THE EMPLOYMENT TRIBUNALS

Claimant: **Miss Linda Obasohan**

Respondent: **William Hill Organization Limited**

Heard at: **London East Employment Tribunal**

On: **24, 25, 26, 27 November 2020**
1, 21, 22 December 2020
5 January 2021 (In Chambers)

Before: **Employment Judge Russell**
Members: **Ms G Forest**
Mr L O'Callaghan

Representation
Claimant: **Ms J Thompson (Lay Representative)**
Respondent: **Ms R Eeley (Counsel)**

JUDGMENT

1. **The Claimant made a protected disclosure on 10 July 2018, only.**

2. **The claim of detriment because of a protected disclosure fails.**

3. **The claim of automatic unfair dismissal by reason of a protected disclosure fails.**

4. **The claim of unfair dismissal pursuant to Section 98 of the Employment Rights Act 1996 fails.**

REASONS

1. By claim forms presented to the Tribunal on 16 November 2018 and 14 October 2019, the Claimant brings complaints of detriment because of protected disclosure, automatically unfair dismissal because of a protected disclosure and ordinary unfair dismissal. The Respondent resists all claims. The issues were decided at a Preliminary Hearing before Employment Judge Burgher on 1 October 2020 and a copy is attached to this Judgment. In the course of

submissions, the Claimant clarified that issues 3.22, 3.23, 3.24, 3.25, 3.27 and 3.28 were not relied upon as protected disclosure detriments although they were relied upon as part of the ordinary unfair dismissal claim.

2. The Tribunal heard evidence from the Claimant on her own behalf. We also read statements provided on behalf of the Claimant by Mr Korede Ajayi, Mr Joe Storey, Mr Emmanuel Lugbosa, Ms Gloria Williams, Ms Zarah Fowora, and Mr Francis Oluyi. These witnesses did not attend to give evidence and were not cross-examined and the Tribunal attached little weight to them as a result.

3. On behalf of the Respondent we heard evidence from Mr Daniel Daley (Business Performance Manager), Mr Jason Sharp (Area Manager), Ms Charlene Sumner (Regional Manager), Mr Andrew Denbigh (Area Manager), Mr Marc Corfield (Business Performance Manager) and Ms Yvonne Jackson (Area Manager). We were provided with an agreed chronology of events and an agreed cast list. There was an agreed bundle extending over 4 lever arch files and we had regard to those pages to which we were taken in the course of evidence. The bundle was not easy to navigate and the print quality of text and WhatsApp messages was poor, nevertheless with the assistance of the parties, the Tribunal and witnesses were able to manage.

4. The hearing was beset with technical difficulties, some more serious and time consuming than others, which ultimately caused the hearing to overrun its time estimate. By consent, the evidence of the Claimant was taken in person at the Tribunal on 21 December 2020 with both Ms Thompson and Ms Eeley attending by video link.

Findings of Fact

5. The Respondent operates nationally in the betting and gambling industry, both online and through licenced betting offices. Its betting offices are organised into regions managed by a Regional Manager. Each region is subdivided into areas managed by an Area Manager and further into clusters of about eight betting offices managed by a Business Performance Manager. Each betting office employs Customer Experience Managers and Customer Experience Assistants.

6. The Claimant began her employment on 6 June 2015, initially a Customer Experience Assistant, she was promoted to Customer Experience Manager on 25 January 2017. At the time, she was working in the Evelyn Street betting office in Deptford. As CEM, the Claimant was responsible for controlling costs, meeting promotional targets, marketing the shop to potential customers, developing special promotion ideas, handling customer complaints, dealing with disputes, training staff members, monitoring progress against targets, organising work and holiday rotas, ensuring that the shop was secure and met health and safety regulations.

7. For reasons not relevant to this case, the Claimant was suspended on 13 November 2017 and dismissed for gross misconduct on 8 January 2018. The disciplinary hearing was chaired by Mr Kieron O'Donovan, with Mr Marc Corfield attending to take notes. Mr Corfield intervened in the hearing to object to an

attempt by the Claimant's representative to answer questions on her behalf. Other than in this very limited way, Mr Corfield played no part in the hearing and the Tribunal accepts his evidence that he played no part in the decision to dismiss the Claimant.

8. Following an appeal heard by Mr Stephen Adams, the Claimant was reinstated with effect from 5 March 2018 and issued with a first written warning to stay on her file until 8 January 2019. The Respondent decided to move the Claimant to a new area as a result of concern about the Claimant's relationships with her former line managers which emerged during the disciplinary process. The Claimant's new Area Manager was Mr Jason Sharp, whom she knew from an inbound placement scheme with which both had been involved and with whom she shared a previously good working relationship.

9. The Claimant was allocated to the Brick Lane betting office. We accept Mr Sharp's evidence that Brick Lane was chosen because it was the only shop with a CEM vacancy and it was very close to Liverpool Street Station, within an hour's travel from the Claimant's home. The Claimant's Business Performance Manager was Ms Gabby Brown.

10. The Claimant's case is that on 20 March 2018, just under two weeks after returning to work, she orally informed Ms Brown that there were cockroaches and loose electrical wires in the ceiling at Brick Lane. The Tribunal was not referred to any contemporaneous record of the disclosure. There is a conflict in the Claimant's evidence: in her statement, she says that the disclosure was made during a site visit whereas in her oral evidence she said that it was during a telephone conversation with Ms Brown.

11. The list of issues also refers to grievances to Ms Brown about training needs on 20 March, 10 April, 1 May and 21 May 2018. The Tribunal asked the Claimant's representative to provide references for any pages in the bundle relied upon as evidence of the grievances. There are no written grievances raised by the Claimant during this time but there are a series of WhatsApp messages between the Claimant and Ms Brown between 24 April 2018 and 1 May 2018 which we considered.

12. Although it is clear from the WhatsApp messages that the Claimant was not happy at Brick Lane, none refer to cockroaches, electrical wires, training needs or mice. The Tribunal finds that the messages reflect the Claimant's anxiety upon her return to work and her belief that she was being "set up" to be dismissed again. The Claimant demonstrated a general distrust of others and stated that she was not prepared to speak or engage in verbal communication would only deal with matters in writing. We consider it significant that there is no record in writing of the matters said to have been raised with Ms Brown and which the Claimant now relies upon as a protected disclosure or detriment, despite the fact that she felt comfortable expressing her other concerns to Ms Brown in forthright terms.

13. The only contemporaneous record of cockroaches at Brick Lane is a WhatsApp group message sent on 7 May 2018. The other CEM told the Claimant who to inform, including the BPM, and it appears that she did so as the

register of maintenance work records a visit by pest control the same day.

14. On balance, the Tribunal finds that the Claimant did not make a disclosure of information about cockroaches or loose electrical wires to Ms Brown on 20 March 2018 as alleged or at all.

15. Mr Sharp regularly visited Brick Lane in his capacity as Area Manager and, as he candidly accepted in cross-examination, the Claimant raised directly with him various concerns about the cleanliness of the shop and her colleagues. This is consistent with a WhatsApp message from the Claimant to Mr Sharp in April 2018 in which she complained about her fellow CEM and stated her belief that she had been put in Brick Lane as a way of once again dismissing her. The Tribunal accepts as credible and reliable Mr Sharp's evidence that when the Claimant raised issues about her colleagues or cleanliness, he would listen to her and take action to address her concerns if appropriate.

16. In her WhatsApp messages, the Claimant said that she was still learning how to use the electronic tablet used by the Respondent's employees in the course of their duties. This is consistent with Mr Sharp's evidence that she also verbally complained to him during site visits that she was not up to date on the use of the electronic tablet. Mr Sharp regarded the points raised by the Claimant as relatively minor day to day issues which could be addressed by consulting the manuals in the betting office or obtaining assistance from colleagues. The Tribunal accepts that this was his genuine belief at the time and it is consistent with the contemporaneous WhatsApp messages which referred to self-directed learning and the absence of any express reference to requiring any other training, whether on the tablet generally or with rota geek specifically. Given the Claimant's expressed desire to deal with matters only in writing, the Tribunal finds that this is significant and infers that there were no grievances or complaints made about training needs at the time, only minor issues as Mr Sharp stated.

17. Mr Daley became Business Performance Manager responsible for the Brick Lane in or around June 2018. The Tribunal accepts as credible and reliable his evidence that in his handover from Ms Brown, she made no reference to cockroaches or loose wires being problems at Brick Lane. He visited Brick Lane on average about twice a week. During these visits, he had regular conversations with the Claimant and he accepted in evidence that she would raise with him various issues of concern to her, such as relatively small cash shortages and whether targets were being reached. The Claimant also complained to Mr Daley about some difficulties in using the tablet, he advised her to seek help from colleagues and the issue was not raised again. Mr Daley did not regard the issues raised as significant but regarded them as indicative of the Claimant's lack of trust in management and her belief that she was being set up for a further dismissal. The Tribunal considered Mr Daley to be a truthful witness and accept that he regarded the Claimant positively in the early days of their working relationship and adopted a supportive management style, seeking to reassure the Claimant and trying to address her concerns.

18. A WhatsApp message sent between staff at Brick Lane on 31 May 2018 confirms that there was a problem with mice. The property maintenance log shows that pest control attended the same day but a message sent by the

Claimant on 11 June 2018 to Mr Sharp and Mr Daley made clear that the problem had not been resolved. Mr Sharp emailed Mr Daley asking him to chase pest control and confirming that their visit had been approved; Mr Daley replied that he had spoken to the helpdesk and somebody would attend the following day. There is no further entry on the property maintenance log to confirm a follow up visit but nor are there any further emails or WhatsApp messages indicating a mouse problem after 11 June 2018. There is no mention of mice in later WhatsApp messages. The Tribunal finds that had the problem with mice persisted after 11 June 2018, the Claimant would have raised it again in an email or WhatsApp message. We therefore infer that the problem was resolved satisfactorily on or about 11 June 2018.

19. Having regard to the WhatsApp messages, emails, property maintenance log for Brick Lane and the oral evidence of the witnesses, the Tribunal finds that the Respondent had in place an adequate process for reporting and rectifying problems at Brick Lane. Brick Lane was an old building and the Tribunal accepts that there were occasional problems with mice or even cockroaches but that when the Claimant raised them, they were swiftly addressed as a matter of ordinary day to day operations and her complaints were not in any way regarded negatively by Mr Daley or Mr Sharp.

20. In June and July 2018, London experienced particularly hot weather. As with a number of older buildings from which the Respondent operated its betting offices, Brick Lane did not have air conditioning. Mr Daley was aware from his visits that there were difficulties with excessive heat and employees were given a water allowance. Two fans were also provided although these did not resolve the problem of excessive heat. The Respondent's case is that staff were also told that they could work part of their daily shifts in a different betting office in the cluster; the Claimant denies that she was ever given that opportunity. The effect of the heat was particularly significant on the Claimant as it exacerbated an ankle injury sustained some years previously.

21. The Claimant sent an email to Mr Sharp and Mr Daley on 10 July 2018 which is relied upon as the second protected disclosure. The email is about hot weather, meeting targets and holes in the ceiling and states:

> **"It has come to a point where working in an efficient manner and meeting targets are hard due to shop team being easily frustrated and customers being impatient both due to the heat in the shop and as stated in previous email it is driving customers away to William Hill competitors as well as employees away from the shop.**
>
> **After weeks of requesting for a fan, we've finally received two from the store order and it is still not satisfactory and tends to blow hot air as that's how heated the shop gets. In order to put the fan together a screwdriver was needed which we were not aware of and had to ask a regular customer if we could borrow his personal one.**
>
> **More so the holes in the ceiling are not safe for employees as above contains loads of wires which are tangled together and some are of use to the flat above. If anything goes wrong this could potentially cause a fire especially when visitors come and need access to the wires above. This is a safety hazard that needs to be patched up and fixed properly.**"

22. The Claimant attached images of the ceiling and asked that arrangements be made for air conditioning to be installed and the holes to be repaired. The Tribunal considers it significant that the email does not refer to ongoing problems with mice or cockroaches. This is consistent with our finding that the problems had resolved by this date. Further, the email demonstrates the Claimant's ability to articulate her concerns in writing to her managers. In the circumstances, the absence of any similar email purporting to raise concern about training needs is consistent with our inference above that there were no grievances or complaints made about training needs at the time. Neither Mr Sharp nor Mr Daley replied in writing to the Claimant.

