EMPLOYMENT TRIBUNALS

Claimant: Miss H Cottam

Respondent: Lancashire and South Cumbria NHS Foundation Trust

Heard at: Manchester **On:** 10-17 May 2021
17 June 2021
(in Chambers)

Before: Employment Judge McDonald
Mrs L Atkinson
Mr P Dobson

REPRESENTATION:

Claimant: In person
Respondent: Ms J Connelly, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claims of unfair dismissal under s.98 and s.103A of the Employment Rights Act 1996) fail and are dismissed.

REASONS

Introduction

1. The claimant was a Senior CAMHS Practitioner for the respondent. She was employed from 2 September 2009 until she resigned with effect from 29 April 2019. She says that resignation was a constructive dismissal and that it was an unfair dismissal. She also says that the reason (or principal reason) for her constructive dismissal was that she had made public interest disclosures.

2. The final hearing of the case was listed for six days. On the first day, the Tribunal dealt with a number of preliminary matters, which we record below. We

heard evidence on the second through to the fifth days (i.e. 11 to 14 May 2021). On the sixth day the parties submitted written submissions and we heard oral submissions from the claimant and Ms Connelly. We then reserved our decision. We began our deliberations on the afternoon of 17 May 2021 and concluded them on 17 June 2021 in chambers. The Employment Judge apologises for the delay in finalising this judgment.

3. The case had been subject to two preliminary hearings. The first was conducted by Employment Judge Howard on 12 February 2020. The Case Management Order from that hearing dated 12 February 2020 was sent to the parties on 27 February 2020. We refer to that Case Management Order as "the Howard CMO". There was a further preliminary hearing on 6 April 2021 conducted by Employment Judge Robinson. We refer to the Case Management Order from that preliminary hearing as "the Robinson CMO".

Preliminary Matters

4. On the first day of the hearing we dealt with the preliminary issues set out below.

Clarification of the claims being brought

5. The Howard CMO identified the claims being pursued as ones of constructive unfair dismissal (under section 95 and section 98 of the Employment Rights Act 1996) ("ERA") and constructive automatically unfair dismissal by reason of public interest disclosure (section 95 and section 103A of the ERA). The issues in the case were summarised at paragraphs 11 and 12 of the Howard CMO. Those issues are set out in the Annex to this Judgment.

6. Although Employment Judge Howard identified the detriments which the claimant said she had been subjected to, it was clear from the Howard CMO that the claimant was not bringing a claim under section 47B of the ERA that she had been subjected to a detriment on the ground that she had made protected disclosures. Instead, the detriments identified in the Howard CMO at paragraph 12(xi) were the acts by the respondent on which the claimant relied as being a fundamental breach of contract entitling her to resign and claim constructive dismissal. Because the claim was one of unfair dismissal only, the Howard CMO listed the final hearing before an Employment Judge sitting alone. However, the Robinson CMO re-listed the matter before a full tribunal because "it is clear that the claims of whistleblowing and the detriments the claimant says she suffered because of those public interest disclosures will require the matter to be heard before a full Tribunal". The Robinson CMO did not, however, deal with any application to amend on the part of the claimant to add a claim of whistleblowing detriment in addition to the claims of unfair dismissal.

7. At the start of the hearing, therefore, we clarified with the parties what the issues in the case were. The claimant confirmed that her claim was of unfair dismissal only. The Tribunal explained to her that if she wanted to add a claim that she had been subjected to detriments because of making protected disclosures she would need to make an application to amend which the Tribunal would then consider. The Tribunal briefly indicated the matters it would take into account in

deciding such an application, and the claimant confirmed that she did not wish to apply to amend. The claims to be decided were therefore of "ordinary" constructive unfair dismissal and automatically unfair dismissal under s.103A (dismissal for making protected disclosures).

The constitution of the Tribunal hearing the case

8. Given this was an unfair dismissal case only, ordinarily, the case would be decided by an Employment Judge sitting alone. However, given the similarity of this case to a protected disclosure detriment case, the Employment Judge decided that this was a case where, having regard to the matters set out in section 4(5) of the Employment Tribunals Act 1996, it was appropriate that the hearing should be heard by a full Tribunal panel. The parties raised no objection to that.

The respondent's applications for specific discovery

9. Ms Connelly made three applications on behalf of the respondent:

(1) That the claimant disclose a class of documents, namely social media messages (whether WhatsApp, text messages or Facebook messages or posts) between the claimant and colleagues in her team in the period between 1 November 2018 and the claimant's resignation on 24 April 2019 which are relevant to the issues in the case. The claimant's position was that there were no such documents other than those already disclosed and, where relevant, included in the documents before the Tribunal.

(2) An unredacted version of the documents at pages 2-21 of the supplemental bundle. These were screenshots of social media messages between the claimant and various individuals whose names or identifying details had been removed by the claimant in the versions included in the supplemental bundle.

(3) Documents relating to her application for the job she started after her employment with the respondent came to an end. That was a role with a company called Healios.

10. Having heard from both parties in relation to the application the claimant confirmed that she agreed to provide the documents sought. We therefore ordered that the claimant provide disclosure of those documents or, if after a reasonable search conducted by the claimant there were no such documents, that she write to the Tribunal to confirm that there were no such documents in existence by 4.00pm on 10 May 2021, i.e. the first day of the hearing. The claimant subsequently did so, confirming that there were no other social media messages other than those already disclosed, providing unredacted versions of the documents at pages 2-21 of the supplemental bundle and providing the documents relating to her application for the role at Healios.

Gemma Turner's availability to give evidence

11. As will be apparent from the findings of fact which we set out below, Ms Turner played a central role in the matters giving rise to the claimant's claim. She had, however, left the respondent's employment by the time the Tribunal hearing took place. On 4 May 2021 the Tribunal made a witness order on the application of the respondent requiring Ms Turner to attend to give evidence at the hearing on Wednesday 12 May, Thursday 13 May and Friday 14 May 2021. On the first day of the final hearing Ms Connelly indicated that Ms Turner had been admitted to hospital. Ms Connelly did not know the details of the reason for the admission but indicated that given her centrality to the incidents in the case if Ms Turner was unable to give evidence the respondent was likely to apply to postpone the final hearing of the case.

12. As we explain below, there was a break in the final hearing on the afternoon of the first day to enable another Employment Judge to decide whether a potentially privileged document should be included in the documents before the Tribunal hearing the case. When the Tribunal reconvened at the end of the afternoon of the first day, Ms Connelly confirmed that Ms Turner had now been admitted to a ward overnight. Ms Connelly's indication was that the respondent was overwhelmingly likely to apply to postpone the hearing. Ms Turner had, very commendably, made attempts to join the hearing by phone from hospital during the first day of the hearing. Ms Turner was also able to receive and send emails on her phone. At the end of the first day, therefore, the Tribunal wrote to Ms Turner asking her to help the Tribunal understand her current situation and whether she was likely to be able to give evidence later in the week. The email asked Ms Turner to send any information she could about the reasons for her admission and whether she was likely to be able to give evidence. She was also asked to provide a copy of any relevant documents, such as her hospital admission record, so the Tribunal could take that into account. The Tribunal said in that email that if Ms Turner had limited email access and therefore was not able to send documentation from hospital she should re-join the hearing at 10.00am on the second day (11 May 2021).

13. Ms Turner wrote to the Tribunal on the morning of 11 May 2021 confirming that while she was still in hospital and unsure how long she would be in for, she was likely to be able to give evidence later in the week. She confirmed the hospital staff were aware of the need for her to attend a Tribunal and that she was awaiting a discussion regarding a confidential room from which she could participate. She confirmed that she did not want to postpone the hearing and that since her symptoms were caused by stress she wanted to draw the issue to a close, enabling her to get better.

14. In light of that email, Ms Connelly did not pursue an application to postpone on the morning of the second day. In the event, Ms Turner was discharged from hospital and was able to give evidence on the fourth day of the final hearing (13 May 2021).

<u>Admissibility of privileged document disclosed in error</u>

15. On 27 April 2021 the respondent made an urgent application to exclude legally privileged documents which had been inadvertently disclosed to the claimant. In brief, this had come about because the respondent's representative had, when

sending a chronology and witness statement to the claimant, included an email string which was legally privileged. It was decided that the most appropriate way for the Tribunal to deal with the matter was for an Employment Judge not involved in hearing the case to hear a separate application in relation to those documents.

16. That hearing took place on the afternoon of 10 May 2021 and Employment Judge Batten ordered that the email string attached to an email sent by the respondent's solicitor to the claimant on 23 April 2021 at 16:07 had litigation privilege and should not be used or referred to in the main proceedings. The Tribunal hearing the final hearing of the case had not seen the email string referred to and it was not referred to during the Tribunal proceedings.

Evidence and Submissions

17. We heard oral evidence from ten witnesses. They had all prepared written witness statements and were cross examined and answered questions from the Tribunal.

18. For the claimant, we heard evidence from the claimant herself, from Fiona Marshall (Specialist Psychological Therapist), Julie Price (Social Worker at CAMHS), and Simon Jacques (Cognitive Behavioural Psychotherapist). As already mentioned, Gemma Turner (Senior CAMHS Practitioner) gave evidence under a witness order. As that witness order was applied for by the respondent, she was treated as the respondent's witness.

