, and discussed, by the 26th July. We note the claimant did not give evidence of requests for the details of the allegations after the 26th July 2017.
195. To the extent that this allegation related to the period prior to the 26th July 2017, we have addressed it above. To the extent it relates to dates after the 26th July, it is not proven.

Allegation 6

196. It is correct that the claimant was informed she had no right of appeal. On an examination of the respondent’s policy it is evident that an appeal is only offered to the complainant. The respondent acted in accordance with its policy. There is no evidence to warrant a conclusion other than this; that the grounds on which the respondent would not offer an appeal was its compliance with its grievance policy; a reason which was wholly unrelated to the claimant’s disclosure.

Allegation 7

197. “I have repeatedly argued that there was no fairness and no natural justice in the conduct of the grievance made against me by A”.
198. This is not a statement of a detriment. A detriment according to Section 47B of the ERA 1996 is an action or a deliberate failure to act which put the claimant at a disadvantage. Allegation 7 is a description of the claimant’s own conduct rather than an assertion of action or omission by the respondent.

Allegation 8

199. “I was threatened with disciplinary measures if I failed to comply with the sanctions decided upon by AVOW management arising out of the grievance made against me by A”.
200. It is correct that the grievance outcome letter [Page 45] does state that the claimant will, or could be, subject to disciplinary or capability procedures if she failed to comply with the recommendations.
201. In our experience to state that non compliance with a direction might mean capability or disciplinary proceedings would be a common response to an instruction. There is no evidence before us to contradict the respondent’s assertion that the offending words were otherwise than the respondent’s standard practice.

202. The recommendations were twofold (1) that Mr Gallanders should conduct and record supervision sessions (2) Mr Gallanders and the claimant should sit down and identify suitable training.
203. In evidence the claimant described being pleased with the promise of training and supervision. Consequently, the probability of the claimant breaching these recommendations was minimal indeed; she wanted supervision and the task of identifying management training to support the claimant was not onerous.
204. Whilst we accept factually that a statement was made, we note it came from the trustees and therefore not from Gallanders and Milner and we do not consider that the decision to incorporate that warning was at any sense on the grounds of a protected disclosure.

Allegation 9

205. " Suspended from work on 1 September on the premise of gross misconduct, despite the fact I never had any informal or formal warning a written warning or reprimand. All of my actions were reported to AVOW senior management and each of the issues raised against me had previously been signed off by my managers without issue".
206. With regard to the majority of the matters listed in document dated 5 September they were assertions that the claimant had misrepresented the content of two written reports on the progress of Dragon Tale.
207. We find no evidence that those misrepresentations had ever been "signed off".
208. We do not consider that it was unreasonable to raise the allegations that were set out by the respondent and again, we simply do not accept that the cause of the disciplinary allegation was related to the claimant's protected disclosure, it was related to the shock of the respondent in finding out that the claimant's reports on the progress of the Dragon Tail project was a misrepresentations of the true circumstances.

Allegation 10

209. " I found myself without support in respect of the disciplinary grievance made against me by A on 1 September".
210. So far as we are aware from the documents, the claimant did have available support in meetings, partly through Peter Jones and then from Mr McArthur.
211. The notes at 166 demonstrate, that albeit there was no support on 1 December, but this was a disciplinary investigation not a disciplinary hearing and neither the ACAS Code of Practice or the respondent's procedure identifies that a companion might attend at such a meeting.
212. In any event we were persuaded that the conduct of the respondent in this respect was not in any sense "on the grounds of the protected disclosure".

213. The claimant states that she was accused of fraud and repeatedly challenged the accusation, which is factually true.
214. The allegation of fraud appears to us is two-fold (1) it was the misrepresentation in the documents. (2) it related to the purchase from her son on behalf of the charity of a bench to be left at the site of the public launch of the project in February. The latter part was a mischaracterisation. It was a conflict of interest rather than a fraud. As to the first part the description is one essentially of misleading the respondent and the Lottery.
215. Was that description one that was chosen consciously or unconsciously in relation to the claimant's protected disclosure of 27 June. We do not consider it was a consequence of that at all.