23. On 11 July 2018 the Claimant told Mr Daley that she would not be able to work her shift that day due to swelling on her ankle. She attached a photograph which shows a significantly swollen right ankle. Mr Daley told the Claimant to take the evening off, he did not refer to the ability to work in another office.

24. The Respondent had decided that it was not practical or cost effective to install air conditioning at Brick Lane or a number of its other betting offices. On 17 July 2018, Mr Sharp told Mr Daley to buy further fans for Brick Lane which he then did.

25. None of the contemporaneous documents refer to the ability of the Claimant, or colleagues at Brick Lane, to work in another betting office for part of their shift if unduly affected by the heat. The Tribunal find on balance that if there had been a formal arrangement made known to affected employees in several shops, that here would be some contemporaneous reference to it. At the very least, Mr Daley and Mr Sharp would have referred to it when emailing about the 10 July 2018 complaint about the heat at Brick Lane. Alternatively, Mr Sharp would have referred to it when the Claimant complained to him about the heat at Brick Lane in a WhatsApp message sent on 17 July 2018. In fact, the first record of the offer was in Mr Daley's note made on 8 August 2018 and it has been consistently denied by the Claimant. The Tribunal does not accept the Respondent's evidence that the Claimant declined the chance to work elsewhere as she did not want to travel. This is inconsistent with the fact that the Claimant did work temporarily at other shops in the cluster, for example covering a shift at Spitalfields betting office in early August 2018. On balance, we prefer the evidence of the Claimant and accept that she was not told that she could work part of her shifts in a different betting office to avoid the heat at Brick Lane.

26. As for the problem with the holes in the ceiling, there is no record in the property maintenance log of any visit or remedial work. Whilst the Claimant did not raise the issue again, we note that she did not work at Brick Lane after 8 August 2018.

27. In WhatsApp messages to Mr Sharp on 12 and 17 July 2018, the Claimant asked to transfer to her former cluster. Mr Sharp did not respond in writing but he did discuss the Claimant's desire to transfer when he visited Brick Lane. Mr Sharp did not understand why the Claimant would want to return to her former cluster given her vocal criticism of some of her former colleagues and dislike of the Area Manager, Mr Anderson. He explained to her that a transfer

would not be appropriate for these reasons. The Tribunal accepts as truthful his evidence that he did not regard the WhatsApp request as a grievance and there was no clear indication that the Claimant wished to raise a formal grievance.

28. The Claimant also asked Mr Daley if she could return to Evelyn Street. He explained that as it was not in his cluster, she would have to contact the relevant BPM and check if there was a vacancy. There is no evidence that the Claimant did so. The Claimant emailed Mr Adams, her former Area Manager, on 17 July 2018 to request a move back to her former cluster suggesting that her placement at Brick Lane was designed to make her fail. Mr Adams replied that an appeal against the decision to relocate her on reinstatement would need to be made to the Regional Manager. The Claimant did not contact the Regional Manager and remained at Brick Lane.

29. From the week commencing 30 July 2018, the Claimant's hours were compressed into four days at her request.

30. The Claimant was due to attend a medical appointment on 2 August 2018 but had mistakenly forgotten that she was due to work that day. On 1 August 2018, the Claimant sent a WhatsApp message to Mr Daley indicating that she would open up but then would be absent from the shop for part of her shift, however she was in the process of arranging cover. This was what happened, with the Claimant returning to work at about 1:30pm on 2 August 2018.

31. On her return to work, the Claimant spoke to Mr Daley. The Claimant did not have a copy of her fitness to work certificate with her. Mr Daley's evidence was that she told him that she had been signed off work for four weeks but only wanted to take one week off sick and then return to work. The Claimant categorically denied saying any such thing. The Tribunal preferred the evidence of Mr Daley. It is consistent with an email sent by the Claimant on 7 August 2018 in which she expressly states that she had only asked for one week off to take medication. It is also consistent with the content of Mr Daley's note drafted on 8 August 2018 which we find to be contemporaneous, full and reliable.

32. On 3 August 2018, the Claimant asked Mr Daley by WhatsApp whether she would be paid for the full shift and to ensure payment for her colleague who had provided cover. At Mr Daley's request, the Claimant gave him the details of the hours she had worked. The Tribunal find that there was a subsequent telephone call on 3 August 2018 between the Claimant and Mr Daley. This is consistent with reference to such a call by the Claimant in her contemporaneous WhatsApp messages. The Tribunal finds on balance that Mr Daley told the Claimant that she would only be paid for two hours of her shift on 2 August 2018.

33. The Claimant was unhappy and told Mr Daley that if she were not paid in full, she would not work her shift providing cover at Spitalfield that evening. Whilst the Claimant had volunteered to work the Spitalfield cover shift, once the shift was agreed, the Tribunal finds that the Claimant was obliged to work it and could not unilaterally withdraw because she had subsequently changed her mind. Mr Daley told the Claimant that if she did not work the Spitalfield shift, she would be regarded as absent without leave. The Claimant's' evidence was that Mr Daley became aggressive and hung up on her. Mr Daley's evidence was that it

was the Claimant who raised her voice and became aggressive.

34. On balance, the Tribunal finds that it was a heated conversation on both sides. The Claimant's use of capital letters in her subsequent WhatsApp message (stating "**YOU DON'T THREATEN ME! about awol**") is consistent with her being very angry about what she perceived to be unfair treatment. It is consistent with Mr Sharp's evidence that if the Claimant became upset, her defence mechanism was to become very loud and upfront, exaggerating small things into larger issues to get her point across. This is consistent with the Tribunal's own view of the Claimant's demeanour during the course of evidence. On balance, the Tribunal finds that the Claimant did raise her voice and that Mr Daley terminated the conversation as a result.

35. The Claimant continued to send WhatsApp messages to Mr Daley on 3 August 2018, complaining that he had put the telephone down on her, that he lacked any professionalism and that she was not prepared to communicate by telephone or WhatsApp but only by text or email. Mr Daley did not respond immediately to the messages but waited until the following day. Given the Claimant's anger and the contents of the heated telephone call, the Tribunal considers that this was sensible in the circumstances.

36. On 4 August 2018, Mr Daley visited Brick Lane and asked to see the Claimant's fit note. The fit note certified that the Claimant may be fit for work with amended duties and workplace adaptations. The box for a phased return to work was unticked and the box regarding altered hours contained a tick which appeared then to have been crossed out. In the comments section, the doctor said that the Claimant should avoid standing at work due to pain in her ankle particularly when weight-bearing. The Claimant did not give the fit note to Mr Daley and instead he took a photograph of it.

37. Mr Daley sought advice from his Area Manager, first because he was concerned that the fit note may have been altered and second because the fit note did not say that the Claimant was unfit for work as she had initially told him but instead mentioned adjustments. Having seen the crossings out on the fit note, the Tribunal accepts that Mr Daley was reasonably and genuinely concerned even though its authenticity was subsequently confirmed by the doctor. Mr Daley told the Claimant that she was required to attend a meeting with him at 4pm that day, at the Wilson Street betting office. The Claimant did not attend.

38. When Mr Daley contacted her at 4:30pm, the Claimant said that she was unable to attend the meeting because immediately after finishing her shift she had somewhere to be and that the meeting would be out of her way. The Claimant's oral evidence that she had been unable to leave Brick Lane as the Respondent's policy prevented the two remaining members of staff being left alone in charge of the shop was inconsistent with this contemporaneous and the Tribunal finds it neither credible nor reliable. The content of the email from the Claimant and her use of block capitals in the final two paragraphs make it clear that the Claimant was angry with Mr Daley and the Respondent. The Tribunal finds that the Claimant sent her email only because she had been chased by Mr Daley to attend the meeting. On balance, the Tribunal finds that the Claimant did

not have a legitimate reason not to attend the meeting to discuss the fit note rather her deliberate decision not to attend was caused by her anger with Mr Daley and the Respondent. This was not appropriate conduct by the Claimant as she was disregarding a legitimate management instruction.

39. Mr Daley asked the Claimant to leave her keys at the Brick Lane shop and planned a rearranged meeting with the Claimant at Wilson Street on 6 August 2018, although no set time was agreed. The Tribunal have been able to decide the reason for the Claimant's subsequent suspension without needing to resolve the dispute as whether or not the request to leave her keys was because Mr Daley needed to lock up (as he says) or because he had already decided to suspend her (as she says).

40. The Claimant was due to work a late shift on 6 August 2018. As she had heard nothing from Mr Daley, at 2.40pm she contacted him to ask where her keys to the shop were. Mr Daley replied by text at 4:28pm, stating that the meeting would take place at 2pm on 7 August 2018. The Claimant claims that she did not receive this text message, a copy of which is included in the bundle. It does not show that the text was undelivered and it is chronologically in order, with a text later sent by the Claimant appearing underneath it. On balance, the Tribunal do not find it credible or plausible that the text was not received by the Claimant.

41. As the Claimant had to collect her keys from Aldgate betting office where they were being held, Mr Daley also asked another employee to tell her that the meeting would take place at Wilson Street at 2pm on 7 August 2018. Emails sent by the Claimant make clear that she had received the message and was very annoyed, stating:

> **"In short, I'm unable to attend the alleged meeting at Wilsons today nor do I find it appropriate to be informed by another colleague in regards to a meeting/time that you have not confirmed and choose to ignore my repeated request via text to confirm this and so far nothing has been consistent nor kept to by yourself.**
>
> **Should I not hear from you in between the "hour I was told will take to get to work from home" I will go straight to Brick Lane LBO and do my 14:00 to 10:10 shift to help avoid less pressure on my right ankle".**

42. The Tribunal finds that there was no good reason for the Claimant to be concerned about the message which was passed via the colleague. There is no evidence that Mr Daley shared the subject matter of the meeting or in any way breached the Claimant's confidentiality, simply that there was a meeting and its time and location.

43. Mr Daley was concerned that the Claimant's behavior was disruptive and unacceptable and, after advice from more senior managers and HR, decided to suspend the Claimant. Another manager, Mr Paunikar, attended Brick Lane and told that Claimant that she was being suspended with pay because of a failure to follow a reasonable request and insubordination. The Claimant refused to sign the record of suspension. Although that record stated that there would be a meeting at 11am on 10 August 2018, the letter confirming suspension for failure

to follow a reasonable request did not give a date or time for an investigation meeting. The Claimant's email sent on the evening of 7 August 2018 makes clear that she was aware that she had also been suspended for insubordination. Mr Paunikar replied to confirm the meeting would be at Wilson Street on 10 August 2018 at 11am.

44. The Tribunal accepts as reliable and consistent with the facts found, the evidence of Mr Daley that the only reason for suspension was the Claimant's failure to attend the meetings to discuss her fit note, the tone of her messages and her refusal to work her Spitalfield shift. The Claimant accepted in evidence that Mr Daley had given her no reason to think that he was annoyed by her July 2018 email, even though he had not addressed her concerns, she said that he repeatedly told her not to worry and that her complaints would be sorted out. The Tribunal finds that the Claimant's suspension was not caused in any way by the contents of her email on 10 July 2018.

45. On 9 August 2018 the Claimant purported to raise a grievance with Mr Sharp about Mr Daley's failure to deal with the recommendations for adjustments contained in the sick note provided on 4 August 2018. Following a complaint that she had received no formal response, Mr Sharp wrote to the Claimant on 13 September 2018 stating that there was no record of any formal grievance from her since 20 March 2018 and asked that she provide a copy of the grievance. Whilst the Claimant maintained that she had raised a grievance on 9 August 2018, no copy was provided to Mr Sharp or appears in the bundle before this Tribunal.

46. There is an email sent by the Claimant on 9 August 2018 to Mr Sharp which purports to bring to his attention a formal grievance raised on 4 August 2018 with Mr Daley. Although the Claimant's email to Mr Daley does express her unhappiness with his conduct, it does not give any indication that it is being raised as a formal grievance. The contents of the email sent on 9 August 2018 to Mr Sharp appear to be a complaint that the adjustments recommended on the fit note had not been actioned as there had been no meeting to discuss them. The Tribunal finds that the Claimant's references to earlier grievances caused confusion and this was why Mr Sharp did not treat the email of 9 August 2018 as a formal grievance in its own right.