19. For the respondent we also heard evidence from Jennie Wynn (Team Leader and Manager of the CAMHS team and therefore the claimant's line manager), Dr Lisa Bennett (Senior Clinical Psychologist), Paul Anderton (the CAMHS Service Lead), Dr Katri Kuusniemi (Principal Clinical Psychologist) and Terry Drake (Lead Nurse).

20. The respondent had also prepared witness statements for Amelia Boshoff (Senior CBT Psychotherapist) and Emma Ackrigg (Lancaster CAMHS Manager). It was the claimant's case that she had made protected disclosures to them on 15 March 2019 (protected disclosures 5 and 6). However, she confirmed that she was not alleging that either of them had discussed the disclosures with third parties or subjected her to a detriment. The respondent therefore did not call them to give evidence.

21. In terms of documentation, the parties had agreed a main bundle consisting of pages 1-602. References to page numbers in this Judgment are to pages within that main bundle. By the start of the hearing the parties had also agreed a supplemental bundle. That supplemental bundle consisted of 33 pages. References to pages in that bundle in this Judgment are given as "SB [page number]".

22. As a result of the further disclosure made by the claimant in response to the order for specific discovery made on the first day of the hearing, the respondent prepared a second supplemental bundle consisting of 45 pages. References in this Judgment to pages in that bundle are given as "SB2 [page number]".

23. Finally, the respondent produced a bundle consisting of screenshots of Ms Turner's calendar from 31 December 2018 to 30 June 2019. References in this Judgment to pages in that bundle are given as "R1 [page number]".

24. The Tribunal took the time after initial discussions on the first day to read the witness statements and the documents referred to in them. They heard the evidence on days two through to five of the hearing. At the end of the evidence on the fifth day we ordered that the parties provide written submissions by the morning of the sixth day (17 May 2021). After reading the submissions we reconvened on the sixth day to hear oral submissions from Ms Connelly and the claimant. We have not set those submissions out in this judgment but took them into account in reaching our decisions. The Tribunal spent the afternoon of 17 May and 8 June 2021 deliberating in chambers.

Findings of Fact

25. We set out below the Tribunal's findings of fact in this case. We first set out our findings on credibility and the reliability of the witnesses' evidence.

Credibility of witnesses and the reliability of their evidence

26. Overall, the Tribunal found the respondent's witnesses' version of events more coherent and consistent with the documentary evidence. We found Lisa Bennett, Katri Kuusniemi and Terry Drake to be particularly straightforward witnesses whose evidence was reliable. We found the claimant's evidence less reliable. She had a tendency to deal in generalisations and to fail to answer the specific questions put to her in cross examination. The Employment Judge had to remind her on a number of occasions to answer the question put to her in cross examination. We found Ms Turner's evidence and that of Ms Wynn to be more reliable and prefer their evidence when there was a dispute between them and the claimant on matters of fact.

27. When it came to the claimant's supporting witnesses, we found Ms Marshall's evidence less convincing than that of the respondent's witnesses. Mr Jacques had a tendency to avoid answering some cross-examination questions directly. We had particular concerns about the evidence provided by Ms Price. The Tribunal noted the significant similarities between her witness statement and that of Ms Marshall. Two of the paragraphs in Ms Price's statement were word for word the same as that in Ms Marshall's witness statement. We found that undermined her credibility as a witness and the reliability of her evidence. We found Mr Anderton's evidence to be reliable.

Background

28. The incidents giving rise to the claimant's claim took place within the respondent's Child and Adolescent Mental Health Services Team ("the Team"). There were about 15 practitioners in the multidisciplinary Team. They included clinical psychologists and CAMHS practitioners. Most of the Team had worked together for a long time. They were based at Whitegate Health Centre with most members of the Team sharing a large open plan office. The clinical psychologists had separate offices, as did Ms Wynn. Ms Marshall and Mr Jacques shared a

separate room. Of the witnesses we heard evidence from this means that the claimant, Ms Turner and Ms Price worked in the open plan office.

29. The Team treated children and young people with mental health issues. Referrals to the Team would come from GPs or from schools. Referrals would be screened as a first step. That involved reading through the referral on a computer screen to determine next steps. A face to face assessment would then be set up. The purpose of the assessment was to assess the suitability of the young person or child for treatment by the Team, to assess the urgency and to assess what treatment might he appropriate. Cases not suitable for treatment by the Team would be signposted elsewhere. There were different types of assessment. A "choice" assessment was a relatively routine one. A "duty" or "ward" assessment was one carried out on a hospital ward. By definition, a "duty" assessment would tend to be more urgent because the child or young person was already in hospital, sometimes due to having self-harmed or attempted suicide. There could also be other urgent assessments involving cases where the child or young person was not in hospital but was at risk for other reasons, e.g. the home environment in which they lived.

30. If the initial assessment determined that the child or young person should be selected for treatment within the Team, there would be a full assessment and an intervention plan created.

31. In late summer 2018 there were changes to the service model which the Team applied. The aim of that was to reduce the referral-to-treatment times. The emphasis was on arranging initial assessments as soon as possible after referral. The result of this, we find, was that there were more children and young people on the Team's "internal" waiting list who had been seen at initial assessment but were awaiting a full assessment, compared to previously when those children or young people would have been on an "external" waiting list, having been referred but not yet seen for initial assessment. We accept that this change in service model did put added pressure on members of the Team who carried out initial assessments. They would be particularly aware of young people who needed treatment but were awaiting a full assessment or creation of an intervention plan. That applied to the claimant and also to Ms Turner, both of whom were members of the "access" team which deal with the referrals and assessments.

Team dynamics

32. It is convenient at this point to record our findings about the deterioration of the relationship between Ms Turner and members of the Team. We find that that relationship was at one stage good as evidenced by social media messages in the Bundle (pp.437- 469). That applies particularly to Ms Price but we also find that the relationship with the claimant was a good one. However, by the end of 2018 and beginning of 2019 we find that there had been a marked deterioration in the relationship between Ms Turner on the one hand and the claimant, Ms Marshall and Mr Jacques on the other hand.

33. The evidence about why that deterioration happened was limited and unclear. On the claimant's own version of events, by the end of 2018 staff in the Team were no longer staying late voluntarily and "worked no extra hours". In contrast, we find

that there was some evidence that Ms Turner was seen by members of the Team including the claimant as being a "kiss arse", working too hard and trying to please Ms Wynn. Her period acting up in January 2019 when Ms Wynn was off due to the death of her father seems to have exacerbated this. We find that Ms Turner had also suggested some new initiatives such as parent workshops which some members of the Team (especially Ms Marshall and Mr Jacques) did not take kindly to.

34. We also find that by the start of 2019 the claimant, Ms Marshall and others had formed a perception that Ms Turner was in some way unstable and not to be trusted. That seemed to be based primarily on the acceptance by them as fact of a rumour that Ms Turner had in her previous job made false allegations of bullying against a colleague. We accept Ms Turner's evidence that no such incident had occurred.

35. It is hard to know whether that rumour was given credit because the claimant had already taken against Ms Turner or whether it was the basis for her doing so. In either case, we find that by January 2019 the claimant and others in the Team (including Ms Marshall and Mr Jacques) had taken against Ms Turner. We also find that there was no reliable evidence from the claimant or others which supported a finding that the deterioration in the relationships at that point was due to the claimant being subjected to a "campaign of bullying and ostracization" by Ms Wynn and Ms Turner.

The supervision meeting on 20 November 2018

36. On 20 November 2018 the claimant had her first Clinical Supervision Meeting ("CSM") with Lisa Bennett. Dr Bennett is a Clinical Psychologist and CSM's were held every 2 months to provide guidance and support on work-related issues. As the Supervision Contract (pp.75-78) makes clear, the content of the CSM was confidential except where there was a breach of the law, breaches of professional codes of conduct or non-adherence to the Respondent's policies, procedures or guidance. The Supervision Record pro-forma contained a box for recording "Safeguarding concerns raised" which specifically required "none" to be inserted if there were currently no such concerns (see, e.g. pp.77-78).

37. A CSM was not a line management meeting. The supervisee retained responsibility for her cases and was free not to act on the guidance or advice given by the clinical supervisor at the meeting.

38. At the CSM on 28 November 2018 the claimant raised concerns with Dr Bennett about her workload. She did the majority of duty/ward assessments which usually involved children or young people at higher risk (rated as red on the RAG rating). A number of those "red" risk patients had not yet been allocated to a practitioner for intervention because of a lack of capacity to do so. That meant that they were on the "internal" waiting list referred to at para 31 and so "with" the claimant until they could be allocated. The claimant explained that being the liaison for those patients and families was having an impact on her ability to complete other tasks, particularly administration tasks.

39. Dr Bennett discussed some strategies to address this issue with the claimant, such as completing typing assessments during the sessions. They agreed the claimant would transfer 5 cases to a colleague and discharge 5 others. Dr Bennett also advised the claimant to set up a line management supervision with Ms Wynn to discuss her workload and agree a way to free up or protect time for admin work during the week.

40. The Supervision Record for the meeting records "none" for safeguarding concerns raised (p.78). It refers to the impact of the claimant's workload on her relationships/responses to other professionals but not otherwise to relationships within the Team. We find that the claimant did not as she claims (Protected Disclosure 1) raise concerns about Ms Turner and Ms Wynn's behaviour at that meeting.

