



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4105339/2020

Held in Dundee on 30 & 31 August and 1 September 2021

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**Employment Judge McFatridge
Tribunal Member A Shanahan
Tribunal Member E Hossack**

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Ms Pauline Sanson

**Claimant
In person**

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Forth Valley Health Board

**Respondent
Represented by:
Mr Davies,
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The unanimous judgment of the Tribunal is that the claimant's claim of detriment for making public interest disclosures fails. The claim is dismissed.

REASONS

35 1. The claimant submitted a claim to the Tribunal in which she claimed that she had been subject to various detriments as a result of making protected disclosures. She claimed under section 47B(1) of the Employment Rights Act 1996 and Regulation 3 of the Employment Rights Act 1996 (NHS Recruitment – Protected Disclosure) Regulations 2018. The respondent E.T. Z4 (WR)

submitted a response in which they denied the claims. The claim was subject to a degree of case management and a final hearing took place over three days. At the hearing the claimant gave evidence on her own behalf. Evidence was led on behalf of the respondent from Anne Lackie a Practice Education Facilitator with the respondent, Anne Cook a Service Manager (previously Clinical Nurse Manager) with the respondent, Lorraine Robertson Head of Mental Health Nursing with the respondent, Ellen Margaret Hudson Deputy Nurse Director with the respondent and Angela J Wallace Executive Nurse Director with the respondent. Michael Brown Head of HR Resourcing for the respondent had originally been asked to attend the Tribunal to give evidence on behalf of the respondent. He was in attendance on the morning of 1 September however the respondent's agent advised that having considered matters overnight he no longer required to call Mr Brown. The Tribunal enquired of the claimant whether she wished to take advantage of Mr Brown's presence to call him as a witness for the claimant and the claimant stated that she did. Mr Brown thereafter gave evidence on behalf of the claimant. A joint bundle of productions was lodged. On the first day of the Tribunal the claimant sought permission via email to lodge certain copy emails. The respondent did not object to this and these were added to the bundle. Some were, in fact, already in the bundle. The claimant sought permission to lodge a video however the Tribunal did not consider this to be relevant since on the basis of the information before us it appeared to be a generic video available on the internet from a member of staff at Stirling University confirming that they worked closely with the NHS in the training of nurses. The Tribunal heard direct evidence in relation to this point from a number of the respondent's witnesses. In any event the claimant did not raise the matter in her own evidence or at any point. On the basis of the evidence and the productions the Tribunal found the following essential facts to be proved or agreed.

Findings in fact

2. The respondent is Forth Valley Health Board. They are a medium sized health board in Scotland providing for health care needs of around 400,000 people in the Stirling and Clackmannan area. They have around

3500 nursing staff. As a health board they are closely involved in medical education and maintain close links with a number of higher education facilities including Stirling University.

3. In 2019 the claimant was a third year nursing student enrolled at Stirling University under their Pre-registration Nursing Programme. This programme lasts three years and is divided into six semesters. As part of the course students undertake six placements to provide them with practical experience usually one per semester. In June 2019 the claimant had completed five of the practical placements and was engaged on her final placement at Ward 5, Forth Valley Royal Hospital. The claimant was training to be a Mental Health Nurse. Wards 1-5 at Forth Valley Royal Hospital are the mental health wards. The claimant had previously completed a placement in Ward 2.
4. The placement in Ward 5 was to be the claimant's final placement. As part of the placement process each nursing student is assigned a mentor or a mentoring team comprising of a nurse or nurses on the ward who are responsible for ensuring the student's professional development during the placement. The mentor (or mentoring team) requires to sign off the claimant's satisfactory performance at the end of each placement. Each student requires to maintain a document folder known as an OAR. This document is essentially a log of the various placements and experience which a student has undertaken. It is the student's responsibility to ensure the safety of this document. At the end of the final placement it is the responsibility of the mentor (or mentors) who are dealing with the final placement to review the OAR in its entirety and then sign off the student as being fit to proceed to be registered as a nurse. Each placement would usually last 12-14 weeks.
5. During the course of her final placement on Ward 5 the claimant wrote a number of emails to the charge nurse who was in charge of the ward. This behaviour was considered unusual since the charge nurse is either available on the ward or available in the charge nurse office which is immediately next to the ward. Usually communications in the ward setting would be made face to face. None of these emails were lodged for the Tribunal. The charge nurse reported her concerns about the emails to

Anne Lackie who was the PEF who was responsible for dealing with issues which arose with regard to students on placement. Essentially she was concerned about the fact that part of the professional requirements for a nurse is that she be able to work as part of a team and communicate effectively with the charge nurse on a ward.

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6. Ms Lackie had had previous contact with the claimant in 2017 regarding issues which had arisen in relation to a previous placement. At that time the claimant had been issued with an Improvement Plan. The claimant had accepted the Improvement Plan however she had a strong sense of grievance in relation to the way this matter had been dealt with and considered that she had been treated unfairly. The claimant had also contacted Ms Lackie in 2019 to raise an issue regarding a university “quality initiative” practicum which she had failed. Ms Lackie had responded to her to advise that the question of whether or not the claimant had failed this academic assessment was entirely a matter for the University of Stirling and not one in which Ms Lackie could be involved. The emails relating to this exchange were lodged (page 74-75). Ms Lackie phoned the charge nurse and following this she sent an email dated 17 June 2019 to the University Practice Learning Team email address. The email was lodged (page 116). It states:-

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“Hi

As per email below I have just phoned Lee-Anne. Issues she wanted to discuss are in relation to CP6 student Pauline Sanson. There appear to be issues with how Pauline is integrating into the team and her anxiety levels extremely high with her emailing SCNs repeatedly. However Pauline has just emailed SCN to say she is going to be off sick tomorrow and does she need to phone the ward as well to follow absence reporting procedures.

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I am aware of previous issues at the university recently with this student and think we need to respond cautiously.

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I have advised Lee Anne to make Pauline aware that she has contacted me because she is concerned with regard to the number of emails she is sending and how she is integrating into the nursing team. I have suggested we visit the ward to speak with Pauline and her

mentor and Lee Anne is going to send me the off duty for both mentor and student. I am concerned about this student's general wellbeing at present."

7. On 14 June the claimant had sent an email to Catherine Quinn one of the other senior charge nurses on Ward 5. Since the claimant relies on this as one of her protected disclosures it is as well to set out the terms of this email in full:-

"Hello Catherine,

I am writing to you to let you know about a situation on placement tonight that I feel was not handled well at all.

Tonight after a great shift, the night staff came on to the handover, one of them being Staff Nurse Fiona. She started yelling at me that it was my responsibility to do the physical observations and she stated they were not all done. She did not approach me in a calm or tactful manner. She said that I was just standing around talking when the obs could of been done. I was quite offended by her yelling and telling me it was my sole responsibility for the following reasons. I feel her reaction was not in proportion to the issue/s at hand and she could of approached me in a much more civilized manner. In addition, I am have some concerns as she mentioned to staff yesterday that she is under police protection due to an ex boyfriend and the police follow her to work and her children's school etc. I feel that if she is under some type of surveillance for her safety it is not right she is at work as all staff's safety is important. I think staff should of been told this.

Getting back to my previous concerns about how she treated me which I will acknowledge why I found this not appropriate I will list in point form the sequence of events for the shift.