47. A heavily redacted email sent on 9 August 2018 shows that Mr Paunikar was advised by an unknown person to put an "out of office message" on his email to avoid having to reply to the Claimant's emails. In evidence, a constant theme of the Claimant's evidence was that managers did not want to engage with her, for example asserting that Mr Corfield had blocked her on WhatsApp and that she suspected that Mr Daley had done so too. The Tribunal found this indicative of the Claimant's tendency to read sinister intent and be suspicious of minor issues: Mr Corfield blocked her in the period between her dismissal and re-instatement when she was not an employee; Mr Daley responded to her emails within a reasonable time period even if not immediately on WhatsApp. As for Mr Paunikar, he was due to meet the Claimant the following day and the out of office advice was given at 8.32pm following an exchange of emails about whether the meeting would be recorded. Whilst the Tribunal accepts that the Claimant was genuinely concerned, we find that her suspicions were not well-founded and that

her managers responded to her in a manner which was objectively reasonable.

48. The investigation meeting took place on 10 August 2018 and was chaired by Mr Paunikar. The Claimant complained that this was not fair as Mr Paunikar was biased and was part of her complaint of unfairness as he had suspended her. The conduct of the investigation meeting is not one of the detriments relied upon and the Tribunal need make no finding as to whether the Claimant's complaint was well-founded.

49. The Respondent's case is that by a letter dated 23 August 2018 it invited the Claimant to attend a disciplinary hearing on 31 August 2018. The Claimant denies receipt of the letter. On balance the Tribunal finds that the letter was not sent. This is consistent with the Claimant's contemporaneous correspondence complaining that she had not received a disciplinary hearing date, only a draft letter being disclosed by the Respondent and the absence of any covering email or other evidence to show that it had been sent.

50. On 28 August 2018, the Claimant commenced a period of certified sickness absence. As a result, the Respondent informed the Claimant that she was no longer on paid suspension but on sick leave and that the sickness policy provided that sick pay was not paid where the employee was subject to a formal disciplinary process. Throughout September 2018, the Claimant sought clarification about her pay and, on 24 September 2018, asked that issues about pay be added to her grievance.

51. The Claimant accepted in evidence that it was reasonable not to have a meeting before 25 September 2018 as she was signed off sick. Her sick note expired on 27 September 2018 and, by a letter dated 28 September, the Respondent invited the Claimant to attend a rescheduled disciplinary hearing on 4 October 2018. There are two copies of the letter in the bundle: one disclosed by the Claimant, one disclosed by the Respondent. The Tribunal carefully considered both and found that any differences in content were minimal (in the penultimate paragraph, a sentence about documents having previously been sent is omitted). On balance the Tribunal finds that the Claimant was aware of the proposed disciplinary hearing scheduled for 4 October 2018.

52. On 1 October 2018, the Claimant submitted a formal grievance about the handling of the process and a further sick note, although she said that she would be able to attend an internal meeting. The Respondent decided that it would be appropriate to obtain advice from Occupational Health and decided to reschedule the disciplinary hearing. Two days later, the Claimant submitted a further sick note which did not state that she was able to attend an internal meeting although she did agree to attend an appointment with Occupational Health on 17 October 2018. The disciplinary hearing did not take place.

53. On 9 October 2018, Mr Sharp contacted the Claimant to arrange a meeting on 12 October 2018 to discuss her grievance. The Claimant informed him that it had been agreed that she would not attend any internal meetings until after her appointment with Occupational Health. The grievance hearing did not take place.

54. The Respondent's case is that by letter dated 13 October 2018, the Claimant was invited to a disciplinary hearing on 19 November 2018. Again, the Claimant denies receipt of the letter. As before, the copy in the bundle is a draft document with track changes and there is no evidence to suggest that it had been sent. On balance, we accept that the letter was not sent to the Claimant. The disciplinary hearing did not take place.

55. The Claimant contacted ACAS to start early conciliation on 19 September 2018. ACAS issued the certificate on 19 October 2018 and the Claimant presented her first claim on 16 November 2018.

56. On 27 November 2018 the Claimant complained to Mr Sharp that she had not received her statutory sick pay. Mr Sharp telephoned her the same day and said that he would ask HR to pay her within the next few days. This is consistent with a contemporaneous entry on the Respondent's automated payroll system. The content of other entries on the payroll system at this time indicate that the problem was because HR were not aware that the Claimant was now entitled to sick pay. Whilst the Claimant had submitted a fit certificate, she had not followed the correct procedure as she had not submitted it to Mr Daley as her line manager. The Tribunal finds on balance that administrative confusion was the reason for the failure to pay her on time. The Claimant accepts that she received backdated company sick pay in full in December 2018. The Claimant's unwillingness to accept that this was a genuine mistake by the Respondent, maintaining that it must have been deliberate and because of her complaints made several months earlier, was not plausible.

57. The grievance meeting took place on 8 January 2019 and was chaired by Ms Sumner. As the Claimant referred to submitting grievances prior to 1 October 2018, the Respondent asked her to send copies and to provide details of her grievances. The Claimant did not send copies of any earlier grievance and the only additional detail provided was in a short list of bullet points sent on the day of the grievance meeting. The topics listed by the Claimant were health and safety at Brick Lane, an unfair rota, lack of training, lack of support with ongoing issues with her ankle, threats by another BPM arising from reporting a colleague for falsifying work hours, racial discrimination by customers, lack of support from line manager, the investigation process, wages, holiday pay, feeling ignored and return to work.

58. Ms Sumner was sympathetic to the Claimant and took very seriously the points that the Claimant was raising. Following the investigation meeting, she investigated further. Ms Sumner was provided with print-outs of incident reports forms for Brick Lane covering the relevant period, copies were included in the Tribunal bundle. We accept that at the time Ms Sumner genuinely believed that they did not provide evidence of racial abuse and health and safety problems at Brick Lane.

59. In her very detailed grievance decision dated 29 January 2019, Ms Sumner accepted that there had been flaws in the initial investigation and that there should have been an independent investigation officer. Ms Sumner acknowledged the problems with payment of wages which had now been rectified and she authorised the payment of outstanding holiday. With regard to

the other points, Ms Sumner dealt specifically with the lack of air conditioning and steps said to have been taken to support the Claimant. Ms Sumner confirmed that a suitable alternative place of work would be discussed and agreed upon the Claimant's return to work. Whilst Ms Sumner found no evidence of a specific training request being made previously to her managers, she agreed that a robust training plan would be formulated upon the Claimant's return to work.

60. Ms Sumner found that there was no evidence in the incident report forms to support the Claimant's complaint about racial abuse by customers, but the procedure for documenting incidents would be covered in the Claimant's refresher training. Ms Sumner concluded that the threat by a colleague had been adequately resolved already and that the Claimant had been supported in connection with her ankle as there had been a phased return to work on reduced hours and that on her return to work from this period of sickness absence, there would be further discussion and agreed actions arising from the Occupational Health report. The Claimant was offered the right of appeal against the grievance outcome.

61. At a return to work meeting with Mr Sharp on 1 February 2019, it was agreed that the Claimant would have a phased return to work and she would return to her former cluster, at the Evelyn Street betting office as she felt that she had a support network there. Following the meeting, the Claimant sent multiple messages about her return to work and the ongoing disciplinary investigation (often several on the same day), often requiring a response in short timescales and then complaining about a lack of contact from the Respondent. The Tribunal does not accept that this was a fair criticism by the Claimant. Whilst the Claimant was undoubtedly anxious and the issues were at the forefront of her mind, Mr Sharp and Ms Chaloner (the HR support) were busy with operational matters and it was not unreasonable for it to take them a matter of days to organise the details of the return to work and to reply once they had done so.

62. The Claimant returned to work on 12 February 2019. The disciplinary investigation meeting took place on 19 February 2019. The same day, the Claimant raised a number of questions which she wanted answered by Mr Daley. The Claimant was not satisfied and continued to send further questions which she wanted Mr Daley to answer, requiring a response within two days and sending chasing emails to Ms Chaloner in the meantime. Ms Chaloner sought to reassure the Claimant, making clear that answers would be provided and even suggesting a face to face meeting with Mr Daley, but the Claimant continued to express her dissatisfaction in frequent and lengthy emails. The answers were provided to the Claimant on 26 February 2019, who then sent in further questions which she required an answer. By letter dated 3 April 2019, the Claimant was informed that the disciplinary investigation would not be pursued.

63. The Claimant's case is that on or around 18 April 2019, she raised concerns regarding her health and safety with Mr James Anderson and Ms Kelly Selhurst and that this amounted to her third protected disclosure. There is nothing in the Claimant's witness statement or any documents in the bundle to show what, if any, information was disclosed. In oral evidence, the Claimant said that her complaint related to a defective till and she gave no further detail of what was disclosed. On balance the Tribunal finds that the Claimant has not proved

that she disclosed any information tending to show a relevant breach on 18 April 2019.

64. In or about mid to late April 2019, on the Claimant's own evidence, she received a call from her manager Mr Adam Marsh who asked why she was not at work. The Claimant said that she had consulted the paper rota and was not due to work. In response, Mr Marsh said "okay". The Claimant accepted that she was unable to say whether or not Mr Marsh knew about any earlier disclosure and there is no evidence to suggest that he did. The Claimant's belief that he would have known is pure speculation on her part.

65. On 19 May 2019 there was a disagreement between the Claimant and a colleague, Chandrika, about borrowing a key for the Evelyn Street betting office. The Claimant raised a formal grievance on 25 May 2019 complaining about inequitable treatment in the workplace, essentially that she had been disciplined previously for conduct where other employees were not so disciplined. She gave a number of examples relating to buddy calls, shift issues, financial checks and the Chandrika key incident. The Claimant also complained that during telephone conversations in June 2019, her BPM and her Area Manager had said that her health problems were not real.

66. After submitting her grievance and until the termination of her employment on 30 September 2019, the Claimant was scheduled to work with Chandrika on two further occasions on 17 and 22 June 2019. There was no evidence about who made the decision or why. On the second occasion, the Claimant emailed Mr Anderson (the Area Manager) to notify him and the two were not put on the rota together again. Chandrika was a "relief" employee, who worked in a number of betting offices to cover temporary staffing shortfalls. On balance, we infer that the Claimant and Chandrika were inadvertently scheduled to work together because cover was required. It is implausible to infer that it was because of a protected disclosure in circumstances where, as soon as the Claimant objected, they were not required to work together again.

67. Mr Anderson chaired a grievance meeting on 13 June 2019. As Mr Anderson then had two periods of annual leave, it was not until 21 July 2019 that the Claimant was informed that her grievance was not upheld. The Claimant's case is that Mr Anderson's letter was a lie from beginning to end.

68. Mr Anderson did not give evidence at Tribunal and when we considered his reasons for rejecting the grievance as given in the outcome letter, we took into account that they had not been tested in cross-examination. The tone of the letter is broadly sympathetic and the Claimant's concerns were addressed in detail. Mr Anderson regarded many of the concerns as matters which should be raised directly with a BPM and others as reasonable management instructions with which the Claimant disagreed as she believed that they were in breach of standard procedure. Mr Anderson was alert to the fact that the Claimant's previous experiences of disciplinary action may be an underlying reason for her concern and sought to reassure her.

69. The Tribunal also took into account the Claimant' tendency in evidence to describe as a lie even the most innocent of mistake, for example where Counsel

inadvertently referred to the second consultation as being on 12 September 2019 when it was actually on 8 September 2019. Similarly, she accused Mr Denbigh of lying that Chandrika had handed in her notice in June 2019 when in fact his evidence was only that he had been told by Mr Anderson that Chandrika was due to leave the Respondent. The Tribunal had no hesitation in accepting Mr Denbigh as an honest and reliable witness who was clearly not lying on this point. In the circumstances, the Tribunal does not accept that Mr Anderson was lying in his grievance letter. Whilst the Claimant disagreed with the outcome of the grievance, we accept on balance that Mr Anderson genuinely believed that her complaint was not well founded on the facts of his investigation.

70. The Claimant's appeal against Mr Anderson's decision was heard by Mr Denbigh. Mr Denbigh carried out some further investigation into the Claimant's complaints, for example obtaining information about shift patterns. By a letter dated 16 September 2019, the Claimant was told that the appeal had not been successful. Mr Denbigh's evidence was that he had no knowledge of any of the protected disclosures asserted by the Claimant nor of her first Tribunal claim. When this was put to her in cross-examination, the Claimant said that she could not comment as she did not know what communications the BPMs may have had with him; she did not rely on any positive evidence from which we could infer knowledge. The Tribunal found Mr Denbigh to be a reliable witness and accepted that he knew nothing about the matters now alleged to be protected disclosures.