41. The claimant and Ms Wynn had a Line Management Supervision on December 2018. They discussed her workload and it was agreed to limit duty assessments to 2 a day, take steps to protect the claimant's time for clinical record keeping and reduce the claimant's duty days from 5 to 4. Ms Wynn also agreed to the claimant's request to work compressed hours (5 days over 4).

<u>The team meeting on 28 November 2018 and contacting Mr Anderton</u>

42. At a Team meeting on the 28 November 2018 the claimant raised concerns about the number of cases (especially "red" high-risk cases) on the "internal" waiting list and the impact that was having on staff managing those cases. The claimant raised concerns about a specific young person on the "internal" waiting list and the fact that there was no capacity in the Team to provide the support and interventions the young person required.

43. Ms Wynn was not at that meeting, which was led by Dr Kuusniemi and Emma Hignett (Acting Consultant Psychologist). Ms Turner was at the meeting. We find that the claimant did not raise concerns during the meeting about Ms Wynn's and Ms Turner's behaviour or suggest that behaviour was impacting on her or the Team's ability to function effectively.

44. The concerns raised by the claimant triggered a general Team discussion about the "internal" waiting lists. Although nothing was added to the risk register (p.82) Ms Hignett suggested that the claimant raise the matter with senior management.

45. Just after 4 p.m. on the day of the meeting the claimant emailed Mr Anderton (pp.577-578). She explained that it had been agreed following a team meeting that she would email Mr Anderton for "an urgent response please". The first full paragraph of her email set out the circumstances of the particular young person who had been in hospital for five weeks and was due to be discharged imminently. She explained that there was an urgent need to allocate a care coordinator to provide post-discharge care, to offer ongoing assessment and support and attend social care meetings.

46. Her second paragraph explained that no one in the Team was declaring any availability to take on that care coordinator role and that she herself did not have

capacity to do so. She explained that was because she was doing duty cover daily as well as carrying a caseload of urgent assessment and "red" risk cases. She explained there was no capacity within the Team to allocate those cases to.

47. The third paragraph repeated that final point, saying that there were young people known to the service who were "not getting the support they require" (i.e. those on the "internal" waiting list). She ended her email with "Please help?".

48. Mr Anderton responded at 4.30 p.m. that day giving his mobile number and asking the claimant to call him before 10 a.m. the following morning (p.578). The claimant did not do so, nor did she follow up by email.

49. The claimant had copied Ms Wynn, Dr Kuusniemi and Emma Hignett into her email, and they were also copied into Mr Anderton's reply.

50. There is no reference in the claimant's email to Mr Anderton to Ms Wynn and Ms Turner's behaviour or its impact on the Team.

<u>Events from 28 November 2018 up to and including the Team Awayday on 30 January 2019</u>

51. In December 2018 Ms Wynn's father died and she took some unplanned time off. Ms Turner volunteered to act up in her absence and did so until mid-January 2019.

52. On 15 January 2019 the claimant had her next CSM with Dr Bennett (pp.86-88). She reported that working condensed hours was having a positive impact on her workload and they discussed working with children and young people with diagnoses of autistic spectrum disorder and anxiety. The claimant did not raise any concerns about working relationships within the Team, there were no safeguarding concerns identified and it is not suggested by the claimant that she made a protected disclosure at this meeting.

53. On 30 January 2019 there was a Team awayday organised by Dr Kuusniemi which was held at Lytham Primary Care Centre. It consisted of a number of activities over the course of a day. One of the earliest was Ms Wynn asking each Team member to tell the meeting about successes over the past year and provide feedback from their therapy pathway. She did so by going "round the room". When it was the claimant's turn, she raised concerns that the relationship between Ms Wynn and Ms Turner was overly close and was leading to disintegration within the Team. She referred to secret meetings and their being overly friendly but did not otherwise provide specific details of the concerns. We find that the claimant did not say that this was putting patient safety at risk.

54. We find that what the claimant said came as a complete surprise to Ms Wynn and that initially she was not certain how to proceed. She initially suggested that they discuss what the claimant had raised further but the consensus was that it would be inappropriate to do so. The discussion was a brief one. There was a suggestion of seeking some external facilitation to resolve any issues within the Team. Ms Turner was very upset by what had been said.

55. We find that the concerns raised by the claimant were shared by Ms Marshall, Mr Jacques, Ms Price and Elizabeth Lofthouse. We do not find those concerns were shared by "all" of the Team as suggested by the claimant. The majority of the Team, including some of those who shared the claimant's concerns, felt it was not appropriate for the claimant to have raised concerns about named individuals in the context of a Team meeting.

Events from 31 January 2019 to 4 February 2019

56. Early on the morning of the 31 January 2019, Ms Wynn sent the Team notes from the awayday (pp.88-93). They included a section headed "Team Dynamics" which recorded that there had been issues raised "including perceptions of some disintegration within the team" (p.92). In the notes Ms Wynn proposed two things. The first was that she was happy and would encourage people to meet with her individually to talk through any concerns and work towards finding solutions. The second was that she would try and facilitate an external facilitator to undertake some further team building. She said it was important to her "and I am sure you, that we work as a cohesive and mutually supportive team".

57. Ms Wynn met with the claimant on 31 January 2019 in Ms Wynn's office. Ms Wynn told her that it had not been appropriate for the claimant to name Ms Turner and raise issues specific to Ms Turner in the awayday setting. The claimant in response raised concerns about Ms Turner's mental health and Ms Wynn said that such matters were confidential. We accept Ms Wynn's evidence that the claimant also made comments to the effect that Ms Turner was coming in early and working too many hours and that she was perceived to have too close a relationship to Ms Wynn.

58. We find that the claimant did say that she and other members of the Team were reluctant to discuss their concerns with Ms Wynn and Ms Wynn suggested that if that was the case, they could always raise concerns with Mr Anderton. The claimant did not do so. In evidence she said that she had by that point lost all trust and confidence in Mr Anderton and senior management. When asked by the Tribunal why that was the case at 31 January 2019 she was unable to explain why.

59. On 1 February 2019, Ms Wynn gave Ms Turner permission to work from home. We find that she did so because Ms Turner was still upset about being singled out for criticism at the awayday. Ms Turner completed screening referrals from home while the claimant did so from the office.

60. We accept that the general practice was that when the claimant and Ms Turner were both in the office, they would sit together to screen referrals. The claimant suggested that this was required by the respondent's policies but was unable to identify any policy document which said this. We find that though general practice, there was no requirement that screening referrals had to be done by 2 Team members.

61. The claimant says she was not told by Ms Wynn that Ms Turner would not be in the office on the 1 February 2019. Ms Wynn was not herself in the office that day. On balance we find that Ms Wynn probably did not tell the claimant that Ms Turner was working from home. The claimant did not email Ms Turner or Ms Wynn to ask

where Ms Turner was. Ms Turner's calendar (R1 p.5) for 1 February 2019 shows her as working from home and doing referrals and we find the claimant would have had access to it.

Events on 5-6 February 2019 – the alleged refusal to co-operate

62. On Tuesday 5 February 2019 at 10:24 a.m. one of the other CAMHS practitioners screened a referral which they identified as requiring an urgent appointment. She asked Ms Turner by email to set up an urgent appointment for herself with the family concerned the following week. Ms Turner emailed back later that afternoon to say she was completely booked and copied in the claimant to ask her whether she "could fit them in at all" (p.95).

63. There then followed an exchange of emails between Ms Turner and the claimant which culminated in Ms Turner saying "maybe we should discuss it with [Ms Wynn]" given that there was an identified need to see the family that week and Ms Turner did not have capacity. The claimant's response began "Discuss it with Jennie then – your role is urgent assessments that is what your 11 o clocks and the afternoon slots are for".

64. Ms Turner copied the email chain to Ms Wynn saying that she felt things "are getting out of hand with the current dynamics within the team" and asked to have a chat with her the following day because she felt it wasn't helpful to prolong the email discussion with the claimant. The claimant was copied into the email to Ms Wynn (p.96).

65. On the 6 February 2019 when she got to work, the claimant asked Ms Turner abruptly "are we having this meeting then or what?". There was then a meeting between Ms Wynn, the claimant and Ms Turner. During the meeting the claimant suggested that Ms Wynn check Ms Turner's calendar and alleged that she was filling her calendar with appointments which she should not be doing to exaggerate her limited capacity for urgent assessments. She also alleged that Ms Turner had started turning down appointments since the away day because of what was said about her at the awayday. Ms Turner denied this. Ms Wynn reminded them that whatever their personal differences they needed to behave professionally towards each other in the workplace.

66. On 6 February 2019 Dr Kuusniemi spoke to Julie Warburton, Psychologist Lead for Blackpool Fylde and Wyre, to discuss the suggestion that the Team use external facilitation to address the concerns raised at the awayday.

Events from 7 February 2019 to 5 March 2019 – the choice appointments rota and the THRIVE announcement

67. The claimant alleged that in March 2019 the choice appointment rota was changed without informing her. The claimant's case was that the choice appointments were undertaken between 5-7 p.m. on Tuesday evenings and that they were done by her, Ms Turner and Ms Wynn. She claimed that in March 2019 Ms Turner stopped taking part in the rota. She claimed this left her working unsafely and alone.