- Connor the other nursing student was co-ordinator for the backshift himself and me were on today in ward 5
- Connor assigned myself and another person to do physical observations
- I began doing the obs with James a HCA from ward 4.
- I monitored the patient WS and WJ closely as felt they were not doing well

- I kept ensuring after I stopped doing the obs that both HCA both named James were doing the obs. The one had told me they were complete

5 - I insisted on staff making sure JW obs were done hourly as requested by the Doctor and encouraged fluids. I took his obs and reported to the DR via phone that he had scored a 4 and explain the rate for each vital sign. The Dr. told Staff Nurse Joan that he felt the way I reported the obs was very well done and he thought both me and Connor worked well in the ward. I was pleased to hear the positive feedback

10 - I encouraged WJ to eat an egg sandwich and drink the coca cola in his room. He ate half a sandwich and had some crisps in addition to about 125 ml of water and coca cola. Before I encouraged WJ I went to the nurses to ensure if he was in fact a diabetic as I had thought someone had mentioned and was it okay to drink coca cola. They said it was. I assisted him with his pygamas

15 - I also noticed WS again with his head between his legs so took his obs and assisted him with his pygamas, call bell and getting to the toilet.

20 - I noticed the new patient as told by me from James that she was naked standing in her room. I asked her if she needed help getting changed and assisted her with her pygamas as well

- I took BM of WF and IB and assisted Joan and Connor with handing out medication

25 - I let IW know that her CPN would be in touch on the home visit next week

- In addition to working around the ward and being on the door, I kept checking in periodically with the HCA to ensure the obs were being done

30 I don't think it was fair for Fiona to yell and blame me if any obs were missed. According to the HCA the obs were done and some left were patients that scored were scoring a 1 and he had just completed them. I thought the patients had supper at 22:00 so although not ideal they could be tested then as usually a 1 score requires a wait."

8. Following the email which Ms Lackie sent to the University Practice Learning Team Ms Lackie checked the claimant's duty rota and arranged

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a meeting which was to take place on Friday 21 June at 3pm in Ward 5 at which the claimant would be present as well as representative from the university. Ms Lackie relied upon the ward staff to advise the claimant of this meeting.

5 9. Prior to the meeting Anne Cook advised Ms Lackie that she was aware that in a letter of acceptance to NHS Forth Valley for a newly qualified nurse position the claimant had also made a number of references to poor treatment of her by staff throughout her training. Documentation relating to this was not referred to during the Tribunal hearing.

10 10. On 18 June 2019 Ms Lackie and others received an email from Margaret Conlon of Stirling University. She also raised various issues relating to the claimant which had been highlighted to her by the charge nurse. These included the charge nurse's description of the claimant struggling with communication and relationships generally in the nursing team and in addition sending multiple emails either to the charge nurse or the senior charge nurse. She described an issue with the claimant taking comments very personally and not being open to support. Ms Conlon went on to state that:-

20 "In terms of skills and proficiencies required for a sign off student, Pauline has not yet coordinated a shift and there is doubt that she is ready for this responsibility. She has struggled with managing the HEPMA system despite saying that she was familiar with its workings. She was asked to complete a risk assessment but took many hours to do this."

25 Ms Conlon indicated that she would be unable to attend the meeting on Friday but agreed that it would be useful.

30 11. The meeting on 21 June proceeded. It was attended by the claimant, Janet Smith of the university, Anne Lackie, Anne Cook, Kirsty McLelland the claimant's mentor and Leanne Blair the Senior Charge Nurse. At least four of those present were registered mental health nurses. Following the meeting Ms Smith sent an email to the claimant and the other attendees at 18:30 referring to the meeting and noting the outcomes of the

discussion. This letter was lodged (page 96-97). Under outcomes Ms Smith stated:-

- 5 “• You and the practice team agreed that it was unreasonable for you to continue in the current placement, or return to it at a later date
- You were advised to self certificate online stating that you are unwell and would be off sick for the following week and to make an appointment with your GP as soon as possible
- You agreed to contact your personal tutor for pastoral support and to discuss ongoing health needs
- 10 • You agreed to an occupational health referral being made by your personal tutor, to ensure that you are in good health prior to returning to practice
- I advised that I would let the practice learning team know that you would not be returning to ward 5, and that an alternative placement should be sought. We did stress that this may not happen
- 15 • I advised that this may not happen imminently, due to our concerns about your current general well being and about our ability to source an appropriate placement
- Clinical Nurse Manager Anne Cook agreed to investigate your allegations of mistreatment, as discussed in the meeting whilst on placement in ward 5
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Whilst I appreciate that your focus was to have a placement identified immediately so you could continue with the programme, you agreed following discussion that the main priority should be your health and wellbeing. You agreed that you had been in need of some time out for a while. During our discussion it was observed that you reflected back repeatedly on previous negative experiences and became visibly upset when recalling your experience in practice around the time of your fathers ill health and subsequent death. On exploration of this, you agreed that there were perhaps some unresolved issues which may have impacted on your interpretation of concerns identified at this present time.

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At the end of the meeting Anne Lackie asked how you had found the meeting today. You said that you had expected it to be bad, but that you felt good about the meeting and that it had been fair and supportive. I explained that I would not be back to work until next

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Wednesday, but that I would let the practice learning lead and your personal tutor know the outcome of the meeting, as above.

Can you please let me know that you received this email, and if you agree with my summary of the agreed actions.”

- 5 12. The claimant did not revert to Ms Smith at any point challenging her summary in the emails.
13. During the meeting the claimant raised concerns regarding her own treatment. The claimant did not raise any concerns about the treatment of patients nor did she raise any generalised concerns regarding bullying.
- 10 During the meeting the claimant raised the issue of her father’s death which had occurred some time previously. The claimant advised that she had not felt able to take time off during that time. All of those present considered that the claimant appeared to be unwell and were concerned about her mental health. During the meeting the claimant indicated that
- 15 she had specific difficulty working with certain individuals. She advised that she was changing her shifts in order to avoid coming in to contact with those individuals. Ms Lackie and the others present did not consider it appropriate to allow the claimant to continue to work alongside people with whom she had raised issues about the way they treated her. Generally
- 20 speaking the nurses on a ward will work as a team. There is considerable overlap between wards and it would not be possible for the respondent or the university to organise matters so that the claimant would never find herself working on shift alongside the people who she was complaining about. Ms Lackie considered it would not be fair to the claimant for her to
- 25 continue working in an environment with people she felt were not treating her correctly. Ms Lackie and the other managers were trying to protect the claimant and find a resolution and a way to allow the claimant to continue with the programme without putting her under undue stress. At the meeting the claimant advised those present of her father’s death.
- 30 Many of those present had not previously been aware of this. The claimant also referred back to various issues in year 1 which some of those at the meeting were unaware of at the time. It would normally be the respondent’s position that if a student was demonstrating anxiety then they would want to reduce the stressors which might be causing this. The

claimant was advised to self certify because during the meeting she was becoming visibly upset and was recalling previous distressing events such as her father's death. The suggestion that she see the GP was motivated by concern for her welfare. The claimant's basic position was that she felt some staff were supportive towards her but a number of staff were unsupportive towards her and she felt they were treating her unfairly.

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14. Following the meeting the claimant did attend her GP however she told her GP that she was exhausted from the way she had been treated. She obtained a fit note on 29 June 2019 signing her off until 8 July. The condition referred to was "fatigue" (page 103).