71. In her appeal, the Claimant did not make any complaint that Mr Anderson had accused her of doing lower work hours when she was on a phased return to work. The Tribunal notes that there was welfare meeting with the Claimant, Mr Anderson and Mr Delgado on 23 July 2019 at which they discussed the phased return which was planned for the period 11 June 2019 to 11 September 2019. On 26 July 2019, the Claimant sent Mr Anderson an email at 4.58pm in connection with a query about her wages, in part about the shift with Chandrika where the Claimant had gone home and in part about the difficulty of double booking at Evelyn Street during her phased return to work. Mr Anderson's email in response was courteous and sought further information, with a commitment to resolving any discrepancy with HR. The Claimant then provided the information by email in reply. There is no evidence of a telephone call and no accusation in any of the emails that the Claimant was working lower hours. Such an accusation is inherently implausible given that the phased return had been reviewed only three days earlier and Mr Anderson was well aware of the arrangements.

72. From July 2019 the Respondent carried out a national reorganisation of its business in light of new Government legislation restricting fixed-odds betting terminals. A briefing document published on 4 July 2019 confirmed the proposal to close 712 betting offices in the UK by the end of September 2019 as well as to reduce jobs at all levels to support a smaller estate. Employees were informed that all staff in offices due to close and relief staff would be put at risk of redundancy. To reduce the number of people impacted, permanent employees in betting offices not proposed for closure were not put at risk. Around 4,500 employees nationally were put at risk.

73. The Respondent consulted the internal employee's representative body about appropriate selection criteria. The criteria adopted were:

(1) Individual Score Card (50%)

This comprised three elements: cash discrepancies, bet discrepancies and log on/log off discrepancies. Each was scored on a traffic light system according to the range of errors made: red = 0 points; white = 3 points; and green = 5 points.

(2) Chemistry Assessment (20%)

This was an externally administered on-line questionnaire in which employees were asked to identify their response to hypothetical scenarios. Employees used their own electronic devices to sit the questionnaire. As not all employees were tested simultaneously, the scenarios were randomly generated from an overall bank to avoid any sharing of answers.

In her evidence, the Claimant was unshakable from her belief that BPMs had scored the assessment, despite there being no evidence to support her suspicion and considerable evidence to support the Respondent's case that it was generated and scored externally. The Tribunal finds that the BPMs had no input into the score on this criterion and consider the Claimant's stance indicative of the extent to which she alleges dishonesty in anything the Respondent did which was to her disadvantage.

(3) Disciplinary record (10%)

This criterion considered only warnings which had not expired before 30 September 2019. No live warnings = 15 points. Current written warning = 5 points. Final written warning = 0 points.

Part of the Claimant's case is that her rescinded dismissal was taken into account as part of the scoring process. It was not. The Claimant was awarded the full 10% available.

(4) Values Rating (20%)

This was a subjective assessment based upon customer service, initiative and quality standards. It was the only part of the selection criteria for which a score was given by the BPM.

74. BPMs were given an information pack containing information about the process which they shared with colleagues in affected betting offices. The Claimant's BPM, Mr Simon Delgado, had been acting up in the position for only about five or six weeks and was due to revert to his substantive CEM post at the end of the restructuring process.

75. On 3 July 2019, Mr Delgado sent the Claimant a WhatsApp message telling her to dial into an important group call the following day. On that group call, affected staff were told about the reorganisation and the risk of redundancy.

On 4 July 2019, Mr Delgado and the Claimant had the following exchange on WhatsApp:

Delgado:	**Did u call at 9am**
Claimant:	**Yes. Did you want me to come in for a meeting?**
Delgado:	**I need to come and see you. When u next in work**
Claimant:	**Tomorrow. Am I one of the ones to be made redundant?**

There is no evidence that any other employee was contacted by Mr Delgado. However, the Tribunal finds nothing sinister in the messages exchanged. Mr Delgado responded to the Claimant's question about a meeting. Inevitably, he would need to see the Claimant and other affected staff. The Tribunal noted the contradiction in the Claimant's case: many of her complaints of detriment are that BPMs did not reply to her or deal with her concerns, here the Claimant complains of detriment when her BPM does exactly that.

76. Mr Delgado did visit Evelyn Street on 5 July 2019 but did not speak to the Claimant about the restructuring as the betting office was busy.

77. On 10 July 2019, the Claimant was sent an electronic invitation to a consultation meeting. The Claimant was unable to download the file. She relies upon this as evidence that HR had deleted her records, an assertion based on a telephone conversation on 9 July 2019 in which another manager told her that a member of HR had said she was shocked that the Claimant was still employed as she had been told to get rid of all of the Claimant's records. The Tribunal regards this is little more than gossip: one manager telling the Claimant what another manager in a different department may have said, without any context. The Claimant's records had clearly not been deleted and were used by the Respondent to pay her and, indeed, score her as part of the redundancy exercise. This was an example, we find, of the Claimant's tendency to see conspiracy where none existed, viewing a relatively mundane technical IT problem as part of a malign campaign to secure her dismissal.

78. The first consultation meeting took place with Mr Delgado on 12 July 2019. The notes record a general discussion about the process and the Claimant's view even at such an early stage that the process would not be fair and that she would be selected for redundancy.

79. By 24 July 2019, the Claimant had completed the Chemistry Assessment on her own computer at home. The Claimant was given 5% of the available 20%. On the scorecard, the Claimant had red lights for two of the criteria (cash discrepancies and bet discrepancies) and a green light for log on/log off discrepancies, getting 16.67% of the available 50%. The Claimant was awarded the full 10% of the disciplinary score. Finally, the Claimant was 11.67% of the available 20% for the values rating. Her total score was 43.33%.

80. There is a dispute as to which BPM scored the values rating for the Claimant. Her case is that Mr Corfield scored her and, in so doing, assessed her unreasonably and negatively. The Respondent's case is that Mr Delgado did the scoring but then discussed them afterwards with Mr Corfield to ensure fairness given that Mr Delgado would also be scored in his substantive post of CEM. On

balance, the Tribunal find that whilst Mr Corfield did not dictate the scores, he did provide more active input than a simple review.

81. In reaching this finding, the Tribunal considered it relevant that Mr Delgado was acting up, had not been long in role, was not experienced and was potentially in a position of conflict of interest as he would be returning to a CEM role and could be affected by redundancy. From this we infer that Mr Delgado did not want the responsibility of selecting colleagues for redundancy. This is consistent with the evidence of the Claimant and Mr Corfield that Mr Delgado sought to avoid conflict. It is also consistent with Mr Corfield's name appearing in the notes for the second consultation meeting next to the part dealing with scoring and the reference in Ms Jackson's witness statement to it being Mr Corfield who made the decision on redeployment and redundancy.

82. The Claimant's case is that Mr Corfield deliberately marked her down because he had previously decided to dismiss her. The Tribunal have already found that Mr Corfield was not the decision maker in the 2018 dismissal. Rather than being unfairly marked down, the Tribunal finds that the values score was one of the Claimant's strongest areas and that her real area of weakness was in the Chemistry Assessment which was entirely independent of Mr Corfield.

83. On 27 August 2019, Area Managers, BPMs and HR representatives attended an all-day meeting to consider all affected employees and select those who would be redeployed. Selection score was not the only criterion as the Respondent also took into account proximity to betting offices with vacancies for which employees had expressed an interest. As a result, affected CEMs were put into multiple possible redeployment pools to maximise the number of vacancies for which they could be considered. The managers then worked through each individual betting office and each candidate for redeployment, recording their decisions on a spreadsheet which was then sent to be checked centrally to ensure that there was no duplication.

84. The spreadsheets for relevant betting offices were provided in the bundle. From these, it can be seen that for some betting offices the Claimant had a lower ranking than other CEMs with lower selection scores but who lived closer to the betting office. Similarly for betting offices where the Claimant had greater proximity, her ranking was higher than CEMs who had higher selection scores than she did. Unfortunately, there were not enough vacancies to redeploy all affected employees, including the Claimant.

85. The second consultation meeting took place on 8 September 2019. It was short, lasting only 15 minutes. The Claimant was told the overall percentage score for each of the four criteria but not given a detailed breakdown of how that percentage had been reached (eg. two red lights on the scorecard for discrepancies). The Claimant was informed that she had been selected for redundancy as she could not be redeployed. On 11 September 2019, the Claimant requested information about who had scored her and the scores awarded.

86. It appears that the details underpinning the individual scorecard score were not provided to the Claimant until this Tribunal hearing. The Claimant has

challenged their accuracy, asserting that some of the cash or bet discrepancies may not have been her responsibility as she may have been resolving discrepancies caused by the CSA's whom she managed. The Tribunal regarded Ms Jackson as an impressive witness and accepted as reliable her evidence that the discrepancy figures were taken from management information already held by the Respondent and covering the period 1 January 2019 to May 2019. Each employee signs on and off their till and is then responsible for reconciling that till for the relevant period. Whilst in theory there could be a discrepancy wrongly attributed to a CEM, the Respondent had undertaken a "data cleanse" in early August 2019 whereby BPMs were sent the data for correction and return to the Finance Department, with the intention of rectifying any discrepancies or incorrect log-in details would be identified. None of the CEMs were consulted as part of the data cleanse and the risk of incorrectly attributed discrepancies would affect all at risk CEMs.

87. The Claimant's selection for redundancy was confirmed in writing on 16 September 2019. A total of 627 CEAs and 739 CEMs were made redundant.

88. Following the closure of the Evelyn Street betting office, redeployed employees began to work at their new locations and those who were not being redeployed were used as cover. The rotas in the bundle relied upon by the Claimant are illegible but a WhatsApp message on 11 September 2019 is consistent with her assertion that she was required to cover four other betting offices whereas, she states, "**my colleagues from Evelyn who are driving**" were covering only one betting office for the week following the closure of Evelyn Street. There is no evidence that this occurred again.

89. On 13 September 2019, the Claimant raised a formal appeal against her selection for redundancy. As an Area Manager based in Birmingham and with no prior knowledge of the Claimant, Ms Jackson was an appropriately independent person to hear the appeal. As she was due to start a two-week period of leave, Ms Jackson suggested to HR that another Area Manager be appointed. The Tribunal accepts that on her return from leave, Ms Jackson was told that no other independent Area Manager had been able to deal with it.

90. Ms Jackson contacted the Claimant on 27 September 2019, asking if there were dates to avoid for a meeting the following week. Some confusion was caused by Ms Jackson's reference to a grievance rather than an appeal and no progress was made before the Claimant's final day of employment on 30 September 2019. The Claimant was unable to attend an appeal hearing scheduled for 3 October 2019 as her trade union representative was not available. To avoid further delay in arranging a meeting in London, Ms Jackson offered to meet the Claimant in Birmingham if she preferred. The Claimant understandably declined. The meeting finally took place on 24 October 2019.

91. Although the Claimant had raised as a ground of appeal her belief that she had been selected because of her first Tribunal claim alleging protected disclosure detriment and because the Respondent did not want to support her health issues, Ms Jackson did not look into the background matters but limited her appeal to the redundancy scoring and redeployment decision. Nor did she interview Mr Delgado, although she did interview Mr Corfield. Ms Jackson

regarded the Claimant's scores as not being bad overall but did not give the Claimant a more detailed breakdown of how the scores had been calculated than previously provided. In her outcome letter dated 1 November 2019, Ms Jackson concluded that the scoring and redeployment process had been fair. She did not accept that the Claimant was treated unfairly by comparison with her other colleagues at Evelyn Street, finding that only one colleague had got their preference.

92. The Claimant's case was that two of her colleagues, Katrina Davis and Daniella, were treated more favourably in that they were essentially approached by the BPM or Area Manager and encouraged to apply for vacancies which had arisen after the redeployment day. The Claimant became aware of this from texts and other communication with her colleagues in October 2019. Insofar as particular assertions were made in the course of her cross-examination and had not been put to the Respondent's witnesses, we disregarded them as it would not be in the interests of justice to make findings on allegations where the Respondent had no opportunity to respond.