68. We find that although Ms Turner did carry out choice appointments on Tuesday evenings 5-7 p.m., she did not do so every week before March 2019. We accept that when she did do those sessions it was overtime for her. Her calendar (bundle R1) showed that she had not worked that slot on 4 February 2019, 11 February 2019 or 26 February 2019. She had worked it on 19 February 2019 and did on 5 March 2019 and on 2 April 2019.

69. We find that Ms Wynn also continued to work the Tuesday night choice appointments when available. We find that there was never an occasion when the claimant was the only practitioner working in the building when she was undertaking choice appointments.

70. On 5 March 2019 Ms Wynn emailed the Team to tell them that she would be working on the THRIVE service re-modelling for the next 3-4 months so there was an opportunity for someone to act up as Band 7 Team Leader in her absence. She invited expressions of interest by Friday 8 March 2019 (p.270). Ms Turner and the claimant both applied for the acting up role. The claimant's evidence was that she did so not because she herself was interested in the role but because she wanted to prevent Ms Turner getting it.

Events from 6 March 2019 to 14 March 2019 – discussion about external facilitation and the acting up interviews

71. At the Team meeting on 6 March 2019 there was a further brief discussion initiated by Dr Kuusniemi about using an external facilitator to support team cohesion. By then Dr Kuusniemi had heard back from Julie Warburton, who had made provisional enquiries about external facilitation following their conversation about that on 6 February 2019. She had made it clear to Dr Kuusniemi that there would need to be clarity about the desired outcome before the idea could be taken forward.

72. The following day, Ms Marshall emailed Dr Kuusniemi thanking her for raising the issue of team dynamics and setting out her views (p.102). She supported using somebody who was impartial (ideally with mediation skills) to talk to Team members individually and try and identify solutions given the difficulties of airing views in a group setting. She referred to the change in leadership because of Ms Wynn's THRIVE secondment and said that "serious consideration needs to be given to who can lead the team…given the on-going difficulties with team dynamics and the changing landscape with THRIVE and service developments".

73. On 8 March 2019, Dr Kuusniemi emailed the Team members to ask their views on the proposal to use an external facilitator including what they hoped the outcome of any such approach would be. She asked them to email or phone her to let her know their views (p.101). She was prompted for an update by Ms Price on 19 March 2019 and chased the Team for further responses on 21 March 2019 (SB p.25-26). She received responses from 8 members of the Team including the claimant. The claimant's emailed response (p.103) supported using an external person. Her email referred to "the team" reporting concerns to her about speaking up in meetings and "the team" having observed that she was treated differently after speaking up at the away day.

74. Although we find there was agreement that Team dynamics had suffered since the awayday, that there were unresolved tensions and that an external facilitator was a good idea, we find that there were differing views within the Team (e.g. Rebecca Brown's email at p.104). Not all the Team felt the same and the claimant did not speak for all the Team though she purported to do so (both at the time and at points during the Tribunal hearing).

75. Although it is jumping forward in time a little, we will set out here our findings of fact about the steps Dr Kuusniemi took to follow up the responses she received. On 2 April 2019 she emailed Julie Warburton to summarise those responses (p.105). She reported that all of the 8 responses she received had expressed an interest in external facilitation with most people saying they wanted to express their own feelings confidentially to someone objective and neutral as well as having some form of group sessions to facilitate cohesion. She said some progress had been made in terms of practically focussed sessions but thought it fair to say that "people are anxious, defensive and divided on a number of issues which go quite deep". On 10 April 2019 she met with senior management to discuss the issue (paras 89-90 below).

76. On 13 March 2019 the interviews for the Band 7 role took place. The members of the Team present wished the claimant good luck when she went in for her interview. We find Ms Turner wished the claimant good luck. No-one wished Ms Turner good luck when she went in for her interview. Ms Turner was successful at interview.

77. After the interviews, Mr Anderton and Julie Warburton joined a Team meeting to announce that Ms Turner had been appointed to the Band 7 role. No one congratulated Ms Turner in the meeting although some members of the Team did do so afterwards. The claimant, Ms Price, Ms Marshall and Mr Jacques did not congratulate Ms Turner at any point.

<u>Events from 15-18 March 2019 – urgent assessment incident and start of sickness absence</u>

78. Ms Turner had been due to start in her Band 7 Acting up role on Monday 18 March. However, because Ms Wynn was on leave on Friday 15 March, she was asked to deal with any managerial matters arising on that Friday. That effective change in starting date was not communicated to the Team until Mr Anderton did so by email at 13:55 on Friday (p.111).

79. On the morning of 15 March 2019, the Team received a referral in relation to a young person who needed an urgent assessment. Ms Turner asked the claimant to do the assessment. Her view was that the claimant had capacity because she had ward follow up slots in her calendar each week which would be free because there had not been on the children on the ward to assess.

80. The claimant said that she could not do the assessment because she had other things to do. She said if Ms Turner couldn't do the assessment she should speak to Ms Wynn. Ms Turner then told the claimant that she was acting up from that day. The claimant said she thought Ms Turner wasn't acting up until Monday and told her "you're not in a management role yet". Ms Turner explained that she had started

acting up from the Friday because Ms Wynn was on leave. She asked the claimant whether she was refusing to do the urgent assessment. The claimant confirmed that she was. Ms Turner said that in those circumstance she would need to raise the matter with Mr Anderton to discuss how to manage the difficulty. The claimant replied by saying that she would be emailing Mr Anderton to self-certify sickness with immediate effect.

81. Ms Turner then spoke to Emma Ackrigg, Lancaster CAMHS manager. She offered to speak to the claimant if she wanted to talk to someone other than Ms Turner. At 11.10, Ms Turner then emailed the claimant. She explained she had spoken to Ms Ackrigg for guidance because she was new in her acting up role. Ms Turner said she was not clear whether the claimant was intending to self-certify because she was unwell or because there were some difficulties in terms of her change of role. She explained that ordinarily the claimant would discuss what support she needed with her team leader. She said she was available to talk but that she appreciated the claimant might want to talk to an external team leader and that Ms Ackrigg was available for her to do so between 2-3 p.m. and at 3.30 p.m. that afternoon (p.108).

82. Ms Turner emailed Mr Anderton at 14:43 (p.109-111) to report what had happened. She reported that the claimant had said she was refusing to complete the assessment and that Ms Turner had told her she would therefore need to raise it with Mr Anderton to discuss how to manage the difficulty. She said she understood that the Team "currently have a difficulty" in accepting she had been selected to act up but that the urgent needs of the young person were paramount. She reported that although she had asked the Team for availability to see the young person the only positive response had been from a Band 5 practitioner who was not qualified to carry out urgent assessments.

83. Mr Anderton responded a few minutes later by email expressing concern that the young person was not admitted and asked that she arrange for them to be seen on Monday through the ward slot (p.109). At 16:22 Ms Turner emailed the claimant to say that Mr Anderton had advised that the assessment be completed by the duty worker (who would be the claimant if she was in work) (p.112). Ms Turner advised that she was not in on Monday and that the claimant did not have to do the CAT meeting if there were people on the ward. We find that at the point Ms Turner sent that email the claimant had not provided a sick certificate or clarified to Ms Turner whether she would be in work the following week.

84. That day, the claimant had a supervision meeting with Amelia Boshoff, her Clinical CBT Supervisor. The claimant was tearful at that meeting. We find that she did refer to difficulties she was having with Ms Wynn and Ms Turner and the impact it was having on her and was advised to speak to her GP.

85. The claimant did also speak to Ms Ackrigg by phone on Friday 15 March. They discussed whether the claimant felt able to attend work on Monday the 18 March, the next working day. The claimant said she would not be able to and explained that the Team did not trust Ms Turner or Ms Wynn and would struggle to support Ms Turner in her acting up role. Ms Ackrigg suggested that the claimant keep a record of interactions with Ms Turner and that she might prefer to raise any

concerns in a group setting or copy senior managers into any emails sent to Ms Turner.

86. First thing on the morning of Monday 18 March 2019 the claimant rang Ms Turner to tell her that she was not going to be in all week and would be self-certifying sickness due to stress at work. The claimant told Ms Turner that she was recording the call. Ms Turner emailed the claimant to confirm the call and to hope she felt better soon. She also asked her to let her know if there was any support the respondent could give her at work whether while she was off sick or on her return (p.115). Ms Turner informed Mr Anderton, Ms Wynn and Julie Warburton and checked what other steps she needed to take (p.114) and emailed the Team to arrange to cover the claimant's appointments (p.116).

19 March 2019 to 29 April 2019 – sickness absence, 23 April meeting and resignation

87. The claimant was signed off sick by her GP due to stress at work, initially from 25 March 2019 to 8 April 2019 (p.121) and then from 2 April 13 May 2019 (p.131). She did not return to work for the respondent before her resignation on 29 April 2019.

88. On 26 March 2019 the claimant had her first interview with Healios. It was for a role as a CBT Therapist working from home (SB2 pp.1-2). She was successful at interview and was offered employment on 29 March 2019. The contract of employment (SB2 pp.3-11) gave a starting date of 29 April 2019. The role was at a salary of £47,500 per annum. That was significantly more than the claimant's salary with the respondent although the pension benefits were not as good. We accept the claimant's evidence that Healios were recruiting on a rolling basis and they were therefore flexible about her start date.