Allegation 11

216. It is correct that the claimant was informed that she was to be investigated for allegations of fraud and that, following the completion of the investigation hearing on 1st December 2017 the same factual allegations were later formulated as disciplinary allegations [287] but the word fraud was no longer employed; the allegations were, in our vocabulary one of misleading the respondent and the Lottery through written representations or failure to disclose information.
217. It is evident that the claimant, based on legal advice, perceived that an allegation of fraud was a purely criminal concept (given the common law tort of deceit and the Misrepresentation Act 1967, that might not be wholly correct) and one which the respondent could not make without police intervention; " *have me charged (under caution)*".
218. The factual allegations were not "dropped" but nevertheless it is evident that the claimant was offended and perhaps fearful (given the legal advice she reported) of the word fraud.
219. The persons who were responsible for the initial formulation of the allegations were Mr Gallanders and Ms Milner. We have already expressed our judgment on the extent to which the claimant's disclosure influenced their conduct and for that reason we find this allegation is not proven.

Allegations 12 – 13

220. The claimant describes the substantial adverse effect of the description of her conduct as fraud. This allegation does not assert conduct by the respondent; it describes the consequence of the allegation which we have addressed above.

Allegations 14 – 15

221. The claimant describes that she was put on half pay which caused significant hardship and had to get signed off from sickness simply to make ends meet.

222. We find that the respondent's reduction of the claimant's pay was in accordance with the terms of her contract. We find that the claimant's GP had certified her fit to return to work.
223. The claimant was offered support during her sickness absence and the claimant conceded that she was alerted to the available support.
224. We find that the respondent's decision to reduce her pay was solely based on the application of the claimant's contractual terms. We do not find a causal link between the disclosure of 27 June 2017 and this matter.

Allegation 16

225. " Having offered to return to work following my period of work and sickness I was refused access to AVOW premises and kept on suspension".
226. This we take to be a reference to the fact that on 9 January the claimant indicated she wished to return to work and that she produced a fit note dated 10 January which referred to her sickness absence between 27 December and 9 January.
227. The claimant says this was unfair in the circumstances and; "I was not offered a reason not to allow me to return to work".
228. We have concluded this the responsibility of Mr Leece-Jones because he was the person with whom the claimant was communicating at the relevant time.
229. In light of Mr Leece-Jones' evidence regarding the "whistleblowing" We have concluded that he was not troubled or even slightly concerned about the character of the disclosure made by the claimant. In those circumstances, his evidence has persuaded he was not influenced, consciously or unconsciously, by the disclosure.

Allegations 17 – 18

230. We conclude that is not an assertion of detriment. It is a statement of a factual foundation of a number of grievances being served by the claimant and they act as a foundation for the allegations which follow.

Allegations 19 and 20

231. We did not receive any evidence from Mr Peter Jones and Mr Gallanders made no admission to the allegation made by the claimant. The claimant's evidence on this point was hearsay and the claimant's email to Mr Jones, the content of which Mr Jones has not confirmed. In the absence of any direct evidence to support the allegation and Mr Gallanders' denial, this allegation is not proven.

Allegation 21

232. "My grievances were chaired by AVOW trustees each of whom in the circumstances had an interest in repressing my public interest statement

and concealing the truth I have repeatedly argued they were acting as judges in their own cause”.

233. The standards of the judicial process or a formal government investigation are not the standards expected of a reasonable employer; a much lower standard is required. Whilst we understand why Mr McArthur has taken the point, it is at odds with the ACAS Code, the guidance and the case law.
234. The high standard identified on behalf of the claimant is not the one by which we must measure the respondent’s conduct.

Allegation 22

235. The claimant’s statement does not assert a detriment; it highlights the document fact that she mentioned her 27th June disclosure in each of her grievances.

Allegation 23

236. The claimant states that the respondent refused to ask ACAS to ensure fairness in the conduct of its internal proceedings. She states that the refusal was on the grounds of cost when the respondent could afford to pay ACAS.
237. We were concerned with this allegation for two reasons. The respondent referred to the £800.00 ACAS charged to conduct a mediation. There were no mediation procedures taking place. The respondent expressly stated that, upon inquiry with ACAS, it did not offer a service of attending or supervising employers’ internal grievance and disciplinary procedures.
238. We find that reason ACAS were not involved in ensuring the fairness of the internal disciplinary/grievance procedures was solely that the respondent understood that ACAS did not offer that service.
239. We find that belief was wholly unrelated to the claimant’s disclosure.

