EMPLOYMENT TRIBUNALS

Claimant: **Ms S De Casagrande**

Respondent: **South London and Maudsley NHS Foundation Trust**

Heard at: **via CVP** **On: 21/4/2021, 26/4/2021 to 4/5/2021 and 6/5/2021 to 7/5/2012 (in chambers)**

Before: **Employment Judge Wright**
Ms C Beckett
Mr A Peart

Representation:
Claimant: **Ms N Owen - counsel**

Respondent: **Mr R Moretto - counsel**

LIABILITY JUDGMENT

It is the unanimous Judgment of the Tribunal that the claimant's claims of: constructive unfair dismissal; automatic unfair dismissal contrary to s. 103A Employment Rights Act 1996 and detriment pursuant to s. 47B Employment Rights Act 1996 fail and are dismissed.

REASONS

1. The claimant presented a claim form on 16/1/2018. She claims 'ordinary' unfair dismissal, detriment and dismissal as a result of making protected disclosures. The respondent resists all of the claims.

2. There is an unfortunate history of delay. A case management hearing took place on 2/8/2018 and a five-day final hearing was listed on 17/6/2019. That hearing did not take place due to lack of judicial resources. Instead, a case management hearing was held and the claim was re-listed for a 10-day final hearing to commence on 20/4/2020. The hearing length was increased to 10-days due to the number of allegations which the claimant relied upon.

3. Due to the Covid-19 pandemic, during spring and summer 2020 no final hearings were able to take place. Again, a case management discussion took place in lieu of the final hearing and the hearing of the case was rescheduled for 21/4/2021.

4. Regrettably and through no fault of the parties, two-days of the final hearing were lost. The parties however agreed a timetable which ensured (subject to the remedy point raised below) that the evidence and submissions were completed. The Tribunal was however able to convene two further deliberation days when it met in chambers and so in fact the intended length of the original hearing was maintained.

5. A preliminary issue was raised. Despite a direction given on 20/4/2020 that an updated schedule of loss would be provided to the respondent one month before the final hearing and an observation that:

   > '…the respondent seeks further mitigation disclosures from the claimant. There was no objection, in principle, from the claimant and it was agreed that this could be dealt with by the parties on a voluntary basis without the need for further order.'

   The Tribunal was told that mitigation evidence was only sent on 8/4/2021 and the schedule of loss on 14/4/2021.

6. The respondent applied for remedy to be determined separately. The respondent also referenced that there was some mitigation documentation outstanding. The claimant's position was that the case had suffered from delay and it would be preferable for remedy to be addressed during the hearing.

7. There was no satisfactory explanation why remedy evidence was late/outstanding and it was observed that the final hearing was listed to address liability and remedy. The Tribunal was told the claimant had limited her claim for remedy to April 2020 and therefore, this was not a case where up-to-date evidence at the time of the hearing was required. That evidence could have been provided at any point since April 2020. The Tribunal directed that the outstanding documentation be requested forthwith and be provided within 24-hours (the claimant is a director of the limited company related to her attempts to mitigate her losses). The Tribunal however decided to determine liability and then to consider remedy if

there was a time to do so. It was noted that the substantive hearing was not due to commence until 26/4/2021 (the first day was a reading day and then there were two non-sitting days) and so there was time for the parties to address the outstanding issues.

8. The Tribunal had before it an electronic bundle of 1556-pages, 18-pages of additional documents and witness statements ran to 138-pages. References are to the electronic bundle. The Tribunal heard evidence from the claimant and her former Line Manager who retired in February 2016, Mr Mark Allen. For the respondent it heard from: Sally Dibben (Head of Employee Relations), Lillian Nsomi-Campbell (claimant's line manager from 15/9/2016 and Interim Director of Estates and Facilities), Gus Heafield (Chief Financial Officer), Radhika Nair (HR Business Partner), Graham Richards (Deputy Director of Capital, Estates and Facilities) and Anthony Whitfield (Estates Manager).

9. A 17-page list of issues had been produced further to the claimant providing detailed particulars of her allegations. The claimant confirmed she was not withdrawing any allegation. There were 80+ sub-allegations, covering: some allegations in October - December 2016; the period January - April 2017; and the period following the claimant's sickness absence which started on 8/5/2017 until her employment terminated following her resignation on 11/7/2017.

10. The parties provided detailed written submissions and provided an oral summary.

11. The Tribunal was grateful for the parties' cooperation, their promptness in re-joining the hearing (after a break) and the general cordiality in the conduct of the proceedings.

Findings of Fact

12. The claimant started working for the respondent on 1/9/1998 as bank staff and she became a permanent employee on 19/6/2000. At the relevant time, her substantive role was that of Band 7 Senior Planning Manager. On 29/9/2015 the claimant was seconded to a Band 8c role of Head of Capital Projects and Planning. The scope of the secondment is an issue in dispute.

13. According to Mr Allen, a CQC inspection was announced in or around February 2015 and as a result he postponed his retirement. The CQC inspection took place between 16/9/2015 to 25/9/2015 and the report was published on 8/1/2016.

14. The claimant was a band 7 Planning Manager (page 343). In February 2015 Mr Allen was asked to perform the role of Director of Capital/Estates on an interim basis. In turn, he asked the claimant to 'act-up' into the role of Interim Head of Capital Planning and Property (page 271). This role was band 8a and was performed by the claimant from 1/2/2015 to 28/9/2015 (page 292).