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15. The claimant started a new placement on or about Monday 22 July. This was at Russell Park a Mental Health Rehabilitation Unit attached to Bellsdyke Hospital. This is around one and a half miles from the Forth Valley Royal Hospital where her previous placement took place. Russell Park's normal practice is to appoint two mentors for students on placement. The claimant's principal mentor was a Mr McCormac. She also had an assistant mentor Mr Livingston. The claimant commenced this placement on or about Monday 22 July. During the course of the first shift she had a "falling out" with her mentor Mr McCormac. As noted above the mentor who is dealing with a student's final placement has the responsibility of checking through the student's OAR and issuing a sign-off at the end of this. Mr McCormac discussed this with the claimant and indicated that he would like to take the OAR home with him so he could read it properly. The claimant reacted badly to this suggestion. An incident also occurred where the claimant was sprayed in the face by an asthma spray whilst working with Mr McCormac. The claimant accepted this was an accident but felt aggrieved that it had happened. Mr McCormac found the claimant quite overpowering. At some point the claimant discussed with Mark Livingston that she would prefer to change mentor so that Mr McCormac was no longer her mentor. A discussion took place attended by William McFadden who was the Clinical Nurse Manager at Bellsdyke Hospital. Mr McFadden considered the claimant behaved inappropriately during this meeting and formed the view that the claimant was misunderstanding Mr McCormac's communications and

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intentions. She personalised conversations in a negative mode. Mr McFadden, who is an experienced Clinical Nurse Manager in the mental health field, considered that when he was listening to the claimant it left him with a sense of hearing paranoid thinking and that she was expressing grandiose thoughts. He did not feel that the claimant was aware of the impact she was creating in the ward in regards to alienating herself from the ward staff by her behaviour, manner and attitude. Subsequently Mr McFadden produced a note setting out his interactions with the claimant which was lodged (page 129-130).

10 16. In the meantime, Ms Lackie who as PEF was responsible for students on placement had already arranged a meeting which was to take place on Thursday 25 July which would be attended by the claimant and her mentors and other ward staff in order to discuss the placement. This had been organised prior to the claimant starting. Ms Lackie understood that the ward staff would be advising the claimant of this meeting. Ms Lackie also decided, after discussing matters with the university, that she would meet on 26 July with the management of the ward in order to share with them details of the issues which the claimant had experienced in her previous placement with a view to ensuring they did not happen again.

20 17. Ms Lackie duly attended Russell Park with Janet Smith for the pre-arranged meeting at 9am on 25 July. Ms Lackie subsequently produced a note of what happened at this meeting which was lodged at page 117-119. It is probably as well to set this note out in full. The Tribunal accepted this was an accurate record of what took place at this meeting.

25 "Initial discussion with mentor John McCormack and DCN Mark Livingstone present: Mentor indicated that he had found the relationship with student difficult. She had commenced duty on the Monday on a 9am-5pm shift and her was on a late duty shift 1.30-9.30pm. In the afternoon they had met to discuss her placement. At this initial meeting between John and Pauline, he indicated that he had found her quite overpowering and wishing to control the conversation. He had requested to take her OAR home to read over which Pauline had responded negatively to. DCN Mark Livingstone told how on the afternoon of 24th July she had intimated to him that she was unhappy

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with her mentor and wished to be allocated to a different person or to have him take over as her mentor this had led to a conversation which included CNM Willie McFadden to explore reasoning behind requiring another mentor. The outcome of this discussion led DCN Mark Livingstone to believe that Pauline had been reassured that her mentor was acting appropriately and in her best interests and that the initial 'rocky start' had been resolved.

When Pauline joined the meeting Janet Smith identified the reason behind this meeting was to provide support for Pauline and ensure that everyone was aware of what was required during this placement. Pauline indicated that the placement had not started well. She advised that she was unhappy that her mentor had not been aware of her commencing placement in a timely manner and that her initial meeting with her mentor had not gone well and that some of his behaviours were unreasonable. She requested clarity about the duration of her placement and indicated that her mentor John had stated it would be 17 weeks whilst Janet Smith had informed her that she would not have to complete all of her placement hours as she had previously completed 5 weeks of semester 6. Pauline was advised that the clinical area had been advised her placement was for 12 weeks consolidation of practice (in line with NMC programme requirements for a sign-off placement) that however of her sign-off mentor deemed her to have met all programme requirements in less time than her placement may be concluded early. Pauline was asked what support she needed to continue with the placement since it was acknowledged by both herself and her mentor that things had not started well. At this point Pauline began to describe her perception of the initial meeting with John and his unreasonable behaviour that had led her to seeking a new mentor. During this description Pauline provided no eye contact to John and talked about him in the third person. She stated that following the meeting with Mark Livingstone she now understood her mentor better but her initial perception of him was 100% correct. He had changed tactics in his behaviour since she had stood up to him and knew she would not tolerate a return to previous behaviours. During this time a medical issue arose on the

ward that required the immediate attention of mentor John who had to leave the meeting.

When Pauline was challenged on her perception of the 'rocky start' having been resolved due to the manner in which she had presented this information. She did not foresee there being any further support she required to continue with this placement and mentor. When it was indicated that for the others in the room it raised questions on the continuation of placement and that John's opinion must be sought, she then indicated that the university was out to punish her and stop her from qualifying. She implied that this was because of her experience in Year 1 with Anne Taylor and action plan that had been raised. She indicated that she did not trust people at the university because of this. Due to the continuation of a patient's condition requiring immediate nursing attention it was felt that the meeting needed to be disbanded at this point. Due to unresolved outcome of this meeting it was not deemed appropriate for Pauline to remain in placement. DCN Mark Livingstone agreed to seek mentor's opinion on the viability of the continuation of placement and further discussion with SCN Katy Smith. Pauline was asked to leave placement until this outcome was known. The meeting concluded at approximately 11.30 hrs. Janet Smith, with concern for Pauline's personal wellbeing, sought reassurance from Pauline that she was able to cope with the outcome from the meeting acknowledging that she would be dissatisfied with the outcome."

18. One of the features of the training of nursing students is that students are encouraged to work "on bank" for a health board whilst they are undergoing training. The bank is the name given to a system whereby care workers are employed on an ad hoc basis to do shifts throughout the health board. As well as being an important source of personnel for the board it is seen as something which assists in the training of nursing students. The health board bank does a presentation to each new cohort of nurses at the beginning of their course encouraging them to seek work on the bank. Once someone is on the bank as a bank employee then they can check an online app to see if there are any shifts available which suit them and match themselves up to those shifts. The claimant joined the

bank for Forth Valley in 2018. Generally speaking there is an expectation that student nurses will not take on more bank shifts than they can comfortably fit in with their course work. When a student nurse is on placement the general expectation is that they will not do more than 16 hours on the bank each week. The claimant carried out bank work in various locations for the respondent up to 2020. These included Wards 1-5 at Forth Valley Royal Hospital.

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19. Following the meeting which took place on 21 June and the subsequent termination of the claimant's placement on Ward 5 there was an exchange of correspondence between the claimant and Anne Cook in relation to the issue of whether the claimant should continue to work bank shifts on Ward 5. This email exchange was lodged (page 105). It begins with Anne Cook suggesting that it would be difficult for the claimant to undertake bank shifts in the mental health unit which comprises Wards 1-5 whilst her concerns were being investigated. Ms Cook suggested to the claimant that until the investigation was complete the claimant should not carry out bank shifts and said that she would let the staff bank know accordingly. The claimant wrote back stating that she did not understand why she could not go to Ward 1 as she had not raised any concerns or complaints with Ward 1 and with any of the staff there. She asked if she could work in Ward 1. Ms Cook responded at 13:27 on 16 July to advise that due to the frequency of staff movement between the various wards it would be inadvisable for the claimant to work on Ward 1. She could not guarantee that the claimant would not come into contact with some of the staff she claimed had treated her badly. During this exchange Ms Cook indicated she expected the investigation to be over in four to six weeks. That was also the claimant's understanding at the time. Of course neither of them were to know that the claimant's subsequent placement at Randolph Park would end so quickly.