89. In early April the claimant contacted the respondent's HR Team anonymously to report her concerns. By the 10 April 2019 Mr Anderton and Ms Wynn were aware that a number of staff within the Team had sought to raise concerns about Team dynamics by different routes such as the HR team and the respondent's Freedom to Speak Up procedure. On that date the issue was discussed at a Network event by Dr Kuusniemi and senior management including Mr Anderton, Mr Drake, Rachel Doherty (Acting CAMHS Service Manager) and Helen Lang, Senior HR. Mr Anderton decided the appropriate course of action was for Mr Drake and Ms Lang to identify and meet with the key staff concerned to try and clarify the situation and find a resolution to the issues. At that point, no formal grievance had been raised.

90. Following that meeting Dr Kuusniemi summarised the concerns and desired outcomes from the responses she'd received from Team members in an email (p.106). The key concerns were a sense of a lack of trust between team members, things having been raised but not resolved since the awayday, anxiety about raising things in team meetings and concerns that people may leave. The timing of the new team leader role (i.e. acting up while Ms Wynn was working on THRIVE) was also noted as a concern. The desired outcomes included a safe space to express thoughts, feelings and concerns, feeling valued and for concerns to be taken seriously and to increase a sense of openness and fairness.

91. Ms Lang identified the claimant, Ms Marshall and Ms Price as the best people to meet with her and Mr Drake to discuss the issues. They were given the opportunity to meet either individually or as a group and preferred to meet as a group. They also indicated Mr Jacques wanted to attend the meeting.

92. The meeting took place on 23 April 2019. It was chaired by Mr Drake. Ms Lang attended from the respondent's HR. The claimant, Ms Marshall, Mr Jacques and Ms Price attended as did their union representative. Mr Drake informed them that the meeting was not part of the respondent's formal grievance process because no formal grievance had at that point been submitted. Instead he explained that the intention was to establish some of the facts and identify potential solutions. Ms Lang made it clear it was an opportunity for the Team members present to put forward examples of matters giving rise to concerns. It was an informal meeting and although brief notes were taken no formal minutes were taken. No objection was raised to that approach during the meeting by the Team members or their union representative.

93. After the meeting Mr Drake and Ms Lang met with Ms Wynn and Ms Turner to seek their views. They then prepared a summary and "Action Plan" (pp.166-167). That summary noted that there were significant challenges within the Team which was having a detrimental impact on the wellbeing of members of the Team. This had resulted in a disconnect between the Team, the first line management (i.e. although not named in the summary, at this point Ms Turner) and "the senior management". There was a perceived lack of inclusion of staff in decision making relating to changes and developments in clinical processes and that "it was clear that at times Trust values were not displayed or not fully embedded across the team". It was also noted that there was some blurring of professional and personal boundaries within the Team resulting in tension within the Team with "some "unhelpful" relationships and an oppressive culture".

94. Mr Drake and Ms Lang were satisfied that these issues were not giving rise to a risk to the safety of the young people or families accessing CAMHS. They did not find that the examples provided by the Team members during the meeting amounted to a campaign of bullying or ostracization of team members.

95. Mr Drake emailed the report to those who had attended the 23 April 2019 meeting, Ms Turner, Ms Wynn and senior colleagues on 3 May 2019 (p.162). He accepted that he should not have shared personal email addresses for the claimant and others in sending that as a collective email. The main proposed action points were external mediation and facilitated organisational development sessions with the Team to support the mediation.

96. That email and Action Plan were, however, sent after the claimant resigned. She did so by email on 29 April 2019. Her letter of resignation (p.153) said that she was resigning due to constructive dismissal which "has been instigate due to numerous breaches within current management within the team." She said that due to that she felt unable to work her notice in a safe manner and therefore gave notice immediately. On that same day the claimant lodged her formal grievance (SB pp.22-24).

<u>Other alleged detriments</u>

97. A number of the claimant's alleged detriments were not pinned down to specific dates or incidents by the claimant and her witnesses. We record our findings of fact about those detriments in this section.

The claimant being excluded from the Access team and discussing moving her to Therapy without her knowledge

98. There was no reliable evidence on which we could find that the claimant was excluded from the Access team. It was not suggested that she was excluded from any Team meetings.

99. We accept Ms Wynn's evidence that there were no plans to move the claimant from the Access team to Therapy team. We find that a member of the CAMHS team from Shawbrook House did work from Whitegate Drive for a couple of weeks to provide extra staffing capacity in carrying out assessments. We find Ms Wynn's explanation that this may have sparked some unfounded rumours in the Team about staff being moved to be plausible.

Ms Wynn and/or Ms Turner swearing at and challenging her in team meetings

100. Ms Wynn and Ms Turner denied this allegation and we did not hear any evidence to support it. We accept their evidence that this did not happen.

The claimant being ignored or not being spoken to

101. We were not given specific examples of this in evidence. The claimant's witness gave generic evidence about this in their witness statements. As noted above, however, we preferred the evidence of Ms Turner and Ms Wynn. In addition to the points made generally in relation to credibility in paras 26-27 above, we note that when it came to what happened in the open plan room., Ms Marshall and Mr Jacques sat in a different room with the door closed and so were ill-placed to witness what went on.

The Law

Protected Disclosures ("Whistleblowing")

102. Protected disclosures are governed by Part IVA of the ERA of which the relevant sections are as follows:-

> **"s43A: in this Act a "protected disclosure" means a qualifying disclosure (as defined by Section 43B) which is made by a worker in accordance with any of Sections 43C to 43H.**
>
> **s43B(1): 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:**
>
> **(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject…[or]**
>
> **(d) that the health or safety of any individual has been, is being or is likely to be endangered.."**

103. The Employment Appeal Tribunal ("EAT") summarised the case law on section 43B(1) as follows in **Parsons v Airplus International Ltd UKEAT/0111/17**:

> **"23. As to whether or not a disclosure is a protected disclosure, the following points can be made:**
>
> **23.1. This is a matter to be determined objectively; see paragraph 80, Beatt v Croydon Health Services NHS Trust [2017] IRLR 748 CA.**
>
> **23.2. More than one communication might need to be considered together to answer the question whether a protected disclosure has been made; Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT.**
>
> **23.3. The disclosure has to be of information, not simply the making of an accusation or statement of opinion; Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 EAT. That said, an accusation or statement of opinion may include or be made alongside a disclosure of information: the answer will be fact sensitive but the question for the ET is clear: has there been a disclosure of information?; Kilraine v London Borough of Wandsworth [2016] IRLR 422 EAT."**

104. **Cavendish** should not be understood to introduce into s.43B(1) a rigid dichotomy between "information" on the one hand and "allegations" on the other. In The question in each case is whether a particular statement or disclosure is a " disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in paragraphs (a) to (f)]" . However, in order for a statement or disclosure to be a qualifying disclosure, it has to have a " sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection 43B(1) ". The question of whether or not a particular statement or disclosure does contain sufficient content or specificity is a matter for evaluative judgment by the Tribunal in light of all the facts of the case (**Kilraine** quoted by the EAT in **Simpson v Cantor Fitzgerald Europe (UKEAT/0016/18/DA)**).

105. The worker need only have a reasonable belief that the information tends to show the matter required by Section 43B(1) and that the disclosure is made in the public interest. A subjective belief may be objectively reasonable even if it is wrong or formed for the wrong reasons.

106. In **Chesterton Global Ltd and anor v Nurmohamed [2017[IRLR 837** the Court of Appeal approved a suggestion from counsel that the following factors would normally be relevant to the question of whether there was a reasonable belief that the disclosure was made in the public interest:

> (a) the numbers in the group whose interests the disclosure served;
>
> (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer.

107. In **Chesterton** Underhill LJ addressed the question of the motivation for the disclosure in paragraph 30, saying that:

> "… **while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at paragraph 17 above, the new ss.49(6A) and 103(6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation - the phrase 'in the belief' is not the same as 'motivated by the belief'; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it."**

Unfair Dismissal

108. S.94 of the ERA gives an employee a right not to be unfairly dismissed by their employer. To qualify for that right an employee usually needs two years' continuous service at the effective date of termination, which the claimant had in this case.

109. In determining whether a dismissal is unfair, it is for the employer to show that the reason (or if more than one the principal reason) for dismissal is one of the potentially fair reasons set out in s.98(2) of ERA or some other substantial reason justifying dismissal.

110. If the employer shows a potentially fair reason for dismissal then whether the dismissal is fair (having regard to that reason) will depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee and shall be determined in accordance with equity and substantial merits of the case (s.98(4) ERA).

Constructive dismissal

111. A constructive dismissal occurs where "the employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct" (s.95(1)(c) ERA). To be a constructive dismissal the employer's actions or conduct must have amounted to a repudiatory breach of the contract of employment entitling the employee to resign: **Western Excavating (ECC) Ltd v Sharp [1978] 1 QB 761**

112. There is implied into every contract of employment a duty of mutual trust and confidence ("the implied term". Each party to the contract is under an obligation not, without reasonable and proper cause, to conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (**Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606, HL**). For the implied

term to be breached the conduct must be such as, viewed objectively, is calculated or likely to undermine the relationship of trust and confidence and must be conduct for which there is, objectively, no reasonable and proper cause (**Bradbury v BBC [2015] EWHC 1368 (Ch)** and **Buckland v Bournemouth University Higher Education Corporation [2010] EWCA Civ 121**).