93. In her email sent on 29 September 2019, Ms Davis expressed a desire to drop to a part-time CEA role from her full-time CEM position due to her personal circumstances. It is clear from this email that Ms Davis had not appealed her redundancy and the email is consistent with Mr Sharp's evidence that although they discussed an appeal, he did not encourage her to do so. There was no evidence of Ms Davis' selection score.

94. Daniela was also selected for redundancy and appealed on 29 September 2019. Her appeal was heard by Mr Marsh. At the time of her appeal some hours had become available at Brixton High Road and she was redeployed into it. There is no evidence that the Claimant was made aware that these hours were available. There was also no evidence of Daniela's selection score.

95. Another CEM, Lakis, had long service with the Respondent and expressed a preference for redundancy. The Tribunal accepts that he was not permitted to volunteer for redundancy but was instead redeployed. Mr Lakis' appeal against the refusal was not successful: he was a valued member of staff who had scored highly in the selection process and the Respondent did not want to lose his ability nor, we infer, to pay the large redundancy payment to which he would have been entitled.

96. Mr Ellis, another CEM, also appealed against his selection for redundancy. He was successfully redeployed into Mr Corfield's cluster when a vacancy became available. There is no evidence of Mr Ellis' selection score.

97. On balance, the Tribunal finds that after the structured approach of the redeployment day, there was no proactive or structured process for making remaining colleagues aware of new vacancies. The notes of the second consultation meeting refer to any internal vacancies being advertised on the Respondent's internal job page and this is consistent with Mr Corfield's evidence that all roles which became vacant had to be advertised internally for two weeks before they could be externally advertised. It is also consistent with the national

vacancy lists from the beginning of October 2019 which show comparatively few external advertisements before November 2019.

98. The formal consideration of redeployment concluded on 27 August 2019. Any additional vacancies which arose between then and the new structure being implemented on 1 October 2019, whilst employees selected for redundancy were working their notice, were not centrally considered or subject to a formal process. The BPM would let area management know when an additional vacancy arose and there would be a discussion with colleagues to see who was still available. Suitability was decided by reference to selection scores and proximity and HR were informed. Ms Jackson's evidence was that affected employees would be approached in order according to their score and, as a result, it did not matter whether or not their appeal had yet been heard. The Tribunal accepts that an affected employee, including the Claimant, could express interest in a vacancy and be redeployed even before the conclusion of any appeal (or even without having appealed). Employees were also told that they could apply for any vacancy even after employment terminated, but if appointed their redundancy payment would be affected.

99. The Tribunal accepts that there was no suitable alternative employment available for the Claimant at the date of her appeal. Spreadsheets in the bundle are consistent with the Respondent's case that external recruitment had been cancelled in order to fill any remaining vacancies with employees who would otherwise be made redundant. The Claimant identified a number of jobs on the spreadsheets which she says were suitable, however all were advertised or went live after 25 October 2019. On balance, we accept Ms Jackson's evidence that she was not aware of any vacancies when she checked following the appeal hearing.

100. The Respondent has an auto-enrolment pension scheme which is administered by Capita, an external organisation. In June 2019, they sent an email to all employees to confirm that the next date for earnings assessment for automatic enrolment was July 2019. The Claimant became aware in October 2019 that she had not been auto-enrolled into pension when she believes that she should have been. The Claimant accepted that she had no evidence that Capita were aware of any of the matters relied upon as protected disclosures or whether anybody at the Respondent would have had a conversation with them about her. In the circumstances, the Tribunal finds the Claimant's case inherently implausible insofar as she relies upon this as a protected disclosure detriment.

Law

Protected Disclosure

101. A qualifying disclosure requires a 'disclosure of information' which in the reasonable belief of the worker tends to show, amongst other things, that a person has failed to comply with a legal obligation and/or that the health or safety of any individual has been, is being, or is likely to be endangered, sections 43B(1)(b) and (d) Employment Rights Act 1996.

102. There is no rigid dichotomy between "information" and "allegation", the issue is whether there is sufficient factual content and specificity such as is capable of tending to show a relevant failure, **Kilraine v London Borough of Wandsworth** [2018] EWCA Civ 1436. This is an issue to be decided having regard to all the facts of the case and is likely to be closely aligned with the issue of whether there is a reasonable belief that the information tends to show a relevant failure.

103. A disclosure can include a failure to act as well as a positive act, **Millbank Financial Services Ltd v Crawford** [2014] IRLR 18.

104. For disclosures made after 25 June 2013, there is no good faith requirement when considering liability but the employee must have had a reasonable belief that the disclosure was made in the public interest, section 43B(1) as amended by the Enterprise and Regulatory Reform Act 2013.

105. As made clear in **Babula v Waltham Forest College** [2007] EWCA Civ 174, the worker must subjectively believe that the information tends to show a relevant failure and objectively that belief must be reasonable. A belief may be reasonable even if it is wrong.

106. The same subjective and objective tests will apply to whether or not the worker reasonably believed the disclosure to be in the public interest, **Chesterton Global Ltd v Nurmohamed** [2017] EWCA Civ 979. There may be more than one reasonable view of what is in the public interest and the Tribunal must not substitute its view for that of the worker. The particular reasons why the worker believes a disclosure is in the public interest are not of the essence nor is public interest required to be the predominant motive for making the disclosure. There is no definition of "in the public interest" and it is a matter of fact for the Tribunal in all of the circumstances, indeed there may still be public interest where the disclosure is self-serving, however the following factors will normally be relevant:

(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.

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

(d) The identity of the alleged wrongdoer, including the size and prominence of the relevant community.

107. In **Blackbay Ventures Ltd v Gahir** [2014] IRLR 416, the EAT gave helpful guidance as to the approach to be adopted by a Tribunal considering a protected disclosure claim. This emphasised the need not to adopt a rolled up approach but to consider each disclosure by date and content, identify the risk to health and safety in each case and the detriment (if any) which is caused thereby.

108. Liability under section 47B is established if the protected disclosure is a material cause of the detriment; its influence must be more than trivial but it need not be the sole cause or even main cause. Liability under section 103A requires that the protected disclosure be the sole or principal cause of dismissal, **NHS Manchester v Fecitt** [2011] EWCA Civ 1190.

109. It is not relevant whether the employer genuinely believes that the worker's disclosure was not protected, **Beatt v Croydon Health Services NHS Trust** [2017] EWCA Civ 401. In this case, the matters relied upon by the worker as protected disclosure were viewed as false accusations by the employer and were the reason for the ultimate dismissal. The Court of Appeal cautioned against the employer allowing their judgment to be clouded by regarding a whistleblower as a difficult colleague or awkward personality worker. The employer should proceed to dismiss a whistleblower only where they are as confident as they reasonably can be that the disclosures are not protected or that there is a distinction which can clearly be made between the fact of the disclosures and the manner in which they are made.

Unfair Dismissal

110. It is for the employer to show the reason for dismissal and to satisfy the tribunal that it is a potentially fair reason, section 98(1) Employment Rights Act 1996 ('ERA'). Redundancy is a potentially fair reason for dismissal, section 98(2)(c) ERA.

111. Section 139 ERA states that:

> **(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:**
>
> **(a)The fact that his employer has ceased or intends to cease-**
> **(i) to carry on the business for the purposes of which the employee was employed by him, or**
> **(ii) to carry on that business in the place where the employee was so employed or,**
>
> **(b)The fact that the requirements of that business-**
> **(i) for employees to carry out work of a particular kind, or**
> **(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,**
>
> **have ceased or diminished or are expected to cease or diminish."**

112. In considering whether the respondent has established that there was a redundancy situation, we must direct our minds to whether there was (i) cessation of the business; and/or (ii) cessation or diminution in the Respondent's requirement for an employee to do the work of Customer Experience Manager.

113. In **Williams –v- Compair Maxam Ltd** [1982] IRLR 83, the EAT set out guidelines for considering the fairness of a dismissal by reason of redundancy. We remind ourselves that these are guidelines only and are not principles of law.

The guidelines provide *inter alia* that there should be: (i) as much warning as possible of impending redundancies (ii) consultation about ways of avoiding redundancy; (iii) application of fair and objective selection criteria; (iv) fair selection; and (iv) consideration of alternative employment to avoid dismissal.

114. In whether a dismissal was fair in all the circumstances of the case, it is necessary to take account of the whole process of dismissal, including events occurring during the notice period, for example where vacancies become available prior to termination for redundancy, **Stacey v Babcock Power Ltd (Construction Division)** [1986] ICR 221.

115. A dismissal which is unfair due to procedural failings but where the appropriate steps, if taken, would not have affected the outcome, may be reflected in the compensatory award either by limiting the period for which a compensatory award is made or by applying a percentage reduction to reflect the possibility of a fair dismissal in any event, **Polkey v AE Dayton Services Ltd** [1987] IRLR 503, HL.

Conclusions

Protected Disclosure

116. The Claimant relies upon four protected disclosures. The Tribunal has found as a fact that the Claimant did not make a disclosure of information about cockroaches or loose electrical wires to Ms Brown on 20 March 2018 as alleged or at all.

117. In her email sent on 10 July 2018, the Claimant disclosed information that there was excessive heat in the shop, that the fans received had not resolved the problem and that staff and customers were becoming frustrated and impatient. She also disclosed information that there were holes in the ceiling, that wires being used in a flat above were tangled together and that there could be a fire risk. The Claimant stated in terms that this was not safe for employees. The Tribunal concludes that the information in this email did tend to show that the health and safety of staff and customers was likely to be endangered. This was the Claimant's subjective belief and it was objectively reasonable. This was not simply an issue about efficiency or about the Claimant's personal preferences. Frustration caused to customers in a betting office could lead to a risk of hostility or even aggression and put staff at risk. The risk from an electrical fire is self-evident in the Tribunal's view. It was not only the Claimant who was affected, her colleagues and members of the public using the betting office were also at risk, as potentially were visitors to the residential flat. The email sent on 10 July 2018 was a protected disclosure.

118. As a matter of fact, the Tribunal has found that the Claimant did not disclose information on 18 April 2019 which tended to show a relevant breach. There is no evidence of any communication with Mr Anderson or Ms Selhurst at that time about anything other than a defective till with no further information tending to show that this would endanger her health and safety.

119. The final protected disclosure relied upon is the written grievance dated 19

May 2019. The Tribunal does not accept the Respondent's submission that the grievance contained only allegations. In her letter, the Claimant not only alleges that she had been treated inequitably at work but she also goes on to give information about the way in which she says this had happened, with examples of buddy calls, shift issues, financial checks and the disagreement with Chandrika. The Claimant subjectively believed that this information showed that she had been disciplined for similar conduct where colleagues were not. That information could not objectively reasonably be considered as tending to show that her health and safety were in danger, but the Tribunal concludes that it could so be considered under s.43B(1)(d) as tending to show breach of legal obligation (the implied term of trust and confidence in all contracts of employment).

120. The key issue, we consider, with this disclosure is whether the Claimant had the necessary reasonable belief that it was in the public interest rather than in her own, personal interest only. In her submissions on behalf of the Claimant, Ms Thompson maintained that it did as it related to the Respondent's conduct as an employer and its obligation to operate fair procedures. Having regard to all of the circumstances including the **Chesterton** factors, the Tribunal prefers the Respondent's submission and concludes that it would not be objectively reasonable for the Claimant to consider that this disclosure was in the public interest. She was the only person whose interests were served by the disclosure and the interests affected were those arising from her own circumstances and own employment contract. Although it was an allegation of unfairness it was not an allegation of discrimination, criminality or other more deliberate wrongdoing. The Respondent is a national business but there is no suggestion that inequitable treatment of the sort alleged by the Claimant arose as a matter of course, that it affected customers or other colleagues or that the nature of the Respondent's business made such conduct (if true) particularly remarkable (for example, the hypocrisy of a disability charity being said to be discriminating against a particular employee because of their own disability). The grievance dated 25 May 2019 was not a protected disclosure.

Detriments

121. Upon her reinstatement after appeal, the Claimant was not happy about being at Brick Lane and was genuinely concerned about whether or not she might be at risk of further disciplinary action. Her dissatisfaction manifested itself in a number of general complaints about the betting office environment and her perception of the adequacy of her colleagues. It is clear that the Claimant felt able to raise issues without with her managers in forthright terms, yet many of the grievances which the Claimant relies upon in detriments 3.1 and 3.2 are not supported by the evidence.