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20. Following the meeting on 25 July which had ended with the termination of the claimant's placement Ms Lackie proceeded to attend the meeting she had arranged for 26 July with the staff nurses at Randolph House. The meeting had originally been intended as a means by which Ms Lackie could pass on the issues the claimant had had at her previous placements.

In the event Ms Lackie did not do this but instead Ms Lackie asked if their rationale for the decision could be set out so that the information could be passed on to the university. As a result of this meeting Mr McFadden wrote the letter previously referred to and lodged at page 129-130.

- 5 21. As noted above, following the meeting on 21 June which had led to the claimant's placement at Ward 5 ending the claimant was advised that Anne Cook would be carrying out an investigation into the claimant's allegations. At the time of the meeting Ms Cook was about to embark on two weeks' annual leave. In addition to this, on 15 July 2019 Ms Cook
10 was appointed as Acting Head of Service. She was later confirmed in this as her substantive post. Prior to going on her annual leave Ms Cook asked the three individuals the claimant had complained about for their version of events. If these individuals provided statements they were not lodged with the Tribunal. Ms Cook's understanding was that two statements
15 were provided but that one of the individuals was by this time on long term sick leave and did not ever produce a statement. Ms Cook's understanding of the position was that she would carry out an initial investigation so as to establish whether or not a formal investigation was required. Any formal investigation under any of the respondent's policies
20 would require to be commissioned by the Service Manager. On 21 June the Service Manager was Lorraine Robertson who was Ms Cook's immediate line manager however due to the promotion Ms Cook herself became Acting Service Manager on 15 July and therefore the person who would have been responsible for instigating the formal procedure. As a
25 result of this, Ms Cook passed over responsibility for the investigation to Lorraine Robertson who at this time relinquished her service manager responsibility which were taken over by Ms Cook. The result of that was that from July 15 onwards Ms Robertson was the person responsible for carrying out the initial investigation by the health board.
- 30 22. At the same time the claimant was in contact with the university to whom she made complaints regarding her treatment whilst on placement and indeed more generally. The claimant lodged a formal complaint form to the university using the university's own formal processes. This was lodged at the beginning of September. It was not part of the claimant's

case that any of the complaints made by the claimant to the university at this time were qualifying disclosures.

5 23. The respondent's position at this time was that following the way the claimant had behaved on placement and more particularly at the meeting on 25 July they had real concerns for her mental health and wellbeing. It was their view that it was up to the university to refer the claimant to Occupational Health in order to try to find out what would be the best way of allowing her to complete her final placement and obtain registration as a nurse. By the end of the meeting on 25 July the respondent's managers present wanted professional advice to ensure the claimant was fit and able to complete her training. They were aware the claimant was very close to completing her training.

10 24. On or about 12 September 2019 Ashley Shepherd of the University of Stirling wrote to the claimant following receipt by her of a fitness to practice referral in respect of the claimant. This was an internal Stirling University process. The letter was lodged (page 281-282). She stated that she considered there was a case to answer in respect of the fitness to practice referral. She stated that an Investigating Officer had been appointed. She also went on to state

20 "Due to concerns about your health I have also instructed that an Occupational Health referral is completed. This is to allow your health to be assessed and to ensure you are appropriately supported by the Faculty. Occupational Health will be in touch with you directly to arrange an appointment.

25 Having considered the concerns raised in the referral, I consider you are a potential risk to yourself and that you may pose a potential risk to public safety therefore the imposition of a temporary suspension order is necessary. This is a neutral measure to protect you and the public whilst the Fitness to Practice investigation is concluded."

30 The respondent were advised of this.

25. On or about 19 September the claimant wrote to Catherine Quinn a Senior Charge Nurse with the respondent. She stated that she was seeking an appointment with her and Leanne Blair to discuss her concerns over poor

patient care in the mental health wards at FVRH. The letter was lodged (page 289-292). In the letter the claimant raises various concerns regarding patient care. It was not part of the claimant's pleaded case that this letter was a protected disclosure she was seeking to rely upon. By this time, as noted above, Ms Cook was no longer investigating the concerns which the claimant had previously raised about her own treatment on Ward 5. This investigation was being carried out by Lorraine Robertson. Ms Cook took no action on the letter herself since she noted that it had been copied to Ms Robertson.

26. Around this time the claimant also sent a number of emails to public figures including Nicola Sturgeon and Jack McConnell. Generally the claimant referred to these as her "cut and paste emails". She made various allegations regarding poor patient treatment in the mental health unit at Forth Valley Royal Hospital. The claimant continued to send similar letters to a number of public figures in a similar vein over the ensuing months and she also wrote to the Care Inspectorate. The claimant understood that as a result of her complaint to the Care Inspectorate an unannounced visit was made by inspectors to the mental health unit.

27. On 5 September 2019 the claimant met with Lorraine Robertson. The claimant had been invited to the meeting in order that she might provide more detail around the concerns that she had raised with regard to the way she had been treated on Ward 5. A note of this meeting was lodged (page 180-181). At the beginning of the meeting the claimant was advised of various options which were said to be available to her in order to pursue her concerns. One of these was said to be a formal investigation into the conduct of specific named employees effectively under the respondent's disciplinary policy. There was also discussion of a more general enquiry into the culture on the ward. The claimant confirmed that she wished for individual staff to be investigated and was told that the route for taking this forward would be through the Managing Employee Conduct Policy. Ms Robertson advised the claimant that if this route were to be pursued then Ms Robertson would require much more detail from the claimant about what she said had happened than the claimant had hitherto provided. She would require specific details of what happened with

approximate dates and who was there etc. The claimant had only been on Ward 5 a few weeks and Ms Robertson's understanding was that the claimant would be able to provide this information. Ms Robertson made it clear to the claimant that she would not be able to investigate anything further if the claimant did not provide this information since so far all the claimant had done was provide allegations which were insufficiently specific to investigate properly. Initially, when the claimant confirmed to Ms Robertson that she wished for individual staff members to be investigated she said that she could provide specific details however she then said that they were currently with her lawyer but she would send them on to Ms Robertson directly. At the end of the meeting the claimant again agreed to send on the specific information she had with regards to individual staff. The claimant never sent in the specific information which she said she would provide. Her lawyer did not send this information in to Ms Robertson either.

28. At the meeting the claimant told Ms Robertson that she was meeting with the university on 12 September. This was the meeting at which the claimant was suspended by the university pending a fitness to practice investigation to her own fitness to practice.

29. On or about 3 December the claimant attended an occupational health consultation with a Dr Sue Blair a consultant in occupational medicine. Dr Blair produced a report dated 4 December 2019 which was lodged (page 306-309). The report was addressed to the university. Dr Blair's opinion was essentially that the claimant was not mentally unwell and that she was fit for practice. She noted the claimant suffered from mild to moderate anxiety but it was stated that this was in relation to her perceptions of how she had been treated. Dr Blair suggested that what was required was that the university should identify with the claimant exactly all the areas of concern she has raised and provide reassurance regarding these areas. It went on to say

"You are advised to identify sensitively and thoroughly all her perceived work related stressors so that you can put in place actions and solutions to if not eliminate these altogether at least substantially reduce them."