113. Ms Connolly in her written submissions drew our attention to the observations of Langstaff J in the EAT in **Frenkel Topping v King UKEAT/0106/15** in which he stressed that the word qualifying "damage" is seriously and pointed out that acting in an "unreasonable" manner is not sufficient.

114. If the employer is found to have been guilty of such conduct, that is something which goes to the root of the contract and amounts to a repudiatory breach, entitling the employee to resign and claim constructive dismissal (**Morrow v Safeway Stores [2002] I.R.L.R. 9**).

115. A breach of the implied term can result from the cumulative conduct of the employer rather that one repudiatory act. In many cases there will be a final act or "last straw" before the resignation. In **Omilaju v Waltham Forest LBC (No.2) [2005] I.R.L.R. 35** the Court of Appeal explained that that "last straw" need not itself be a breach of contract and need not be unreasonable or blameworthy. However, the act complained of has to be more than very trivial and has to be capable of contributing, however slightly, to a breach of the implied term of mutual trust and confidence. It would be rare that reasonable and justifiable conduct would be capable of contributing to that breach.

116. Where the act that tips the employee into resigning is entirely innocuous, a constructive dismissal claim will still succeed, provided that there was earlier conduct amounting to a fundamental breach, that breach has not been affirmed and the employee resigned at least partly in response to it (**Williams v Governing Body of Alderman Davies Church in Wales Primary School [2020] I.R.L.R. 589**).

117. The Court of Appeal clarified the correct approach for the Tribunal to take in such cases in **Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1, para 55:**

> "In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:
>
> (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
>
> (2) Has he or she affirmed the contract since that act?
>
> (3) If not, was that act (or omission) by itself a repudiatory breach of contract?
>
> (4) If not, was it nevertheless a part (applying the approach explained in **Omilaju**) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the **Malik** term?

(5) Did the employee resign in response (or partly in response) to that breach?"

118. Where the employee waits too long after the employer's breach of contract before resigning, he or she may be taken to have affirmed the contract and thereby lost the right to claim constructive dismissal. In the words of Lord Denning MR in **Western Excavating (ECC) Ltd v Sharp1978 ICR 221, CA**, the employee "must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged".

119. In **Gordon v J & D Pierce (Contracts) Ltd [2021] UKEAT 0010_20_1201** the EAT held that an employee does not affirm a contract of employment by engaging in a grievance process available under that contract

<u>"Whistleblowing" and unfair dismissal</u>

120. Section 103A of the ERA deals with protected disclosures and reads as follows:-

> **"an employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure".**

121. The reason or principal reason is derived from considering the factors that operate on the employer's mind so as to cause him to dismiss the employee. In **Abernethy v Mott, Hay and Anderson [1974] ICR 323**, Cairns LJ said, at p. 330 B-C:

> **"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."**

122. That requires the Tribunal to make a finding about who took the decision to dismiss.

123. Where the reason for dismissal is said by a claimant to be automatically unfair but the respondent advances a potentially fair reason, the approach to be taken is derived from the decision of the Court of Appeal in **Kuzel v Roche Products Ltd [2008] IRLR 530.** The claimant must show that there is a real issue as to whether the respondent's reason was not the true reason. If that is done, the respondent must prove his reason for dismissal. If he fails to do so, he must disprove the reason advanced by the claimant, otherwise the claim will succeed.

Discussion and Conclusions

(1) <u>Constructive Unfair Dismissal</u>

(i) Did the respondent fundamentally breach the claimant's contract of employment? The claimant relies upon a breach of the implied term of trust and confidence; being a course of bullying and ostracization as detailed under 'detriments' below, carried out by JW and GT and which

> the respondent took no adequate steps to prevent. The last straw being a meeting with meeting with colleagues and management on 23rd April 2019. The claimant states that the respondent did not conduct that meeting properly; no procedures were explained, no minutes taken despite requests, the process, next steps and possible outcomes were not explained and there was a lack of clarity.

124. The claimant relies on a breach of the implied term of trust and confidence. For the implied term to be breached, the respondent's conduct must be such as viewed objectively is calculated or likely to undermine the relationship of trust and confidence between the employer and the employee, and be conduct for which there is, objectively, no reasonable and proper cause. We refer to such conduct as "conduct breaching the implied term".

125. The conduct relied on by the claimant as conduct breaching the implied term was a "course of bullying and ostracization" consisting of the detriments identified at para 2(vi) of the List of Issues. We deal below with each of those in turn before turning to the questions at 1(i) to (iv) of the List of Issues.

The claimant being subjected to a campaign of bullying and ostracization by JW and GT

126. We have dealt below with specific incidents complained of by the claimant which could fall under this heading. We did not find that there was a campaign of bullying and ostracization of the claimant. The evidence we heard simply did not substantiated that allegation. If anything, it supported the view that it was Ms Turner who was ostracized rather than the claimant. Examples include the claimant applying for the acting up Band 7 role announced by Ms Wynn on 5 March 2019 because she wanted to prevent Ms Turner getting it rather than because she herself was interested in it and the treatment of Ms Turner when she was going in to the interview and when her appointment was announced.

The claimant being excluded from informal and informal discussions and decisions affecting her role.

127. The claimant did not provide much in the way of clarity about what this allegation referred to. We have taken her allegation of changes to the choice appointment rota (see paras 67-69) to fall within this category. As recorded in our findings of fact, we did not find that there was in fact such a change. Ms Turner and Ms Wynn had not always carried out choice appointments on Tuesday evenings before March 2019 and did not always do so in March 2019 or afterwards. We do not find that there was any conscious change of rota policy in March 2019. The evidence also did not support the claimant's allegation that she was left to work alone and unsafely.

The claimant being ignored and not spoken to

128. As we record in our findings of fact, there were clear instances of Ms Turner being ignored or not spoken to but not of that happening to the claimant. The most glaring example is what happened on 13 March 2019 when the interviews for the

Band 7 role took place (para 76) and when it was announced she had been appointed (para 77).

129. We find that the evidence pointed to Ms Turner being ignored and ostracised by Ms Turner, Ms Marshall and Mr Jacques rather than the other way round.

GT not carrying out referrals with the claimant and not informing her that she would have to do them alone (in breach of policy)

130. As recorded in our findings of fact, we did not find that there was a policy requiring referrals to be carried out by 2 practitioners together, though accept that was the general practice. The one specific occasion we heard evidence about was on the 1 February 2019 when Ms Turner carried out screening referrals from home having been given permission do so by Ms Wynn. We found that Ms Wynn probably did not tell the claimant that Ms Turner was working from home. We find that was an oversight. It was clear from Ms Turner's calendar that she was working from home on referrals and the claimant could easily have checked that. It was not something which caused the claimant sufficient concern to make her email Ms Wynn or Ms Turner to ask where Ms Turner was. At most it was a failure of communication. We do not find it was conduct breaching the implied term.

GT refusing to co-operate with the claimant

131. We understand this to refer to the exchange of emails on the 5 February 2019 recorded in our findings of fact at paras 62-65. We find that this began with Ms Turner checking, politely, with the claimant whether she could help out when she did not have capacity to carry out an urgent assessment. We find that of the two, it was the claimant's final response which was brusque ("Discuss it with Jennie then"). We accept Ms Turner's evidence that although she did not have capacity to do this assessment, she was not refusing to co-operate with the claimant. The claimant suggested at the meeting with Ms Wynn on 6 February that Ms Turner was refusing to co-operate and turning down work after the away day. We note that it was Ms Turner who asked the claimant for help and that this incident took place only some 5 working days after the away day. We do not find that there was a pattern of Ms Turner failing to co-operate with the claimant or turning down work.

132. To the extent that the follow up meeting on 6 February is alleged to be an incident of conduct breaching the implied term we reject that. Ms Wynn was fully entitled to ask her staff to conduct themselves in a professional manner despite their differences. We did not find that the claimant was singled out for criticism by Ms Wynn at that meeting.

The claimant being excluded from the Access team and discussing moving her to Therapy without her knowledge

133. As recorded in our findings of fact at paras 98-99 we found this did not happen.

Ms Wynn and/or Ms Turner swearing at and challenging her in team meetings

134. As recorded in our findings of fact at para 100 we found this did not happen.

Ms Turner threatening to report the claimant and singling the claimant out to cover when she had no capacity to do so

135. As we understand it, this refers to the incident on the 15 March 2019 (paras 78-83). We find that by that point Ms Turner had been appointed to act up to Band 7. She was the claimant's manager at that point and therefore entitled to ask her to carry out the assessment. We do not accept this was "singling out" the claimant – it was reasonable for Ms Turner to ask her to do the assessment which was akin to a ward assessment. We accept Ms Turner's explanation of why she believed the claimant had capacity to take on the urgent assessment.

136. We do accept that at the start of the exchange the claimant did not know that Ms Turner had already started acting up as a Band 7 as initially that was due to happen from Monday 18 March 2019. However, her refusal to do the assessment came after Ms Turner had explained that she was acting up on that day because of Ms Wynn's absence. Given her refusal to undertake the assessment it seems to us that it was entirely reasonable for Ms Turner to refer the matter to her line manager, Mr Anderton, to resolve the impasse they had reached. We do not accept the claimant's characterisation of that as a threat. If the claimant was not accepting Ms Turner's decision there was little else she could do but refer it to Mr Anderton. That was particularly given Ms Turner's inexperience in her new role.