122. There was no grievance about training needs and only a few references in the WhatsApp messages to any concern about use of the tablet. These references did not suggest any particular training need and were no more than minor day to day issues. Both Mr Sharp and Mr Daley addressed the Claimant's concerns by suggesting use of informal support from colleagues and the issues were not raised again.

123. The Claimant did express a desire to move to another betting office in

WhatsApp message sent on 12 July 2018 and 9 August 2018. These are referred to in detriment 3.2 as grievances when the Tribunal regards them as requests supported by complaints about horrible customers, colleagues and the heat. These messages could not reasonably be considered to be grievances in the sense commonly understand in the employment context, namely as requiring a grievance process by way of response. Moreover, there is no reference to training needs, mice, cockroaches or electrical wires.

124. The Tribunal does not accept that Mr Sharp or Mr Daley failed to deal with the Claimant's complaints about Brick Lane and her dissatisfaction. Both provided considerable support to the Claimant and sought to reassure her in their regular discussions with her on visits to Brick Lane. Mr Daley did not ignore her request to transfer, instead he suggested that she speak to the Evelyn Street BPM to see whether there was a vacancy. Mr Sharp discussed the Claimant's desire to return to her former cluster with her and explained why a transfer would not be appropriate. Mr Adams also replied to the Claimant's request for a transfer and told her that she would need to contact the Regional Manager; the Claimant did not do so. The Tribunal does not conclude that it would be objectively reasonable for an employee in the Claimant's position to regard the refusal as a detriment in all of the circumstances. Moreover, the refusal had nothing to do with the protected disclosure on 10 July 2018 but was because the Respondent did not consider it sensible to send the Claimant back to work in her former cluster where she did not like colleagues, did not trust them and thought that they were out to get her, particularly her distrust of the Area Manager.

125. Despite it featuring heavily in evidence, the failure to take adequate measures to address the problem with heat at Brick Lane in the summer of 2018 was not one of the detriments identified in the list of issues. There is no evidence that the Claimant requested a move to any other betting office in the cluster as a result, nor have we found that the Respondent offered a move for at least part of the shifts due to the heat.

126. Detriments 3.3 and 3.4 arise out of the events surrounding the Claimant's fitness for work note in August 2018. The adjustments suggested by the medical consultant are those in the fit note provided to Mr Daley on 4 August 2018, with possible options being amended duties, workplace adaptions, possibly altered hours and advice that the Claimant avoid standing at work. Mr Daley and Mr Sharp had previously been supportive of the Claimant's health, permitting her to work compressed hours and to sit down at work. It is not plausible that they would have ignored this further medical advice and, we conclude, they did not as Mr Daley wanted to discuss them with the Claimant.

127. Given the apparent discrepancies in what the Claimant had told Mr Daley about whether she was fit to work, the crossings out on the fit note and the heated conversation about pay for the shift part worked, it was appropriate for Mr Daley to say that a more formal meeting in a private room was required to discuss the issues raised in the fit for work note and also the outstanding issue about pay for attendance at the medical appointment. The contents of the fit note and the possibility of adjustments were not ignored. Mr Daley sought advice from HR and more senior managers, he made reasonable efforts to meet the Claimant to understand what was required but the Claimant did not attend.

128. The context for the Claimant's suspension is relevant. The Tribunal has found that there was a genuine need for a more formal meeting and the Claimant had already failed to attend one scheduled meeting without any adequate reason. The meeting on 7 August 2018 was important and necessary. Mr Daley's use of WhatsApp to arrange the meeting was unduly informal: the meeting should have been properly diarised, with a written invitation giving a set time and a set place. Whilst WhatsApp messages can serve a purpose for day to day communication, as it clearly did, it is not the ideal medium for more formal communication regarding important matters. It is a common feature of this case that the Claimant felt that her managers were not communicating with her, regularly referring to being ignored. The Tribunal does not accept this criticism; it is not reasonable to expect an immediate response to every WhatsApp message and both Mr Daley and Mr Sharp did respond to the Claimant's concerns.

129. Nevertheless, despite the informal arrangement, the Claimant was aware that the meeting was due to take place as is clear from her message sent on the day of the meeting. The Claimant made clear that she did not intend to attend the meeting. The Claimant had already failed to attend a prior meeting without good reason. The content of her messages to Mr Daley were hostile and uncooperative. Having taken advice, Mr Daley genuinely believed that the Claimant was failing to follow a reasonable management instruction. This is the entire reason for her suspension and the Tribunal accepts that the protected disclosure on 10 July 2018 was not a cause in any way whatsoever

130. The Claimant's pay was first stopped at the end of August 2018 when her period of sickness absence started. This was before the submission of the first ET1 on 16 November 2018. The decision was taken by HR and was because the Claimant was subject to an ongoing disciplinary process. The subsequent problems with pay in November 2018 were due to administrative confusion about whether the Claimant had complied with the requirement to provide sick notes as none had been provided to Mr Daley. The Claimant undoubtedly feels aggrieved about her pay being stopped when she had in fact sent in valid sick notes but the Tribunal has accepted that it was poor communication between managers and HR which caused the problem. Once brought to Mr Sharp's attention, he acted promptly and contacted HR to resolve the issue and the outstanding payment was made in full the following month. This is not consistent with the Claimant's case that her protected disclosure on 10 July 2018 was the reason her pay was stopped. The Tribunal concludes that the protected disclosure was not in any sense whatsoever a cause of the detriment regarding pay.

131. The Claimant was suspended on 7 August 2018. Her grievance was not heard until 8 January 2019, there was no disciplinary investigation until 28 February 2019 and the disciplinary process only concluded on 3 April 2019. The process was protracted and the Tribunal accepts that this nine-month period of uncertainty was a cause of anxiety to the Claimant. Letters inviting the Claimant to meetings were not in fact sent to her and the Claimant was left to deal with uncertainty for a lengthy period of time. Ms Thompson's submission on the Claimant's behalf is that the Tribunal should infer from such unreasonable behavior that the protected disclosure was a material cause. Ms Eeley on behalf of the Respondent submits that the delay was in any event caused by the

surrounding circumstances and practicalities of following relevant procedures.

132. On balance, the Tribunal prefer the submissions of the Respondent. The delay was in part caused by the Claimant's sickness absence which required meetings to be postponed and in part caused by poor communication. The Claimant accepts that it was reasonable not to have a meeting before 25 September 2018. During the three-month period from 11 October 2018 to 8 January 2019, the Claimant was not able to attend meetings as she was unfit for work. The grievance decision was sent within two weeks of the grievance hearing. The delay from the investigation meeting to the disciplinary outcome is unexplained and is unreasonable, but it is implausible that Ms Sellars, who decided that the disciplinary process should discontinue, would be in any way motivated to delay communication of that decision because of a protected disclosure made almost a year before and relating to matters with which she was not involved. For these reasons, the Tribunal does not infer from unreasonableness that the delay was in any way whatsoever caused by the protected disclosure made on 10 July 2018.

133. It is not a fair criticism of the grievance decision to suggest, as the Claimant does, that Ms Sumner failed to provide reasons for the grievance outcome. It became evident during the course of the hearing that the Claimant's real complaint is that she did not agree with some of the findings and that, as far as she is aware, no action was taken against the colleague to whom she referred. The Tribunal considers that Ms Sumner dealt with the grievance thoroughly and fairly; she was sympathetic to the Claimant and carried out reasonable investigation upon which she reached her conclusions for reasons unrelated to the protected disclosure. The decision letter was very detailed, accepted some of the points made by the Claimant, rejected others and made constructive recommendations to improve matters going forward. There was no detriment to the Claimant, far less one caused by a protected disclosure.

134. Detriment 3.8 is said by Ms Thompson to be part of a pattern of accusing the Claimant of wrongful conduct. The Tribunal does not agree. This was not an accusation of wrongdoing by Mr Marsh, simply a management query which was swiftly resolved when the Claimant's answer was given and immediately accepted without further question. No reasonable objective employee in the Claimant's position could have a justified sense of grievance arising from this telephone call. It was not a detriment.

135. After the Claimant and Chandrika disagreed about the key, we have found that they were rostered to work together on two occasions in June 2019. The Tribunal cannot decide who made the decision. On balance, we have inferred that it was an inadvertent action which arose from Chandrika's role as cover staff. For reasons set out in our findings of fact, the Tribunal found it implausible to infer that it was because of a protected disclosure in circumstances where, as soon as the Claimant objected, they were not required to work together again. Even if this were a detriment, it was not because of the protected disclosure made on 10 July 2018.

136. It is convenient to consider the alleged detriments arising from the redundancy situation together below. The next non-redundancy detriment is at

3.12. As set out in our findings of fact, the Tribunal regarded this as little more than gossip. It is not safe to infer from a relatively mundane technical IT issue about the ability to download a document, that the Claimant has been subjected to a detriment, far less that it was because of a protected disclosure, particularly in circumstances where the Claimant's records had clearly not been deleted. Moreover, as the Respondent submits, there is no evidential basis on which we could find that the relevant member of HR even knew of the 10 July 2018 protected disclosure.

137. Detriments 3.13 and 3.14 arise from the Claimant's grievance raised on 25 May 2019. The grievance hearing took place on 13 June 2019 and the decision was sent on 21 July 2019. During this period, Mr Anderson had two periods of annual leave and the Respondent was engaged in a large-scale national redundancy exercise from at least 4 July 2019. The Tribunal concludes that these two factors combined were the reason why the process took two months to conclude. It is not plausible that a protected disclosure made a year earlier about a betting office at which the Claimant was no longer working was in any sense whatsoever a material cause of this short period of delay.

138. Mr Anderson gave detailed reasons for rejecting the grievance. The Claimant describes these as a lie from beginning to end. The Tribunal has not accepted that description of the grievance decision and has found as a fact that Mr Anderson genuinely believed that the grievance was not well-founded for the reasons given in his letter. This had nothing at all to do with the protected disclosure on 10 July 2018.

139. The final detriments not arising from the Claimant's dismissal are those at 3.15 (Mr Anderson accused her of doing lower hours whilst on a phased return) and 3.20 (Mr Denbigh rejected the appeal against grievance). The Tribunal has not found that Mr Anderson accused the Claimant as alleged. There was no contemporaneous complaint. The contemporaneous correspondence between the Claimant and Mr Anderson is not consistent with such an accusation being made and it is inherently implausible that such an accusation would have been made in the circumstances of the review only three days earlier and Mr Anderson's familiarity with the arrangements. As for the appeal, the Tribunal accepted Mr Denbigh's evidence that he knew nothing at all about the protected disclosure. Even if there were a detriment, it was in no sense whatsoever because of the protected disclosure.

140. The remaining detriments arise out of the redundancy exercise which culminated in the termination of the Claimant's employment. For reasons set out below in connection with the unfair dismissal claim, the Tribunal has accepted that there was a genuine redundancy situation. A large number of the Respondent's betting shops were closed across the United Kingdom following regulatory changes, resulting in a corresponding diminution of the requirement for CEMs. The Claimant's betting office was one of those closed.

141. The Claimant asserts that the contact from Mr Delgado on 4 and 5 July 2019 were detriments because she had been singled out in circumstances where none of her colleagues had received similar contact. The content of the 4 July 2019 WhatsApp message is set out in full above and the Tribunal found nothing

sinister in it, even if other colleagues did not receive a similar message. It was the Claimant who initiated the possibility of a meeting and Mr Delgado merely replied in circumstances where he would inevitably need to meet and consult the Claimant and other affected employees at some point. Ms Thompson submits that it was far from innocuous for Mr Delgado not to reply when the Claimant asked if she was to be made redundant. The Tribunal disagrees. At this date, the redundancies had only just been announced and there had been no consultation meeting or application of selection criteria. There was no easy response which Mr Delgado could have given to such a premature question; his failure to respond is entirely understandable in the circumstances.

142. There was no discussion on 5 July 2019 about the restructure in any event as the betting office was busy. It follows that the Claimant was not spoken to privately as she asserts in the issues. More broadly, the Claimant's case appears to be that this contact by Mr Delgado permits the inference that she had been pre-selected for redundancy. The Tribunal does not consider that this is an appropriate inference in circumstances where all employees in the betting offices faced with closure were equally at risk and no conversation in fact took place. The Tribunal considers that the appropriate inference is that Mr Delgado was seeking to be supportive of the Claimant and provide appropriate communication at a difficult time. No reasonable objective employee in the Claimant's position could have regarded this as a detriment.