Dr Blair suggested that the claimant authorised her to liaise with the claimant's GP but the claimant declined this.

- 5 30. Following receipt of this report the Investigating Officer appointed by the university wrote to the claimant confirming that in light of the report's findings the fitness to practice investigation would go no further. So far as the university was concerned the claimant could now proceed to her final placement and complete her training. Dr Shepherd wrote to the claimant confirming this on 14 January (page 310).
- 10 31. In the meantime, Angela Wallace the Executive Nurse Director of the respondent had become aware of certain of the "cut and paste" emails which the claimant had been sending to various public bodies. She became aware on the basis that she had been copied in to certain of them and, in addition, certain of the individuals and organisations the claimant had written to had contacted her to ensure that these concerns were being
15 looked at. In order to deal with these concerns Ms Wallace asked her mental health senior management team to carry out an investigation of the matter. This was on the basis that if the staff were not behaving appropriately in the ways claimed by the claimant then Ms Wallace would not have confidence they were providing a high standard of patient care.
20 It was also of concern to her to ensure that if these things were taking place and no-one else within the mental health unit was raising it with the appropriate authorities then this raised a question mark over the culture within the mental health unit. She asked the mental health team to check for what she termed red flags by looking through incident reports, complaints, concerns raised by other students, reports of any violent or
25 aggressive incidents and anything which would correlate with the types of concerns the claimant was raising. She noted that the claimant had provided some detail but had not given detail which was specific enough in terms of dates, times and individual names. She also checked what is called 'nursing care assurance data' looking to see the whole picture. She
30 arranged for her team to carry out additional unannounced inspections in the area mentioned by the claimant. At the end of the investigation it was reported to her that there was nothing in any of the data to suggest that the mental health unit or Ward 5 in particular were outliers in terms of any

of the data available. Although she had not found anything she continued with increased monitoring and increased visibility of monitoring in this area. She did this as a normal management response where concerns of this type were raised. Ms Wallace was unaware of the detail of any of the emails which the claimant had sent in June and July 2019 which are relied upon by the claimant as constituting protected disclosures. She was unaware of precisely what the claimant had said at the meetings she attended or what she had verbally said to anyone else on the ward. This remained the case in February 2020.

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10 32. In early February the claimant wrote directly to Ms Wallace asking her what was happening about organising a new placement for her given that the university had now ended the investigation into her fitness to practice. Ms Wallace responded to the effect that the matter was under consideration. The exchange of emails was lodged (page 317).

15 33. On 14 February Ms Wallace wrote to the University of Stirling. The letter was lodged (page 318-319). It is probably as well to set out the terms of this letter in full since it sets out the respondent's position at that time in relation to the claimant's placement.

"Dear Jayne,

20 **Placement request for Student Nurse Pauline Sanson**

Colleagues from your Practice Learning team at the University of Stirling have approached NHS Forth Valley for a final placement for Pauline Sanson (PS), a mental health nursing student in her final year. I am pleased to hear that the team has advised that she has been deemed fit to return to practice as a student following occupational health assessment and a recent period of absence. As the University's key practice partner we continue to support all requests for practice placements, confident in our ability to provide quality practice and learning experiences for all students where they are supported by mentors/sign off mentors of the highest caliber and this continues to be the case.

30 As you are aware since last year, sadly I have been disappointed to hear of the concerns that PS felt that she had to raise with NHS Forth

Valley about her experiences as a student nurse within our Mental Health Services whilst on placement.

She has described the difficulties she has experienced, citing alleged bullying and concerns in relation to staff conduct. It may be helpful to explain that PS has shared these concerns in a series of email communications and as a result staff met with PS to get a deeper understanding and to investigate and take any necessary actions.

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We have assured PS that NHS Forth Valley takes all concerns raised very seriously, acknowledging how distressing this must be for her and we have been actively pursuing with PS ways in which to investigate these issues in a sensitive and supportive manner since September last year.

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We continue to maintain contact with PS in the hope that she will share the detail surrounding her concerns so that we can investigate her complaint fully. At the time of writing we do not have this information but have again written to PS asking her to engage and share this information. Despite not having the detail required as a result of these concerns raised NHS Forth Valley commissioned senior staff from the Mental Health Unit to look across all of the areas mentioned in the concerns and we were not able to substantiate her claims.

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As previously stated Forth Valley remains and is committed to facilitate and support your request for a placement for PS. I would be grateful if you could consider from a university perspective that given the level of concerns and the assurances required from PS, Forth Valley may not meet her requirements. In order that PS feels that she has a safe and supported placement perhaps consideration by the University to another locality may be an alternative option. This may allow PS an opportunity to complete her final placement removing the ongoing and unresolved concerns she continues to have around an NHS Forth Valley placement. Unless she feels that she can have trust and confidence in those supporting her, my concern would be that PS may not consider she has had a fair and equitable opportunity to complete her programme of study. This option has been discussed with and is supported by our Chief Executive and Director of Human Resources.

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I would be happy to continue to work with you and your colleagues in supporting PS.

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I look forward to hearing from you.”

34. On the same day (14 February) Lorraine Robertson wrote to the claimant. The letter was lodged. (320-321)

35. She referred back to the meeting which had taken place in September. She noted that the claimant had shared incidents of alleged bullying and concerns in relation to staff conduct. She referred to the fact the claimant had indicated that she wished for individual staff members to be investigated through the NHS Forth Valley Managing Employee Conduct Policy. She noted that she had told the claimant that she would require specific written details of the incidents involving the staff concerns. She noted that the claimant had informed her that she had specific details but these were currently with her lawyer and she would ensure these were sent to me. Ms Robertson confirmed that she had not received any further information from the claimant. She also noted that in a previous letter dated 20 September the claimant had indicated that she did not wish Ms Robertson to correspond directly with her but only through her lawyer. Ms Robertson went on to say:-

“As I explained at our meeting, without the specific details of the alleged incidents and the staff involved I am regrettably unable to proceed to investigate your complaints. However we remain committed to investigating fully the concerns that you have and would encourage you to share the detail as promised with us so that we can complete our investigation.

If we do not hear from you we will be unable to progress an investigation without the detail.”

It was the claimant’s position at the tribunal hearing that she did not have any additional detail which she could provide to Ms Robertson. No further detail of these concerns was ever provided to the respondent.

36. Following the decision that the claimant’s final placement would not be with the respondent the decision was made by the university to seek a placement for the claimant with Lothian Health Board. This would involve the claimant attending a hospital in Edinburgh for her final placement.