Allegations 24 and 25

240. These are matters which we have already addressed with respect to the reason for the dismissal and the claimant’s assertion in writing that it was a sham process. We have reached a conclusion that the conduct of the respondent was not on the ground of the claimant’s 27th June 2017 disclosure but the respondent’s genuine belief that the claimant had misrepresented the project’s progress, that the project was falling far short of its expected performance and the prospect of sufficiently improved future performance was too slight to warrant its continued support from the Big Lottery’s funds.

Allegation 26

241. The claimant alleges that the volunteers and beneficiaries of Dragon Tale were side-lined and made to feel victimised as a result of their association with the claimant.

242. This allegation is not one which is expressed as an act or deliberate omission causing a detriment to the claimant.
243. In any event, the evidence cited upon in the schedule of detriments is less than persuasive; being partly hearsay, in one respect (concerning the Wepre Park event), contradicted by the statement of Mr Morsy and contradicted by Mr Gallanders' evidence. On the balance of probabilities, we preferred the respondent's evidence.

Allegation 27

244. An allegation that Mr Gallanders approached a number of colleagues fishing for information, asked them to write statements that were detrimental to the claimant's good name and professional reputation.
245. Mr McCarthy's statement (14 – 16) indicates that in July he was approached about the progress of his Camry bursary. That evidence does not state that he was asked to write a statement or that any other person was asked.
246. In fact, it appears on Mr McCarthy's statement he was asked about the other colleague whose Camry bursary hadn't progressed to completion.
247. Mr Gallanders denied the allegation of "fishing".
248. We find this allegation is not proved.

Allegation 28

249. "When those colleagues would not agree to support AVOW with a statement, they were strongly advised not to say anything about the approach made to them".
250. The facts asserted in this allegation were not presented in evidence.

Allegation 29

251. The dismissing officer systematically set about destroying the claimant's reputation with some client contacts and main financial support of the big lottery.
252. This allegation was evidenced by the respondent's email addressed to the Prison Service and the National Offenders Management Service. There were five recipients of that email.
253. The second paragraph of that email refers to the "management of ongoing employment issues for the manager of the project" which suggests, in our judgement, that there had been some prior reference to that issue because the comment has no introduction or context.
254. This is the direct evidence of the respondent communicating with two of the external bodies in a manner which infers some undefined difficulties with

the claimant's employment. The communication did not need to reference "employment issues", it could simply have said that the claimant was still unavailable rather than containing a reference which might be interpreted in a negative fashion.

255. However, we remain convinced by the respondent's explanation that whilst more circumspect wording could have been used, the statement was true and did not indicate that the claimant's "employment matters" related to any culpable conduct on her part. Further, we find that the respondent has proven that the disclosure had no bearing on the choice of words.

Allegation 30

256. *"Those supporting volunteers who complained about the treatment I received were subsequently thrown off the project without explanation or any support (they were in recovery)".*
257. The volunteers' relationship with Dragon Tale ended as a consequence of the decision to end the project and the volunteers were invited to consider joining other projects.
258. We see this allegation asserting a detriment relating to other persons i.e. the volunteers but not to the claimant.

Allegation 31

259. We also went through the claimant's statement in respect of allegation 31, wherein she asserts none of her grievances have ever been fully or properly dealt with. We took into account the cross examination of the claimant by Mr Ali. We reviewed Mr McArthur's submissions
260. On the evidence before us, the complaint is really that her allegations were not upheld. The claimant, having great faith in her own accuracy, the honesty of her own account and the logic of her arguments did not accept that the rejection of her complaints was explicable save for the possibility she was not listened to.
261. We went through the claimant's witness statement to try to identify the precise particulars of the alleged failures to consider her complaint properly, we reviewed the grievance interviews, the written decisions, the cross examination of the respondent's witness Ms Griffiths (the only decision maker who gave evidence) and the claimant's submissions. There was little to assist us in identifying evidence of failures to consider the claimant's complaints properly. We did note the allegation that Ms Warner did not agree with the record of her grievance interview and, that she had not been allowed the opportunity to comment on the summary of that interview. We also considered, and accepted, the evidence that Mrs Warner had been invited to submit comments on this issue to the grievance appeal and had not done so.
262. There is nothing on the respondent's decisions which, in our judgement, evidences a failure to consider her complaint properly. There are clear

examples of individual complaints being addressed through interviews with witnesses, requests for evidence and reasoned outcomes.