143. As for detriment 3.16, the Claimant was told on 8 September 2019 that she had been selected for redundancy. The Claimant's case is that this was because Mr Corfield had assessed her scores, that he had done so unreasonably and negatively having previously dismissed her in 2017. The Tribunal has found that Mr Corfield did not dictate the scores but did have more active input than a simple review of scores given by Mr Delgado. In essence, this was a more collaborative exercise than the Respondent's case states and was not a single assessment by Mr Corfield as the Claimant's case suggests.

144. The Tribunal has not accepted either that Mr Corfield previously dismissed the Claimant nor has it accepted as a fact that the Claimant's BPM values were unreasonable or negative. Indeed, this score was one of her strongest areas and was the only part of the score which was decided by the BPMs. It is perhaps indicative of the Claimant's tendency to see malign influence even where none exists that she has also asserted during the course of the evidence that the BPMs marked the chemistry assessment and that she was unfairly marked on the disciplinary score. In fact, the Claimant obtained the full score for the disciplinary criterion and the chemistry assessment was entirely independent of the BPMs. The Tribunal does not accept that the Claimant was subjected to the detriment as set out in the list of issues, she was properly and fairly scored.

145. It is not in dispute that the Evelyn Street betting office in fact closed in September 2019. Thereafter, redeployed employees began to work at their new betting offices and those who had not been redeployed worked out their notice period as cover for other betting offices. As with other CEMs facing redundancy, the Claimant was not a relief manager but was being used as short-term cover in the particular circumstances of employment shortly due to terminate. A WhatsApp message sent on 11 September 2019 is consistent with the

Claimant's case that she was required to cover four betting offices that week whereas other employees only covered one betting office. The Claimant's belief at the time is that this was because they drove to work and she took public transport. Whilst the Tribunal accepts that this may reasonably have been considered unfair by the Claimant and amounted to a detriment, there is no primary finding of fact from which we could conclude that it was in any way because of an email about holes in the ceiling and heat at a different betting office, sent 14 months earlier.

146. The Claimant did request her redundancy scores in her email sent on 11 September 2019. At the second consultation meeting, she had been told the percentage score for each of the four criteria and her overall total; she had not been given the detailed breakdown of how each percentage score was calculated. For reasons set out below, the Tribunal consider that it would have been better for the information leading to the score card percentage to have been provided to the Claimant. It would have provided greater transparency and enabled the Claimant to challenge the cash and bet discrepancies if she genuinely believed that they were not her responsibility. This is not to say that the failure to do so renders the dismissal unfair for reasons set out below, however, the Tribunal accepts that it was a detriment.

147. In her submissions, Ms Thompson did not specifically address the facts relied upon by the Claimant in establishing a causal link between the 10 July 2018 protected disclosure and this detriment. In her evidence, the Claimant was unable to identify anything other than her belief that her earlier complaints were the reason she was treated in way which she considers unfair. Nevertheless, the Tribunal considered carefully whether there was anything in the overall pattern of the Respondent's conduct or other findings of fact from which we could conclude that the protected disclosure had been a material cause for the failure to provide the scores. We decided that there was not. Mr Delgado had no reason to regard the Claimant in a negative light because of her protected disclosure, not least as Brick Lane was not a betting office for which he was responsible. The Claimant's conduct following her reinstatement and her evidence at Tribunal were characterised by a clear, but unfounded, distrust of all managers with whom she dealt leading to an unshakeable subjective belief which was entirely unsupported by primary facts and which was often implausible. On balance, the Tribunal rejects the Claimant's case and finds that her protected disclosure was in no sense at all a material cause of the failure to provide her with the detailed scores supporting the scorecard percentage.

148. It is a matter of fact that the Claimant's appeal was not heard before her employment terminated and that she was not successfully redeployed. The Claimant asserts that her colleagues were treated more favourably and, the Tribunal understands, that we should therefore come to the conclusion that it was because of her protected disclosure. For reasons set out more fully below, the Tribunal does not accept that the reason for dismissal, selection for redundancy or failure to be redeployed were in any way because of a protected disclosure. The detriments related to redeployment at paragraphs 3.22, 3.23, 3.24, 3,25, 3.27 and 3.28 are no longer relied upon, which leaves the delay in the appeal and the appeal decision.

149. The Claimant was told that she had not been redeployed at the meeting on 8 September 2019, she appealed on 13 September 2019 and her employment terminated on 30 September 2019. The appeal hearing was originally due to be held on 3 October 2019 but was postponed because the Claimant's trade union representative was not available. Ms Jackson suggested to HR that somebody else hear the appeal as she knew that she was due to start a two-week period of annual leave. On her return, she found out that nobody else had been able to deal with it and therefore made arrangements for the appeal hearing to take place as soon as practicably possible. Given the size of the restructure and the reduction in all levels of employee, including Area Managers, it is not surprising that there were fewer independent people who would be available.

150. The Tribunal accepts the submission of Ms Eeley that the scheduling of any appeal hearing was entirely independent of other appeal hearings, without central coordination or a dedicated window. This is not a case where the same manager heard all of the appeals and therefore an inference may be drawn from an unusually long delay for one employee compared to others in the same situation. If it had not been for the unavailability of the Claimant's trade union representative, the appeal hearing would have taken place within only a few days of the end of employment. For all of these reasons, the Tribunal is not satisfied that the difference of treatment is a fact from which we could appropriately infer that the delay was in any material sense caused by the protected disclosure.

151. In reaching her decision, Ms Jackson limited her consideration to the redundancy scoring and redeployment decisions. She objectively reviewed the scores and the redeployment process, including the treatment of other colleagues of the Claimant. Ms Jackson interviewed Mr Corfield as part of her investigation and checked for any possible vacancies at the date of the appeal hearing. Whilst her decision may not have been welcomed by the Claimant, the Tribunal accepts that it was her genuine assessment based upon the evidence which she obtained. Ms Jackson was an appropriate impartial decision maker. Although Ms Jackson was aware of the protected disclosure because the Claimant had referred to it, her decision to disregard it is more consistent with an appeal decision based solely on the redundancy process than one caused in any material sense by that disclosure.

152. Having considered each of the detriments individually, the Tribunal stood back to consider the picture as a whole. In doing so, it is instructive to consider the auto-enrolment detriment at issue 3.21. The Claimant's case is that this was a protected disclosure detriment because July 2019 (the assessment month) was the only month in which she did not meet the earnings threshold. The Tribunal considered this symptomatic of the way in which the Claimant tended to see any treatment which she subjectively perceives to be unfair or unreasonable in the light that "it must be because of the protected disclosure". Just as the Claimant on occasion characterized as a lie something which was clearly an innocent mistake (such as Counsel's error about the date of the final consultation meeting), she equally maintained her assumption that the protected disclosure "must be" the link even when, as here, it was Capita as an external administrator of the pension which decided the assessment month for all employees of the Respondent and the Claimant accepted that there was no evidence at all that

they knew of an entirely unrelated complaint about Brick Lane. The Tribunal has concluded that this is inherently implausible. Even looked at overall, the Tribunal is satisfied that where detriments have been established (as set out above), none of them was in any way whatsoever caused by the protected disclosure on 10 July 2018.

Unfair Dismissal – s.103A and s.98 ERA

153. The Claimant's dismissal followed a national restructuring which led to the closure of a large number of betting offices throughout the United Kingdom and the loss of jobs for 627 CEAs, 739 CEMs and a reduction at management level. Around 4,500 employees were at risk of redundancy although fortunately a large number could be redeployed. The Respondent has shown that there was a genuine redundancy situation and that this was the sole reason for the Claimant's dismissal. The protected disclosure made on 10 July 2018 was not the sole or principal reason for either her selection for redundancy or her failure to secure alternative employment.

154. The pool of all employees at betting offices due for closure was with the range of reasonable choices for an employer.

155. The selection criteria were agreed after consultation with the internal employee representative body. The scorecard was based upon data already in existence from a system which applied to all CEMs, the external chemistry assessment and the disciplinary score were each an objective and fair criterion. Whilst there was a risk that a cash or bet discrepancy registered against a CEM may not in fact be their own personal responsibility, the Respondent took reasonable steps before assessment to ensure that the data was reliable and robust. Given the size of the restructuring exercise and the numbers involved, the Tribunal accepts that this selection criterion fell within the range of reasonable and fair criteria open to the Respondent to apply.

156. The only subjective criterion was the BPM values rating. This comprised only 20% of the overall score. In all of the circumstances, the use of this subjective criterion was not unfair. Overall, the selection criteria adopted were clear and transparent, sufficiently objective and precise, and their respective weight was carefully calibrated to ensure fairness.

157. The selection criteria were fairly applied to the Claimant. Ms Thompson submitted that the Claimant was not provided with appropriate support to complete the chemistry assessment, comparing her to an employee within Ms Jackson's area who did receive support. However, there is no evidence that the Claimant asked for support or that she had told her managers that she had dyslexia which may affect her performance. Moreover, she was able to complete the assessment on her own computer, in her own home and at a time of her choice. The Claimant's disappointment at being selected for redundancy is evident and understandable. However, her assertions of unfair scoring are without merit and again appear to be born of a view that because she does not agree with the decision, "it must be" unfair. This belief was strongly held even where demonstrably wrong, for example the assertion that the Respondent improperly took into account the rescinded dismissal when on the information

available to the Claimant by 8 September 2019 it was clear that she had scored the full 10% on this criterion. The Tribunal considers this indicative of how the Claimant's subjective perception clouds her ability to view the situation objectively and thereby renders her case unreliable when based solely on her belief without consistent evidence in support.

158. Mr Corfield's involvement in the scoring assessment on the BPM values rating was not negative or unreasonable. It is not for the Tribunal in an unfair redundancy case to embark upon a detailed re-marking of selection scores so long as it is satisfied that they were applied fairly. We are so satisfied on the evidence before us.

159. In considering the procedure applied, the Tribunal were conscious that the information underpinning the score on the Individual Score Card was not provided to the Claimant prior to the termination of her employment or her appeal hearing, despite her contemporaneous request. If it had been, the Claimant may have challenged the bet and cash discrepancy scores as part of her appeal. The Tribunal conclude that it would undoubtedly have been better if the information had been provided. It may have helped the Claimant to understand why her score was so low and provided greater transparency. For consultation to be meaningful, the employee needs to have access to adequate information.

160. However, there is no general obligation to provide an employee selected for redundancy with all of the information on which the decision was based in order that it might be subjected to detailed scrutiny. The question for the Tribunal is whether what was provided was sufficient to render the dismissal fair in all of the circumstances of the case having regard to the **Compair Maxam** guidelines. Factually, this is not a case where the Claimant was not told her detailed scores: she was given a breakdown of the percentage score for each criterion in the second consultation meeting. There was an adequate opportunity to discuss those scores within the meeting and the Claimant was told of Mr Corfield's involvement in the scoring process. The scores are relevant to redeployment rather than selection for redundancy. The chances of redeployment were part based on scores and part based on geographic proximity. Even without the detail of the discrepancies, the Claimant had enough information provided for consultation to be meaningful and to be fairly considered for redeployment.

161. The initial redeployment day was well-structured, organised and systematic. Every affected employee was properly considered for all available vacancies. As Ms Eeley submitted, there was no element of individual preference in the allocation of redeployment opportunities.

162. After the structure of the redeployment day, the redeployment process was not organised centrally and instead any vacancies which arose were dealt with informally. The BPM in the cluster where the vacancy arose would discuss with colleagues which employees were still available. According to score and proximity, vacancies were offered to those who expressed interest. This was the process for all employees whether or not they had appealed and whether or not any such appeal had been heard and concluded. The Tribunal has found that there was no ongoing proactive process for making employees facing redundancy aware of new vacancies. Instead, we infer, that in the three weeks

between redundancy selection and termination of employment, there was an expectation that employees would engage proactively in checking for vacancies and expressing interest if they arose. The vacancies were made available to all on the internal jobs database.

163. The Tribunal concludes that in a perfect world, all employees working their notice prior to termination would have been individually notified of all vacancies which had arisen in their cluster and nearby clusters. However, the Tribunal also accepts that section 98(4) is not a requirement for perfection but a question of what is fair in all the circumstances of the case, from the date that notice is given through to the last day of employment (see **Stacey**). The employer is under a duty to do what it can so far as is reasonable to seek alternative work as an alternative to dismissal.