37. A placement was arranged for the claimant. The claimant was due to commence a placement starting on or about 11 May 2020. The day before this the claimant wrote to the university and to NHS Lothian confirming that she could not attend. She stated that she had a sinus infection and post nasal drip which was potentially chronic rhinitis. She stated she was on Amoxicillin. Her email confirming this was lodged (page 373).
38. On 20 May the claimant wrote to a number of individuals including Angela Wallace, Nicola Sturgeon and representatives of NHS Lothian asking for a guarantee regarding the PPE issued to staff working on the ward she was supposed to be going on placement to.
39. By this time the pandemic had broken out. The claimant made arrangements to stay at a hotel in Edinburgh which was being offered free of charge to NHS workers in order to assist. Despite this the claimant never in fact ever took up her placement with Lothian NHS. She stated that she was unable to drive through from Stirling to Edinburgh because of a knee injury. She was referred to occupational health in relation to this knee injury. She also indicated that it was inappropriate for her to drive since she owned an older car and it would not be safe for her to drive in case it broke down. The claimant wrote various emails regarding this including one dated 20 July 2020 which was lodged (page 388). By this time the claimant's RCN representative was in direct contact with the university and the respondent and Lothian NHS. The claimant also considered that being placed on a placement outside Forth Valley would place her at increased risk of covid. The claimant had various meetings with the university over this period.
40. In July 2020 the claimant raised an issue with a number of individuals including the Scottish Government about her suggestion that
- “until very recently classes required for NMC hours were being let out early yet it was reported to NMC as full hours. Some students have stated Lecturers until only very recently have kept with the allotted class times.
- ... This indicates to me that potentially there are a number of former and upcoming Stirling University graduates who are now or will

become Nurses currently employed who are legally not qualified by NMC standards and regulations.” (page 399)

41. Following the claimant's occupational health appointment (which took place remotely due to the pandemic) Dr N Flaih issued a report dated 9 July 2020. (402-405). He set out various things the claimant could do in order to cope with a lengthy commute to Lothian. He also noted the claimant had various other concerns including the fact that she was concerned about her being allocated to Edinburgh where the infection rate at that time was higher than in Stirling. Occupational health suggested various accommodations to get round the claimant's concerns.
42. In July 2019 the claimant had been advised and had agreed that she would not work bank shifts at Wards 1-5 of the Forth Valley Royal Hospital. The claimant did not in fact apply to take any bank shifts anywhere from then until around September 2020. Although the claimant was not permitted to take bank shifts at Ward 1-5 she could have carried out bank work at any other of the wards within the Forth Valley Royal Hospital and indeed any other areas where bank work might be available. There were many more acute wards where the claimant could have done bank work but she did not in fact do so. In or about September the claimant applied for and was accepted to do bank work at a community based facility within Forth Valley. She worked one shift on this. She reported this at one of the various meetings she was having with the university at that stage with a view to resolving the issue over her final placement. The university spoke to Ellen Hudson of the respondent regarding this. Ms Hudson had been in correspondence with them with a view to seeing if there was any possibility of the claimant being found a placement in the Forth Valley area after all in order to deal with her concerns about having to travel through to Edinburgh etc. Ms Hudson decided that with everything else going on it would be inappropriate for the claimant to be doing bank work until she had investigated the occupational health report and established that the claimant was in fact fit to do bank work and that this was not going to have an adverse impact on her ability to agree and complete a final placement. Ms Hudson spoke to the respondent's human relations department regarding this and they conveyed to the Director of Resourcing Mr Michael

Brown that he should not be offering bank work to the claimant. Accordingly the offer of bank work at the community facility was withdrawn. The claimant was advised of this in an email dated 11 September 2020 which was lodged (page 418). Following a request
5 from the claimant Mr Brown set out the reasons for the decision in an email which was sent to the claimant on 21 September (page 422). Following the respondent's investigating their concerns they decided that it was not necessary for the ban on the claimant doing bank shifts to continue. The respondent's Mr Brown wrote to the claimant on 27 October 2020
10 confirming that this was the case (page 429). Following this the claimant was able to obtain bank work working at a vaccination centre. She continues to do bank work for the respondent. The claimant's earnings from bank work were set out in a number of tables which were lodged at pages 470-476.

15 43. In 2021, the claimant was subsequently advised that the ban on her working on Wards 1-5 was also lifted. This was done by letter dated 27 April 2021 (p458).

44. On 12 November 2020 Ellen Hudson wrote to the university confirming that the respondent had been able to find a placement for the claimant.
20 This was with Stirling Community Mental Health team which also covered the Clacks and Stirling Older Adult Mental Health Service. Ms Hudson wrote to the university confirming this on 12 November and her letter was lodged (page 433). This information was conveyed to the claimant. The claimant subsequently advised that she did not wish to take up this post
25 until she had been fully vaccinated.

45. As a trainee nurse the claimant was eligible to be vaccinated from around January 2021 onwards. The claimant was in fact vaccinated giving her initial dose in either December or January and her second dose around eight weeks later. At that point the claimant advised that she did not wish
30 to take up the post until the Employment Tribunal proceedings were complete.

46. The current position is that the claimant continues to work bank shifts at a vaccine centre for the respondent. She is due to take up the placement

mentioned once the Employment Tribunal proceedings are over. She has also been advised that the respondent are carrying out an investigation into various other concerns she has and that it is anticipated that this will be concluded by the beginning of September.

5 **Observations on the evidence**

47. The Tribunal generally considered that the respondent's witnesses were attempting to assist the Tribunal by giving evidence which was truthful. They were all careful in their evidence only speak to those matters where they had personal knowledge. They made appropriate concessions. The Tribunal generally found their evidence to be credible and reliable. If the Tribunal had any criticism of the evidence of the respondent's witnesses it is that there was no-one who appeared to have an overall overview of their interactions with the claimant. There was certainly a degree of confusion in relation to the way that the claimant's grievance was dealt with. Each of the witnesses appeared to have a degree of tunnel vision in that they could only speak about their own personal involvement and there were a number of decisions which appeared to have been made by the respondent which no-one was clearly taking responsibility for. Matters were no doubt confused at the outset when two of the managers involved essentially swapped roles. At the end of the day this did not make any difference to the decision given the claimant's total failure to establish the basis of her case but clearly had matters reached the stage where the claimant had established a prima facie case and the burden of proof moved to the respondent then this lacunae may have caused the respondent some difficulty.

48. The Tribunal considered that the claimant was an extremely poor witness. She made it clear from the outset that she was not keen on giving detailed evidence in relation to the specifics of her claim but preferred to make generalised statements setting out her view that the respondent and Stirling University were "bad people" who had conspired against her and more generally treated student nurses such as herself badly. It was extremely difficult to pin the claimant down to give specific evidence about most aspects of her case. Despite the claimant being warned on many occasions that she should restrict her evidence to the case which

was pled on record against the respondent the claimant preferred to give generalised evidence setting out her entirely negative view of the respondent and failing entirely to give any specific evidence in relation to the case which was pled. At various points during the hearing the claimant made plain her view that she had been subject to a generalised conspiracy between the respondent and the university to treat her badly and indeed expressed her view that if the Tribunal did not find in her favour then she would assume that we were part of this conspiracy.

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49. The Tribunal was mindful of the fact that the claimant was not legally represented and sought on a number of occasions to guide her into giving evidence which addressed the issues set out in her pleaded case however the claimant appeared to take the view that this was an attempt to “gag” her and prevent her from setting out her views. This was particularly problematic in relation to the Tribunal making findings of fact in relation to the alleged disclosures. The claimant accepted in her evidence that the email to Catherine Quinn of 14 June did not contain any protected disclosures. She also confirmed that she had not made any protected disclosures at the meeting following the placement at Russell Park.

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50. The claimant did speak in general terms of having raised concerns about patient safety whilst at Ward 5. She was entirely unspecific in her evidence about where, when and to whom these disclosures had been made and these disclosures were not set out with any clarity in her pleadings. More worryingly for the Tribunal the claimant, in her evidence, stated that she had kept a diary during this period which she said was a bright orange notebook which she took around with her. She said that she used a bright orange notebook so that the other members of staff would be aware she was taking notes. Clearly if such a notebook existed then this would have been a key piece of evidence for the Tribunal. The claimant was asked about this notebook and could not provide any satisfactory explanation as to what had happened to it. She accepted that she had not mentioned it or referred to it at any of the meetings which had taken place with the respondent either at the time or subsequently during her grievance process. It was clear that Ms Robertson had specifically asked the claimant for more specification in general regarding her

complaints about what had happened in Ward 5 and the claimant had not mentioned it.