137. It was Mr Anderton who directed that the urgent assessment be dealt with as a duty assessment the following Monday. At that point it was not clear whether the claimant would be in work. It seems to us that there was nothing unreasonable about that decision or Ms Turner conveying it to the claimant by email.

Supervisors and Managers taking no steps to prevent the conduct alleged.

138. We have found that the conduct alleged by the claimant did not take place as she alleged. We accept that there was a breakdown in relationships within the Team and this had an effect on the well-being on those within the Team including Ms Turner. We find there were steps taken to address the issues within the Team:

a. Ms Wynn making it clear to the claimant and Ms Turner on 31 January 2019 that they needed to treat each other professionally at work even if they personally were not getting on;
b. The exploration of the use of an external facilitator by Dr Kuusniemi with Julie Warburton on 6 February 2019 and then through her emails to the Team in March 2019 and the meeting with senior management on 10 April 2019
c. The attempt through the meeting on 23 April 2019 to identify and seek informal solutions to the issues.

139. We now return to the questions in the List of Issues.

(i) <u>Did the respondent fundamentally breach the claimant's contract of employment?</u>

140. Based on our findings above, we do not accept that, viewed objectively, the respondent's conduct (and specifically that of Ms Wynn and Ms Turner) was conduct breaching the implied term. That is the case whether each detriment is viewed separately, or they are considered cumulatively. It is clear that relations between Ms Turner (and perhaps to lesser extent Ms Wynn) had broken down by January 2019. Ms Wynn attempted to manage the situation by requiring the claimant and Ms Turner to act professionally in their relations with each other. There were continuing tensions in the Team and it may be argued that good practice might have been to seek to resolve it sooner or be improve communication (e.g. as to when Ms Turner started acting up as a Band 7). However, we are not satisfied that, viewed objectively, there was conduct by the respondent calculated or likely to destroy or seriously damage the employment relationship between it and the claimant.

141. When it comes to the alleged last straw, i.e. the handling of the meeting on 23 April 2019, the claimant's primary complaint by the end of the Tribunal hearing was that Mr Drake did not inform the Team members attending that meeting about the respondent's formal grievance process. We have decided that there was no breach of the implied term prior to that meeting. To justify the claimant resigning and claiming constructive dismissal we would have to find that the conduct at that meeting breached the implied term either in itself or viewed cumulatively with what went before. We accept Mr Drake did not explain the formal grievance process but do not find that to be conduct breaching the implied term either in itself or cumulatively with what went before. The meeting was intended to be an informal one to establish facts and seek solutions. We cannot see that the failure in that context to set out what the formal grievance procedure was amounted to conduct breaching the implied term.

142. We accept that there were no formal notes taken at the meeting. We accept that the respondent did not at that meeting explain what the formal grievance processes were. We find that completely understandable given that the aim of the meeting was to seek an informal resolution to matters. There was a note of the meeting subsequently produced together with an indication of potential steps forward. That note indicates that there was an acknowledgement of the complaints raised by the claimant and her colleagues at the meeting and an indication of proposed solutions to those issues.

143. Our conclusion, therefore, is that there was no breach of the implied term by the respondent entitling the claimant to resign and claim constructive dismissal. Her resignation on 29 April 2019 was not a constructive dismissal so her unfair dismissal claim fails.

144. We have found there was no breach and no constructive dismissal. For the sake of completeness however, we record our findings in relation to the remaining issues in the case.

(ii) If so, did the claimant resign in response to the breach?

145. The respondent's case is that even if there was a breach of the implied term the claimant did not resign in response to it. Instead, the respondent says the claimant resigned because she had confirmation of her new job with Healios. The

claimant's case was that although she had confirmation of her new job the new employer was willing to delay her start until she was ready to join them. The respondent submitted this is an unusual situation, which we agree with. However, as we said in our findings of fact, on this issue we prefer the claimant's evidence that Healios were recruiting on an ongoing basis, and this explains their flexibility as to the start date. In those circumstances, had we found that the claimant's contract had been breached we would have found that she had resigned in response to the breach rather than because she had obtained a new job with Healios.

(iii) If so, did she do so without delay or did she affirm any breach?

146. The claimant resigned five or six days after the meeting on 23 April 2019. Had that meeting been the last straw in a breach of the implied term we find the delay of 5-6 days is not unreasonable and not sufficient to affirm the breach.

(iv) If the termination of the claimant's employment amounts to a dismissal, was that dismissal fair applying S98 ERA 1996?

147. We have found that the termination of the claimant's employment did not amount to a dismissal. Had we done so, the respondent did not suggest that it would have been a fair dismissal.

(2) Public interest disclosure (PID)

(i) Did the claimant make one or more protected disclosures (ERA sections 43B) as set out below? The claimant relies on subsection(s) (b) and (d) of section 43B(1); specifically (b) the respondent's legal obligation towards its employees and its service users to take reasonable steps to ensure a safe system of work, not to breach the implied contractual term of trust and confidence and to provide its service to users in a manner which ensures that the health and safety of service users is protected and (d) not to endanger the health and safety of service users.

Protected Disclosure 1: (para 6) 20th November 2018: raising concerns during a supervision meeting with clinical psychologist Lisa Bennett about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients.

148. We found that the claimant did not raise concerns about the impact of Ms Wynn and Ms Turner's behaviour on her ability to carry out her role at the CSM with Dr Bennett on 20 November 2018. We found that she did raise concerns at that meeting that her workload meant she did not have time to deal with the administration relating to her caseload.

149. We find that this was not a protected disclosure because the claimant did not reasonably believe that she was disclosing information tending to show one of the things in s.43B(1)(b) or (d). She was raising concerns about the impact of her workload on her and her ability to complete administrative tasks. She did not raise concerns about the impact of that on a specific case or indicate how or whether the

inability to complete the administrative tasks had led to a service user's welfare or health being put at risk. Our finding on this is bolstered by the fact that Ms Bennett did not, when completing the record of the supervision, note any safeguarding concerns raised by the claimant. We find that she would have been alive to any such risks given the nature of the work that she and the claimant and their colleagues did. The claimant did not at any point suggest that Ms Bennett had failed to record a matter which should have been recorded as part of the safeguarding part of the supervision notes

150. We also do not accept that the claimant believed that the disclosure was in the public interest. It seems to us that on this occasion what the claimant was raising was a concern about her own workload rather than a matter of wider public interest.

151. Our conclusion is that Protected Disclosure 1 was not a qualifying disclosure for the purposes of s.43B(1) of the ERA.

Protected Disclosure 2: (para 7) 29th November 2019: raising concerns during a team meeting to clinical psychologist leads; K Ksunini and E Higgnett about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients.

152. We find that on this occasion the claimant did make a qualifying disclosure. We found that the claimant did not raise concerns about the impact of Ms Wynn and Ms Turner's behaviour on her ability to carry out her role at the team meeting (which was on the 28th rather than 29 November). However, as the respondent accepted in its submissions, she did raise a specific concern about the impact of lack of capacity in the team on its ability to provide care support for a young person in need of such support.

153. The claimant did not specify at the meeting, in her subsequent email to Mr Anderton or at the Tribunal hearing, the relevant legal obligation said to be (or likely to be) breached. We do not find this was a disclosure falling within s.43B(1)(b). However, we accept that the claimant reasonably believed that the information she disclosed tended to show that the health or safety of an individual was likely to be endangered (i.e. was within s.43B(1)(d)) and that she reasonably believed it was in the public interest to make the disclosure. We find the collective decision that the claimant should raise the matter with senior management supports our conclusion on this point.

154. Our conclusion is that Protected Disclosure 2 was a qualifying disclosure for the purposes of s.43B(1) of the ERA. It was made to the employer (in the sense of the claimant's managers or supervisors attending the team meeting) and was, we find a protected disclosure under s.43A of the ERA.

Protected Disclosure 3: (para 8) 29th November 2019: raising concerns in an email to Paul Anderton, service lead, about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients.

155. As we recorded in our findings of fact, there is no reference in the email to Mr Anderton to Ms Wynn and Ms Turner's behaviour or its impact on the Team. However, we find that this was a qualifying disclosure for the reasons given in relation to protected disclosure 2. It was further communication of that same information which we have found the claimant reasonably believed tended to show a matter within s.43B(1)(d) and whose disclosure she reasonably believed to be in the public interest.

156. The qualifying disclosure was a protected disclosure because it was made to Mr Anderton, the Service Lead, and therefore to the claimant's employer.

157. Our conclusion is that Protected Disclosure 3 was a qualifying disclosure for the purposes of s.43B(1) of the ERA. It was made to the employer (in the sense of the claimant's managers or supervisors attending the team meeting) and was, we find a protected disclosure under s.43A of the ERA.

Protected Disclosure 4: (para 9) 30th January 2019: raising concerns on behalf of herself and the whole team, to JW, L Bennett, K Ksunini, E Hignett and service Psychologist lead Julie Warburton, at a team 'Away Day' about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients.

158. We find this was not a qualifying disclosure. We find that the concerns raised by the claimant at the away day did not have enough factual content and specificity to amount to a qualifying disclosure as required by **Kilraine**.