164. The Tribunal accepts Ms Eeley's submission that it would be outside the range of reasonable responses to require the Respondent to contact every single redundant colleague to notify them of ongoing vacancies given the size of the restructuring exercise, the number of employees affected and the nature of the work (essentially, two generic roles – either CEM or CEA). The time between redeployment decisions and the start date for the new structure was relatively short and the Respondent took reasonable steps by making all employees aware that there may be vacancies on the internal job site and by restricting any vacancies to internal candidates only. The vacancy lists from the beginning of October 2019 are consistent with the Respondent's case that jobs were restricted to internal advertisement for an initial two-week period. The Claimant was not able to identify any potentially suitable vacancy on the internal lists prior to 25 October 2019, by which date her employment had terminated and no vacancy had been identified by Ms Jackson at appeal.

165. The Claimant has raised the issue of inconsistent treatment of other staff (although many are no longer relied on as detriments, the Claimant was clear that they were still relied upon in the unfair dismissal claim). This arises from the redeployment and appeal issues.

166. Whilst the Tribunal accepts that there was a difference in treatment, in that Ms Davis, Daniela, Lakis and Mr Ellis were all redeployed, we do not consider that it is of a kind to render dismissal unfair. In the case of Lakis, he was equally unable to secure the outcome he wanted in the process as he was not permitted voluntary redundancy. As for Ms Davis, Daniela and Mr Ellis, each was redeployed after the conclusion of the formal selection day process. In none of their cases were the Tribunal satisfied that their redeployment had been inconsistent with the more informal process described above. Essentially, each case was considered on its own merits and there is insufficient evidence from which the Tribunal could conclude that there had been inconsistency of a sort to render the dismissal of the Claimant unfair.

167. Whilst it is regrettable that the Claimant's appeal was not heard until 24 October 2019, the initial hearing date was 3 October 2019 and had to be cancelled because of the unavailability of the trade union representative. The subsequent delay was in part due to Ms Jackson's annual leave and in part due to the reduced numbers of alternative Area Managers available in her absence.

Any delay did not prejudice the Claimant as she was able to apply for any further vacancies before her appeal concluded and the position with vacancies was considered afresh at the date of her appeal. Even if her appeal were heard on 29 September 2019, the focus would have been on redeployment only and the available vacancies would have been no different.

168. For these reasons, the claim of unfair dismissal fails and is dismissed.

Overview

169. In our findings of fact and conclusions the Tribunal has addressed specific disputes of fact and contemporaneous evidence. In addition, we would add that we were impressed by the evidence of Mr Sharp who we concluded had genuinely tried to reassure and assist the Claimant during what he appreciated was a vulnerable period after reinstatement. The Tribunal also found Ms Jackson to be a particularly reliable witness who was able to provide further detail about the redeployment process with a spontaneity and clarity which was impressive. The Claimant was an honest witness and somebody who genuinely believes the accuracy of her evidence, however, the Tribunal found that there were many occasions where her evidence was less than reliable due to the passage of time and the clear sense of bitterness which she feels.

170. The Claimant's vulnerability and anxiety were exacerbated by very different expectations about communication which she and her managers demonstrated. There is an inevitable impact on the relation of trust in the working environment for an employee who has been summarily dismissed for reasons which they consider entirely unfair. To the Respondent's credit, it reinstated the Claimant on appeal in 2018 but the experience led to such a deep level of distrust on the part of the Claimant that she convinced herself that the Respondent was trying to dismiss her. The lack of trust was demonstrated even with managers such as Gabby and Mr Sharp, with whom the Claimant said she got on well. In essence, when something happened which a different CEM may take in their stride, the Claimant was anxious that it may be used against her. If she tried to raise her anxiety in a WhatsApp message, every step taken or not taken by managers was interpreted by her as negative and fed into her sense that she was somehow being targeted and set up to fail. Objectively, the Claimant's distrust was not well placed but subjectively we accept that it was genuine and clearly a source of great anxiety to her.

171. The Tribunal appreciates that BPMs are busy with multiple betting offices to oversee. Mr Sharp and Mr Daley considered the issues raised by the Claimant to be ordinary operational matters, perhaps indicating a degree of over-worrying on her part. Whilst the Tribunal accepts that they tried to tell the Claimant not to worry, excessively informal communication by a medium such as WhatsApp did not help – instant messaging created for the Claimant an expectation of an instant response which was not always reasonable but nevertheless caused her increased anxiety.

172. Whilst we have not accepted the Claimant was subjected to detriment for blowing the whistle or unfairly dismissed, the Tribunal recognises the genuine anxiety experienced by the Claimant. The Claimant genuinely loved her job and

was committed to her customers. As a vulnerable employee fearful for her job security, a more proactive approach to reintegrating her into the workplace may have helped to calm her concerns and rebuild trust. It is a sad feature of the case that the Respondent, including Mr Daley and Mr Sharp, accept the Claimant's love of her job and commitment; regrettably, however, a large-scale redundancy exercise pitted her against a large number of equally able and committed colleagues for a reduced number of vacancies.

173. The Tribunal would like to thank the representatives for their care and skill in presenting the case. In particular, the considerable assistance provided by Ms Thompson through her hard work and clear ability. The Claimant can be assured that her case was put to its highest extent.

174. Employment Judge Russell apologises for the delay in sending this Judgment to the parties. The decision and reasons were reached at the in Chambers day on 5 January 2021 and were dictated shortly afterwards. The subsequent delay was due to other judicial commitments which limited the time available to finalise the Judgment and Reasons before now.

Employment Judge Russell
Date: 13 April 2021

Schedule A
Issues

The issues the Employment Tribunal will be asked to decide at the final hearing are as follows.

1 The Claimant brings claims for detriment following making protected disclosures under section 47B of the Employment Rights Act 1996. The alleged disclosures are:

1.1 On 20 March 2018 to her line manager "Gabby' notifying her that there were cockroaches in the Brick Lane outlet and that there were loose electrical wires in the ceiling. It is alleged that this is a protected disclosure for the purpose of section 43B(d) of the Employment Rights Act 1996 ('ERA') in that the health and safety of staff and customers was likely to be endangered.

1.2 On 10 July 2018 by email to Daniel Daley and Jason Sharp complaining about the lack of air conditioning and the heat at the Brick Lane outlet. It is alleged that this is a protected disclosure for the purpose of section 43B(d) of the Employment Rights Act 1996 ('ERA') in that the health and safety of staff and customers was likely to be endangered. If the Claimant is a worker, what was the correct rate of pay.

1.3 On 18 April 2019 the Claimant raised concerns regarding her health and safety with James Anderson and Kelly Selhurst.

1.4 On 25 May 2019 the Claimant raised a formal grievance regarding behaviour of Chandrika and different treatment.

2 The Tribunal will consider whether any or all of the above alleged disclosures are qualifying protected disclosures for the purposes of sections 43B and 43C of the Employment Rights Act 1996.

3 The alleged detriments are as follows:

3.1 Gabby failed to deal with the grievances regarding the Claimant's training needs made on 20 March, 10 April, 1 May and 21 May 2018.

3.2 Daniel Daley and Jason Sharp failed to deal with the Claimant's grievances regarding training needs and wish to move from the Brick Lane outlet. The Claimant alleges that she raised these grievances to them on 1 June, 12 July, 14 July, 17 July 2018 and 9 August 2018.

3.3 The Claimant had adjustments suggested by her medical consultant in a sick note on 4 August 2018 ignored by her managers.

3.4 The Claimant was suspended on full pay following investigation on 7 August 2018.

3.5 The Claimant alleges that her pay was stopped and then reinstated following submission of her ET1.

3.6 The delay in dealing with the investigation allegations against her.

3.7 Not providing reasons for the outcome of her grievance on 20 January 2019.

3.8 Receiving a call from Adam, her line manager in mid to late April 2019 wrongly accusing the Claimant of not doing a shift.

3.9 Being put on the rota with Chandrika following from 13 June 2019. The Claimant had complained about Chandrika and believed it was unfair and unreasonable to be required to work with her.

3.10 On 4 July 2019 being singled out by line manager Simon by being sent a text message stating that he needed to see the Claimant. The Claimant alleges that none of her other colleagues received such a text. The Claimant worked with Kiera, Lakis, Gloria and Lola at the time. Chandrika and others were said to be 'spare' staff.

3.11 On 5 July 2019 being spoken to be Simon privately, before anyone else was contacted. The Claimant did not know if Simon spoke to anyone else on this date.

3.12 On 9 July 2019 being told by her former manage Mustafa, that he had been working with another line manager in HR, Rocheen, and she informed him that he was shocked that the Claimant was still employed as she had been informed that HR were told to get rid of all the paperwork relating to the Claimant.

3.13 On 10 July 2019 by James Anderson and Ellen in HR had delayed in dealing with the Claimant's grievance. There is no complaint about the redundancy consultation meeting on 10 July 2019. The Claimant asked for redeployment and received the notes of this meeting 2 days later.

3.14 On 24 July 2019 James Anderson rejecting the Claimant's grievance.

3.15 On 26 July 2019 James Anderson accused the Claimant of doing lower work hours in when she was on a phased return to work.

3.16 On 8 September 2019 being made redundant. The Claimant alleges that her former manager Mark assessed her scores unreasonably and negatively. He had previously dismissed the Claimant in January 2018 but his dismissal was overturned on appeal in February 2018.

3.17 The Evelyn St store closed on 8 November 2019 and the Claimant was asked to cover 4 stores instead of, like her colleagues, only one store.

3.18 On 11 September 2019 not providing the reasons for the redundancy score process.

3.19 The Claimant appealed her dismissal on 13 September 2019 but her appeal was not heard before the dismissal date of 30 September 2019, unlike her colleagues Lakis, Danielle, Katrina and Tony Ellis.

3.20 On 16 September 2019 Andrew, Area Manager refused the Claimant's appeal against her grievance.

3.21 On 2 October 2019 the Claimant discovered that she was not auto enrolled in the Respondent 's pension scheme which should have occurred in April 2019.

3.22 On 7 October 2019 the Claimant was informed that her colleagues Lakis, Danielle, Katrina and Tony Ellis were successful in their appeal against dismissal and had been reinstated.

3.23 On 12 October 2019 the Claimant received a text that other colleagues were keeping their jobs.

3.24 On 23 October 2019 Katrina sent the Claimant a message that she was encouraged to appeal her dismissal for redundancy and that she was reinstated.

3.25 On 24 October 2019 the Claimant's redundancy appeal was heard. The Claimant states that her colleagues had their appeals earlier that her.

3.26 On 4 November 2019 the Claimant's appeal against redundancy was dismissed by Yvonne. She contends that the Respondent unfairly accounted for her rescinded dismissal as part of the redundancy scoring process.

3.27 On 11 November 2019 the Claimant was informed by a former colleague, Cheryl, that the Respondent were still recruiting staff.

3.28 On 5 December 2019 the Claimant became aware that the Respondent was internally and externally recruiting for positions. The Claimant was not provided information about such roles.

Automatic unfair dismissal

4 Whether the Claimant was dismissed by reason or principle reason of making a protected disclosure contrary to section 103A of the Employment Rights Act 1996.

Unfair dismissal

5 Whether the Respondent has established a potentially fair reason for dismissal. The Respondent asserts redundancy.

6 If the Respondent has established a potentially fair reason for dismissal, whether the dismissal is fair and reasonable in all the circumstances having regard to:

6.1 Selection criteria and selection pool;

6.2 Fair application of the selection criteria for redundancy;

6.3 Whether there were any alternatives to redundancy;

6.4 Whether the Claimant's appeal was dealt with fairly;

6.5 Whether there was inconsistent treatment with other members of staff;

6.6 Whether there was alternative work available.

Remedy, if appropriate

7 Whether any compensation due to the Claimant should be reduced in terms of Polkey v Dayton Services Ltd [1987] ICR 142.

8 Whether the Claimant has taken reasonable steps to mitigate her loss.

9 Whether the Claimant is entitled to a sum for injury to feelings or personal injury.

10 Whether there should be any adjustment to compensation in respect of any failures to comply with the ACAS procedures on discipline or grievances.