263. For these reasons we find that the factual allegation is not proven.
264. We struggle to see that any of these matters are ostensibly referable to the disclosure. We have been directed to two facts which are relied upon to persuade us to conclude that the decision makers were tainted by the disclosure; their pre-existing relationship with the respondent and rejection of most of the claimant's grievance complaints.
265. We also note that Ms Griffiths was appointed to be independent in her decision making, it is questionable whether the respondent is liable for any failings on her part.
266. Without repetition we are not clear that the claimant has evidenced the detriments and we are satisfied that there was no causal connection between the whistleblowing disclosure and those matters.

Allegation 32

267. This is an assertion of fact by the claimant describing her conduct during the disciplinary investigation meeting of the 1st December 2017.
268. We record that the schedule of detriments did not have an allegation number 33.

Allegation 34

2. The tribunal accept that, Mr Leece-Jones went through all of the misconduct allegations during the investigation meeting and accordingly, there were no allegations which remained to be addressed at the end of the investigation meeting. For the reasons discussed in allegation 35, we do not accept that Mr Leece-Jones determined the merits of the allegations or concluded that there was "no case to answer" on any of the instances of alleged misconduct during that meeting.

Allegation 35

269. The claimant's allegation is founded on disputed factual premise; "*that the Chairman of the trustees also agreed there were no fraud issues to deal with and inferred there never had been. He said don't worry about it*". Based on that factual assertion the claimant asserts that the respondent failed to respond to her request to return to work.
270. Laying aside the fact that the claimant was signed off work by her doctor until the 9th January 2018. This allegation is dependent upon the factual foundation noted above.
271. We looked at the notes of the meeting [page 216] which set out the relevant record of the meeting. We have considered the evidence of Mr Leece-Jones. Neither source of evidence persuades us that Mr Leece-Jones agreed that there was no fraud. The evidence led us to conclude that, in

response the claimant asking whether she and he had discussed the fraud issues. Mr Jones said; “yes we have, we have gone through them”. He does say; “do not to worry about it” but that is not in our judgement a statement that the fraud allegation had no merit or that the allegation had been dismissed.

272. In our judgment Mr Leece-Jones did not make the alleged statement or indicate that the fraud allegation was no longer a live issue. We have concluded that factual foundation for this assertion is not proven and consequently the averred detriment is not proven.

273. We note that we have found Mr Leece-Jones to be an honest witness and his denial that he was influenced by knowledge or understanding of the claimant’s disclosure was persuasive.

Allegation 36

274. Allegation 36 is somewhat similar to 35, reflecting the same point that the claimant having been left in limbo over the Christmas period and had not received the outcome from Mr Leece-Jones following the meeting of 1 December 2017. Based on our findings of fact and our conclusions on Mr Leece-Jones motivation for his conduct, which are stated above, we have concluded that this allegation is not proven.

Allegation 37

275. This is a statement of the claimant’s conduct and is a foundation for the subsequent assertions of detriment, it does not assert a detriment.

Allegation 38

276. *“The first indication I had regarding of AVOW’s intention to make me redundant came on 3 January when the seven project volunteers who had complained about my treatment which they sent a letter from the trustees. They were informed of their involvement in the project had been summarily terminated”.*

277. We find that the involvement of seven volunteers who were part of the project was terminated and they were informed that, if they wished, they could volunteer for other projects and we accept that the volunteers informed the claimant of the AVOW’s decision and that this was the first information from which the claimant could infer that AVOW was considering the claimant’s redundancy.

278. We have already made adverse findings about the lack of opportunity for the claimant to make any representations. We have already made a conclusion that the dismissal was not related to “whistleblowing” but was related to the redundancy.

279. As a matter of law dismissals are expressly excluded from the definition of a section 47B detriment. Laying that aside, we have already made findings of fact which lead us to conclude that, as a freestanding detriment, we have been persuaded by the respondent’s evidence that its conduct and decision

making in respect of the termination of the Dragon Tale Productions project was not related to the claimant's disclosure.