51. The Tribunal's view was that this notebook did not exist and that the claimant had simply made this up in order to assist her claim without thinking it through. The Tribunal felt that this cast considerable doubt on the accuracy of the claimant's evidence and in general terms we did not consider that she was sufficiently credible or reliable for her evidence to be accepted without corroboration from some other source. The Tribunal was also concerned about some of the claimant's evidence in relation to the reason why she had not been able to resume her final placement. It was clear that the claimant had given various reasons to the respondent for not wanting to attend the final placement which had been arranged for her with Lothian Health Board. The Tribunal's view was that the various reasons given; having a cold, having an unreliable car, having a knee injury which made it difficult to drive long distances, covid concerns, all were of the nature of the claimant finding excuses not to do something which she didn't want to do. The Tribunal was also of the view that the claimant appeared to be clearly in no rush to complete her final placement even when an acceptable placement at the respondent Health Board had been found for her.

Issues

52. The sole claim before the Tribunal was a claim made under section 47B of the Employment Rights Act 1996 to the effect that the claimant had suffered detriments as a result of having made protected disclosures. The 2018 regulations also applied in this case as the respondent are an "NHS Employer" and had the claim been successful the tribunal would have had certain additional options in relation to remedy in terms of rule 6. The alleged protected disclosures are set out in paragraphs 4 and 10 of the Paper Apart to the claimant's ET1. In the Agenda submitted by the claimant's representative for the first preliminary hearing it was clarified that the alleged disclosures were said to be protected in that they fell within the terms of section 43B(1)(b) and 43B(1)(d) of the Employment Rights Act. That is to say the claimant was alleging that information disclosed by her tended to show that a person has failed, is failing or is likely to fail to

comply with any legal obligation and/or that the health or safety of an individual has been, is being or is likely to be endangered. In box 2.3 of her Agenda the claimant stated that the making of each disclosure had been in the public interest because

5 “The patients under the care of those are members of the public utilising the services of the national health service. It is in the public interest to report concerns regarding the quality of the care being administered to patients.”

10 53. The alleged detriments suffered by the claimant were set out in paragraph 23 of the Paper Apart to the ET1. These were

- 15 “1. Being removed from her placement in Ward 5 at FVRH;
2. Being blocked from working bank shifts in Wards 1-5 of FVRH;
3. Being blocked entirely from working any bank shifts in any of the Respondent’s hospitals or facilities including community hospitals;
15 4. Being prevented from being granted a CP6 placement with the Respondent.”

54. In the Agenda which was lodged by the claimant a fifth detriment was alleged namely

20 “25/6 July 2019 the Claimant was advised that it was not appropriate for her to return to Russell Park due to complaints about her. She was told by Anne Lackie, Personal Education Facilitator, Leanne Blair, Senior Charge Nurse, Janet Smith, Module co-ordinator and John McCormack;.”

25 55. During the course of submissions the respondent’s agent very fairly accepted that albeit this particular detriment was not specified in the ET1 the respondent were prepared to accept it as being part of the claim on the basis that it had been highlighted in the Agenda document.

30 56. The claimant sought compensation as the sole remedy in the event that she was successful. The claimant provided a Schedule of Loss in which she indicated she was seeking £985,000 in compensation. She subsequently changed this to the range of £635,000 - £980,000. The

respondent's position was that even if the claimant were successful in her claims her actual financial and other losses were relatively modest.

Discussion and decision

57. Both parties made full submissions. Rather than summarise these they will be referred to where appropriate in the discussion below.
58. Before doing so we should make a general observation. As was pointed out to the claimant on numerous occasions both prior to and during the hearing, the purpose of the Tribunal was not to carry out a generalised enquiry into the claimant's various allegations of poor practice within Forth Valley Health Board. The Tribunal's role was to look at the specific allegations made by the claimant in her pleadings and then, applying the relevant law decide whether or not the claimant had established her case. It was clear to the Tribunal during the hearing that the claimant may well have made various statements to the respondent and indeed to other bodies and individuals in the past which might be capable of amounting to protected disclosures. It was not the role of the Tribunal to trawl through the claimant's evidence and decide whether or not each and every interaction she mentions amounted to a protected disclosure. It would be judicially improper for us to do this in that it would be extremely unfair on the respondent to investigate matters of which they did not have fair notice. The principal of natural justice as applied in the Tribunal and the principal of fair notice means that we require to examine the case which the claimant has pled in her written pleadings and decide whether or not that case is established.
59. The first question to be determined was whether or not the claimant had made the disclosures alleged and whether these were protected in terms of the relevant section of the Employment Rights Act. The respondent drew our attention to the case of *Timis and others v Osipov and others* [2018] EWCA civ 2321 which confirmed that the claimant has the onus of proving that protected disclosures were made and that these disclosures were the reasons for any subsequent detriment.
60. The claimant's pled case in respect of the disclosures is somewhat vague and inspecific. Paragraph 4 refers to the claimant having raised a number

of concerns. These are set out. There is however absolutely no specification of where, when and to whom those alleged concerns were raised. Paragraph 5 goes on to refer to two emails, one dated 13 June to Catherine Quinn and another dated 18 June to Ross Cheape. It also refers to having raised the concerns with Leanne Blair the Charge Nurse who replaced Catherine Quinn. We accepted in evidence that the reference to an email dated 13 June was in fact a reference to the email of 14 June lodged at page 88. The claimant accepted in her evidence that there was nothing in there which amounted to a protected disclosure. The tribunal agreed with this. The claimant is making various complaints about the way she was treated on a particular shift. She sets out how she (the claimant) behaved on this shift and sets out her view that it was inappropriate for Staff Nurse Fiona to blame her for missing patient observations because the claimant had been busy doing other things. Some statements are made in relation to her suggestion that one of her colleagues was under police protection following a relationship breakdown but the tribunal did not accept this was information showing breach of a legal obligation or that health and safety was being endangered. We did not believe the claimant believed that information to be being provided in the public interest. She was simply trying to denigrate the character of some-one who she felt had yelled at her on the ward. The Tribunal could see nothing in this email which amounted to a protected disclosure. The email of 18 June to Ross Cheape refers to the claimant taking shifts where she could avoid certain staff who were treating her in a bad manner such as yelling at her, gossiping and talking down to her. She is critical that this avoidance was viewed as some sort of lack of learning and she felt that she had not been given a chance. She believes that she was up to date and had knowledge expected at this stage of her placement. There is nothing in this email which amounts to a protected disclosure. With regard to disclosures allegedly made to Leanne Blair the claimant's evidence was totally lacking in any kind of specification about the disclosures which she made. In her evidence in chief she did mention a number of concerns which she had regarding patient care. Her direct evidence on the subject was that "I raised concerns directly to a Staff Nurse named Claire. I had another meeting with her and another nurse whose name I can't remember. I also raised concerns with Leanne Conville and Catherine

Quinn.” She did not give any detail whatsoever as to where, when and how these disclosures were made. She made various complaints about the way the Staff Nurse called Claire treated patients. The Tribunal did not accept the claimant’s evidence in relation to this. The reasons for this was (i) the claimant referred to having written down all of these concerns in an orange notebook, (ii) the claimant was evasive when asked what had happened to this orange notebook, (iii) it was clear that from the evidence of the other witnesses that this notebook had not been mentioned at all in any of the meetings which had subsequently taken place, (iv) at the meeting which took place at the end of the placement in Ward 5 the claimant does not mention any of these matters. The entire focus of the meeting is on the relationships within the placement between the claimant and others. The only mistreatment referred to in this meeting was the claimant’s allegation that she had been mistreated personally by the staff. In addition to this the Tribunal were satisfied on the basis of the evidence of the respondent’s Executive Nurse Director Ms Wallace that the respondent have a fairly robust procedure in place to deal with allegations of mistreatment of patients. This can be seen from the steps which were taken by Ms Wallace when the claimant did start making allegations about patient mistreatment in or about September 2019 when she started sending what she referred to as the “cut and paste emails” to the Scottish Government and various prominent individuals. The Tribunal’s view was that on the balance of probabilities the claimant had raised concerns whilst in Ward 5 about the way that she was personally being treated but that she had not raised any concerns about the treatment of patients.