159. If we are wrong about that, and the claimant referring to "secret meetings" (which is as specific as the concerns raised at the meeting got) is enough to satisfy the **Kilraine** test, we find the claimant did not reasonably believe that information tended to show one of the things in s.43B(1)(b) or (d). In her oral evidence the claimant was repeatedly asked by the Tribunal to clarify in what way the relationship between Ms Turner and Ms Wynn posed a risk to the claimant's health and safety, and the claimant was unable to clearly articulate that. The closest she came was to suggest that there were rumours that Ms Turner had made allegations against a colleague in the team in which she formerly worked which had led to that colleague's registration as a practitioner being put at risk. There was no clarity as to what "legal obligation" the information tended to show was being (or likely to be) breached so as to fall within s.43B(1)(b)). We find that the claimant did not believe that the concerns she raised tended to show something falling within either of s.43B(1)(b) or (d). If she did so believe, it was not a reasonable belief.

160. Although as set out in the List of Issues the suggestion is that the relationship had an impact on the team's ability to function effectively, and that that posed a risk to the safety of patients, we find that the claimant did not raise this at the meeting and did not have a reasonable belief in the public interest of the matters she was raising. Any public interest, it seems to us, has been constructed after the event.

161. Our conclusion is that Protected Disclosure 4 was not a qualifying disclosure for the purposes of s.43B(1) of the ERA.

Protected Disclosure 5: (para 33) 15th March 2019: raising concerns in a clinical supervision meeting with Amelia Bosshoff, clinical CBT supervisor, about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients and that she was subject to a campaign of bullying and ostracization by JW and GT.

162. At the start of the hearing the claimant confirmed that Ms Bosshoff did not discuss the concerns which the claimant raised with her with anybody else and had not subjected her to any detriment. On that basis, it is not strictly necessary for us to decide whether this is a protected disclosure because it is not suggested that there was any detriment as a result of it. Had we been required to decide it, we would have decided that this was not a protected disclosure. We find that the claimant did not reasonably believe that any information she disclosed about her concerns about Ms Wynn and Ms Turner's relationship or behaviour amounted to information tending to show any of the things in section 43B(1)(b) or (d). Similarly, we do not find that she reasonably believed that such matters were in the public interest.

Protected Disclosure 6: (para 35) 15th March 2019: raising concerns in a meeting with Emma Ackrigg, Lancaster CAHMS manager about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients and that she was subject to a campaign of bullying and ostracization by JW and GT.

163. At the start of the hearing the claimant confirmed that Ms Ackrigg did not discuss the concerns which the claimant raised with her with anybody else and had not subjected her to any detriment. On that basis, it is not strictly necessary for us to decide whether this is a protected disclosure because it is not suggested that there was any detriment as a result of it. Had we been required to decide it, we would have decided that this was not a protected disclosure. We find that the claimant did not reasonably believe that any information she disclosed about her concerns about Ms Wynn and Ms Turner's relationship or behaviour amounted to information tending to show any of the things in section 43B(1)(b) or (d). Similarly, we do not find that she reasonably believed that such matters were in the public interest.

Protected Disclosure 7: (para 42) 23rd April 2019: raising concerns in a meeting with her other 3 team members, HR and senior management about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients and that she was subject to a campaign of bullying and ostracization by JW and GT.

164. The final alleged protected disclosure took place during the meeting on 23 April 2019 with Mr Drake and Ms Lang. We find that the claimant has not provided evidence of a disclosure amounting to information which she could reasonably believe tended to show something falling within section 43(1)(b) or (d) when it came to patient safety. The concerns raised were not, we find, something which tended to show a risk to the safety of patients.

165. We have considered whether the information would tended to show the matters in s.43B(1)(b) or (d) in relation to the Team members. We accept that at the meeting there was a discussion about the wellbeing of staff which was reflected in

the notes of the meeting. We do not think that any of the information disclosed was specific enough to mean the claimant could have had a reasonable belief that it showed something falling within s.43B(1)(b) or (d) when it came to Team members. In our view, the allegations made were too generic and non-specific to give rise to such a reasonable belief.

166. When it comes to whether the claimant had a reasonable belief that it was in the public interest to disclose what she did in the meeting, we concluded that the disclosure was not such as to mean she could reasonably believe that those matters were in the public interest. She was raising matters on behalf of her and her colleagues without an eye to the public interest element. We accept that the case law shows that a mixed motivation does not prevent a reasonable belief in the public interest of matters being raised. In this case, however, we do not think that the claimant had any public interest in mind.

167. Our conclusion is that Protected Disclosure 7 was not a qualifying disclosure for the purposes of s.43B(1) of the ERA.

(ii) What was the principal reason for the termination of the claimant's employment and was it that she had made protected disclosures?

168. We have found that the claimant was not constructively dismissed. Strictly speaking this question does not arise. Had we been required to decide it we would have found that the protected disclosures we did find took place (protected disclosures 2 and 3) played no part in her subsequent treatment. Those disclosures were made to the Team and Mr Anderton and were not about Ms Wynn and Ms Turner but about a particular case. There was no suggestion that Mr Anderton subjected the claimant to any detrimental treatment as a result. There was no evidence which could lead to a finding that those disclosures had in some way changed Ms Wynn and Ms Turner's attitude towards the claimant so as to cause them to subject her to the detriments alleged.

(iii) Did the respondent subject the claimant to any detriments, as set out below?

169. We have recorded our finding about the alleged detriments in deciding whether the claimant was constructively dismissed above and do not repeat them here.

(iv) If so was this done on the ground that she made one or more protected disclosures?

170. We have set out above our reasons for finding that there was no link between the protected disclosures we found had occurred and the claimant's treatment by the respondent.

Summary Conclusion

171. We find that the claimant was not constructively dismissed so her unfair dismissal claim fails and is dismissed.

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Employment Judge McDonald

Date: 16 August 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

16 August 2021

FOR THE TRIBUNAL OFFICE

ANNEX
List of Issues

(1) Constructive Unfair Dismissal

(i) Did the respondent fundamentally breach the claimant's contract of employment? The claimant relies upon a breach of the implied term of trust and confidence; being a course of bullying and ostracization as detailed under 'detriments' below, carried out by JW and GT and which the respondent took no adequate steps to prevent. The last straw being a meeting with meeting with colleagues and management on 23rd April 2019. The claimant states that the respondent did not conduct that meeting properly; no procedures were explained, no minutes taken despite requests, the process, next steps and possible outcomes were not explained and there was a lack of clarity.

(ii) If so, did the claimant resign in response to the breach?

(iii) If so, did she do so without delay or did she affirm and breach?

(iv) If the termination of the claimant's employment amounts to a dismissal, was that dismissal fair applying S98 ERA 1996?

(2) Public interest disclosure (PID)

(i) Did the claimant make one or more protected disclosures (ERA sections 43B) as set out below? The claimant relies on subsection(s) (b) and (d) of section 43B(1); specifically (b) the respondent's legal obligation towards its employees and its service users to take reasonable steps to ensure a safe system of work, not to breach the implied contractual term of trust and confidence and to provide its service to users in a manner which ensures that the health and safety of service users is protected and (d) not to endanger the health and safety of service users.

(ii) What was the principal reason for the termination of the claimant's employment and was it that she had made protected disclosures?

(iii) Did the respondent subject the claimant to any detriments, as set out below?

(iv) If so was this done on the ground that she made one or more protected disclosures?

(v) The alleged disclosures the claimant relies on are as follows; by reference to the annotated paragraphs of the particulars of claim:

1. (para 6) 20th November 2018: raising concerns during a supervision meeting with clinical psychologist Lisa Bennett about

the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients.

2. (para 7) 29th November 2019: raising concerns during a team meeting to clinical psychologist leads; K Ksunini and E Higgnett about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients.

3. (para 8) 29th November 2019: raising concerns in an email to Paul Anderton, service lead, about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients.

4. (para 9) 30th January 2019: raising concerns on behalf of herself and the whole team, to JW, L Bennett, K Ksunini, E Hignett and service Psychologist lead Julie Warburton, at a team 'Away Day' about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients.

5. (para 33) 15th March 2019: raising concerns in a clinical supervision meeting with Amelia Bosshoff, clinical CBT supervisor, about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients and that she was subject to a campaign of bullying and ostracization by JW and GT.

6. (para 35) 15th March 2019: raising concerns in a meeting with Emma Ackrigg, Lancaster CAHMS manager about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients and that she was subject to a campaign of bullying and ostracization by JW and GT.

7. (para 42) 23rd April 2019: raising concerns in a meeting with her other 3 team members, HR and senior management about the impact of JW's and GT's behaviour on her ability to carry out her role and the team's ability to function effectively which posed a risk to the safety of patients and that she was subject to a campaign of bullying and ostracization by JW and GT.

(vi) The alleged detriments the claimant relies on are as follows:

- Being subjected to a campaign of bullying and ostracization by JW and GT; excluded from informal and informal discussions and decisions affecting her role; being ignored and not spoken to; GT not carrying out referrals with her and not informing her that she would have to do them alone (in breach of policy); GT refusing to

co-operate with her; excluding her from the Access team and discussing moving her to Therapy without her knowledge; swearing at and challenging her in team meetings; GT threatening to report her; singling her out to cover when she had no capacity to do so;

- Supervisors and Managers taking no steps to prevent the conduct alleged.