Allegation 39

280. This is a statement of fact rather than a detriment specific to the claimant. There was a meeting held which determined to end the request for funding and then the Dragon Tale project.

Allegation 40

281. All other project volunteers remained in place and continued to advertise for volunteers on its website.

282. Although we don't have a copy of the website, we know from page 272 that the volunteers were directed to the website if they wished to apply for other volunteering posts on projects associated with AVOW.

283. The claimant says "that the only thing that the seven dismissed volunteers had in common was their support from me when I was first suspended following which they lost their principal".

284. The other thing these people had in common was the involvement with the Dragon Tale project which was brought to an end.

Allegation 41

285. "AVOW instituted their redundancy plan before knowing whether they had actually lost the funding for the project".

286. This is a factor we considered as part of our decision on the reason for the claimant's dismissal. We found that the reason for the dismissal was solely a genuine redundancy.

287. "I was subsequently given three dates for redundancy the first two of which AVOW's solicitors acting on their behalf kept changing to suit their negotiating position".

288. The Tribunal is aware that the delays to the claimant's termination date occurred during a period of without prejudice negotiation.

289. The consequence of the delay was the extension of the claimant's employment. It is not readily apparent to the tribunal what detriment the claimant suffered as a result of her continued employment.

290. There is no evidence before us that identifies that the delay was "on the ground of the whistleblowing" and given the respondent's denial of that motivation, we find the denial persuasive. This allegation is not proved

Allegations 42 – 49

291. These are all matters which the claimant accepts arise out of without prejudice discussions.

292. Item 49 refers to AVOW's solicitors repeatedly refused to discuss the redundancy terms with me unless I pay for proper legal advice which I could not afford.

293. The tribunal notes that a settlement agreement it is only valid if the employee has been advised by a person who is competent and insured; either a trade union official or a solicitor. For an employer engaged in discussions with proposed settlement it is not, in our view, in any way related to a whistleblowing disclosure for the employee to advise that a person should be so advised.

Allegations 51 to 55

294. These allegations are either statements of the adverse consequences of the points set out in 46 – 50 or assertions of conduct during without prejudice discussions; about which no evidence has been given. Accordingly, these allegations are not proven.

Allegation 56

295. An assertion that the redundancy was a sham, that the offer of an independent appeal was also criticised. We will come to the appeal but otherwise the sham point is a matter that falls within our remit under Sections 103A, 92 and 98 rather section 47B and has been addressed above; we concluded that the redundancy was not a sham.

Allegations 57 – 58

296. These allegations are statements of the claimant's losses flowing from dismissal. They are not assertions of specific acts or deliberate omissions. The question of compensation arising from unfair dismissal is not a matter for determination today.

Allegations 60 and 61

297. Both these relate to the appeal process conducted by Ms Griffiths. The claimant asserts that the person hearing the appeal came to the meeting; *"well informed and espoused AVOW's agenda. The person accompanying me before the meeting virtually recited what she would write up in the report. The appeal meeting felt like AVOW set up from start to finish and the circumstance had to conclude that. There was nothing independent or fair about the appeal process the appeal report was a catalogue of errors and statements and unfair and inaccurate representation of what was happening and what was said"*.

298. We have heard from Ms Griffiths in cross examination. We have looked at the claimant's statement, her oral evidence and the content of the appeal report. It is not evident to us which parts of the report are alleged to be "catalogue of errors" or an inaccurate representation. Mr McArthur's submissions did not address this.

- 299. Our own reading of the report, in the context of the wider evidence before us does not lead us to conclude that the decision was unreasonable.
- 300. Ms Griffiths asserted that she was independent. She denied that she was in any way influenced by the whistleblowing disclosure and we found no evidence or any answer she gave in cross examination which caused us to doubt the credibility of this independent professional.
- 301. We find that the detriment is not proven and that Ms Griffith's denial of any influence by reason of the disclosure persuasive.
- 302. In those circumstances we find that Ms Griffiths has persuaded us that she was in no way, consciously or unconsciously, motivated by knowledge of the protected disclosure.
- 303. In those circumstances and the above reasons, we dismiss the detriment claims.

Employment Judge Powell

Date 11th October 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

.....12 October 2019.....

.....
FOR THE TRIBUNAL OFFICE