61. The Tribunal’s view was that the concerns raised by the claimant at that time were purely about her own treatment and as such did not meet the public interest test obtained in section 43B of the 1996 Act.

62. Having decided that as a matter of fact the claimant did not make the protected disclosures alleged in her ET1 that is really the end of the claim. Given however that the Tribunal heard considerable evidence in relation to the matter it is probably as well if we set out our view regarding the remaining parts of the evidence. Clearly, it would be a matter of considerable public interest if a trainee nurse who raised concerns about

patient treatment was thereafter punished for this by having her placement withdrawn and suffering the various other detriments referred to by the claimant in her pleadings. It is therefore appropriate at this stage that we say that having heard the evidence in this case we are absolutely satisfied that this was not the case.

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63. The claimant's case was predicated on the disclosures which she allegedly made during and immediately after the time she worked in Ward 5. There was no reference in the pleadings to disclosures made after this date. The claimant was legally represented at the time her claim form was submitted and the decision to rely on those alleged disclosures would appear to be sensible given that any alleged disclosures made by the claimant after that date would post-date the alleged detriments and therefore as a matter of logic could not be the reason for the claimant's alleged detrimental treatment. It is no doubt for this reason that the various "cut and paste emails" which the claimant sent out to various government bodies and individuals were not included as part of her pleaded case. The Tribunal accepts however that these emails did raise concerns which could properly be the subject of public interest disclosure. Although the evidence we heard about the way the respondent dealt with these was limited it was clear to the Tribunal that Ms Wallace and her management team had treated these allegations seriously and that they had been investigated and dealt with.

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64. With regard to the specific allegations of detriment the claimant's case fails essentially because she did not make the qualifying disclosures on which she relied. In any event, taking each of the detriments in turn the Tribunal was of the view that, with one exception, the respondent's evidence had more than demonstrated that the alleged decision was made for a legitimate reason which had absolutely nothing to do with the disclosures allegedly made.

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65. With regard to the claimant's removal from her placement at Ward 5 the Tribunal accepted the evidence of the respondent's witnesses who attended the meeting on 21 June. It was clear at that stage that relations on the placement had broken down and the claimant agreed that she should move to another placement. The decision had nothing to do with

any alleged disclosures made by the claimant and indeed our view is that at that stage the claimant had not made these disclosures. The claimant's position at that stage was that she was being unfairly treated in a personal capacity and she wanted to move to another placement. With regard to the claimant being advised not to take any bank shifts on Wards 1-5 by Anne Cook the evidence of the claimant and the respondent's witness was that the claimant had agreed not to do shifts in Wards 1-5 after 21 August. Initially the claimant was in agreement with this because she thought that the investigation would only take four to six weeks. It was not completely established that there had been any additional conversation on 14 July with Anne Cook but in any event the claimant had to establish whether Anne Cook knew of any alleged protected disclosures. Ms Cook's evidence was that there was considerable overlap of staff between Ward 5 and the other four mental health wards and that if the claimant was working a bank shift on Wards 1-5 she was likely to come into contact with people she had accused of mistreating her. Even if the protected disclosure had been made this claim would have failed on the basis of a lack of a causal link given that Ms Cook did not know of the disclosure and the decision was made for an entirely separate reason.

66. With regard to the third detriment, the termination of the placement at Russell Park, the claimant's own evidence was that she accepted this was nothing to do with whistleblowing. The claimant got off to a bad start at Russell Park when she was critical of her mentor for making a perfectly reasonable request that he take the claimant's records home with him to read. The claimant was removed from this placement essentially because those present at the meeting felt that she was showing symptoms of mental disturbance and the decision had nothing to do with any alleged whistleblowing disclosures.

67. The fourth alleged detriment is the one which, had the Tribunal found that a protected disclosure had been made, we would have had most difficulty with. There is no doubt that a decision was made that the claimant be banned from doing any bank shifts at all for a period of a few weeks in late 2020. The evidence in relation to how this decision was made was somewhat vague. Ms Hudson accepted that she had made the decision

but really could not give any coherent explanation as to why the decision had been made except to say she had made it in consultation with HR. That having been said Ms Hudson was quite clear in her evidence that the decision had not been made in any way to punish the claimant. It was also not established by the claimant that Ms Hudson was aware of any potential protected disclosures which had been made.

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68. The final alleged detriment of being prevented from being granted a CP6 placement with the respondent was one where on the basis of the evidence the Tribunal found that the reasons for this were absolutely nothing to do with any alleged protected disclosures which had been made by the claimant. Her position was that the claimant had agreed to terminate her placement in Ward 5 because of interpersonal difficulties she was having with the staff. The claimant was training as a Mental Health Nurse. The respondent are a relatively small Health Board with a limited number of wards suitable for training the claimant. The claimant had then gone to Russell Park and this placement had also broken down after a few days. The reasons for these breakdowns was, in the view of the Tribunal, absolutely nothing to do with any alleged whistleblowing disclosures made by the claimant. The respondent were then in the position where they had extremely limited facility to provide the claimant with a further placement. The decision was then made by the university, who are not party to this action, to seek to find a suitable placement for the claimant at a neighbouring Health Board. A placement was found however it was not taken up by the claimant. As mentioned above the Tribunal's view was that the claimant was being disingenuous in the reasons she provided for this and at the end of the day the claimant simply did not want to travel to Edinburgh for this placement. In any event the university and the respondent then look at the matter again and the claimant is found a suitable placement. Even at this stage the claimant is the one who puts obstacles in the way of the placement being taken up. This alleged detriment was not in any sense caused by any alleged disclosures made by the claimant.

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69. At the end of the day it was for the claimant to demonstrate that she had made protected disclosures and the claimant failed to do this therefore her

claim must be dismissed. As noted above it is the Tribunal's view that even if the claimant had established that protected disclosures had been made as alleged the claimant would have entirely failed to show that the alleged detriments were causally linked to the disclosures. The reason for this is that (i) the claimant failed entirely to provide any evidence which would lead to the burden of proof shifting to the respondent, (ii) even if the burden of proof had shifted to the respondent, the respondent would in all cases quite clearly have been able to demonstrate that the decisions were made for reasons which had absolutely nothing to do with protected disclosures. The sole exception being detriment four where, as noted above we felt the evidence provided by the respondent was somewhat inadequate albeit we were entirely satisfied and accepted the statement of Ms Hudson that the reason had nothing to do with punishing the claimant. For the above reasons the claimant's claim fails and is dismissed.

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Employment Judge:
Date of Judgment:
Date sent to parties:

I McFatridge
14 October 2021
15 October 2021