15. On 8/4/2015 Mr Allen contacted Ms Dibben regarding a temporary enhanced role for the claimant (page 275) and then on 3/9/2015 Mr Allen again contacted Ms Dibben saying:

> 'As you know I'm looking to appoint into the head of capital planning post on a secondment basis, up to two years subject to a forthcoming review.
>
> Can I ask for Internal candidates only? I want the advert out for a week only.
>
> We also want to Interview on the 29th September, is that doable?'
>
> (page 299)

16. A review was planned of the department and in November 2016 Essentia was appointed by the respondent to carry out an Estate Strategy and Estates Function Review. Indeed, the secondment advertisement stated:

> 'The Capital, Estates, Faculties and Hotel services are currently embarking on a review of structures and functions. Therefore this role will be on a secondment basis and subject to change as part of the forthcoming review.'

17. The role of Head of Capital Projects and Planning[1] was advertised internally on 11/9/2015 (page 315). It was advertised as a 'secondment for two years' and as a band 8c. The claimant was the only applicant and she was appointed in the role on 29/9/2015 (the date of the interview) for the two-year period.

18. Mr Allen completed an 'offer and joining form for successful candidate' on 30/9/2015 (page 331). He completed the section 'type of contract' as a two-year secondment. An offer letter was sent to the claimant on 8/10/2015 by HR. The letter confirmed the role was secondment as Head of Capital Projects and Planning at band 8c (page 333). The claimant accepted the role on 19/10/2015.

19. Mr Allen seemed to misunderstand the difference between a fixed-term contract for two or more years and a two year secondment. He seems to have thought that once a secondment exceeded two years, that gave the employee additional employment rights[2]. The claimant had more than two years' service in any event and she already had those employment rights, irrespective of the secondment (for two years). It may well have been the case that Mr Allen misled the claimant into thinking that after two years in the role, she would somehow or other be made permanent if there were no performance issues. Having said that, the job advertisement and associated paperwork was unequivocal that the role was a two

[1] Referred to as the 'band 8c role'.

[2] Such as protection from unfair dismissal and entitlement to a redundancy payment.

year secondment[3]. In addition, the claimant never queried the position until she was given three months' notice in June 2017 (pages 1235-1236).

20. A secondment contract was sent to the claimant. It provided (page 342):

> 'THE SOUTH LONDON AND MAUDSLEY NHS TRUST
> INTERNAL SECONDMENT CONTRACT
> 3 MONTHS OR MORE
>
> …
>
> Details of Secondment
>
> You have been successful in your application for a secondment under South London and Maudsley NHS Trust Secondment Scheme to the post of Secondment as Head of Capital Projects and Planning until 29 September 2017 within the Bethlem Royal Hospital, Monks Orchard Road, Beckenham, Kent BR3 3BX Service & Corporate Directorate.
>
> This secondment is for a period of 2 years, starting on **29 September 2015** and ending on **29 September 2017**. This period of time can be extended by agreement It will be a full time secondment working 37.5 hours per week. You will be based at Bethlem Royal Hospital. Monks Orchard Road, Beckenham, Kent BR3 3BX and you will be managed by Mark Allen.
>
> You will remain an employee of the Trust who will pay your salary and other related benefits. Your salary during the secondment period will be £56,548 plus 15% London Weighting Allowance. You should submit any travel expense claim forms after counter signature to Mark Allen.
>
> As you remain an employee of the Trust you will remain eligible to compete for any posts advertised internally or externally. It is anticipated however that you will complete the agreed period of secondment.
>
> …
>
> I confirm that it has been discussed and agreed with you that at the end of this period you will:
>
> a) Return to your substantive post of Planning Manager within Corporate CAG Bethlem Hospital, Beckenham, Kent, BR3 3BX.
>
> b) Be found suitable alternative work on terms and conditions no less favourable that those you enjoyed immediately prior to taking up your secondment as detailed in the Trust's Secondment Policy. You may be asked to work at a lower grade on a protected salary whilst suitable alterative employment is being found.

[3] Including the 'Offer and Joining Form for Successful Candidate' completed by Mr Allen on 20/9/2015 (page 331).

> This contract constitutes a temporary variation to your existing Contract of Employment. All other terms and conditions of service remain the same. Please sign and return the enclosed copy of this contact as your acceptance of this change.
>
> …
>
> I have read the Secondment Guidelines and the above contract I hereby agree to return to:-
>
> a) Return to your substantive post of **Planning Manager** within **Corporate CAG, Bethlem Hospital, Beckenham, Kent, BR3 3BX.**
>
> b) Be found suitable alternative work on terms and conditions no less favourable that you enjoyed immediately prior to taking up your secondment as detailed in the Trust's Secondment Policy. You may be asked to work at a lower grade on a protected salary whilst suitable alterative employment is being found.

21. The contract was signed by Mr Allen and the claimant.

22. Despite the contractual agreement, the claimant contended, supported by Mr Allen, that to all extents and purposes the secondment would turn into a permanent position at its end if there were no performance issues.

23. It was accepted by Mr Allen in cross-examination the claimant did not meet the essential criteria for the role. One was that the applicant had (page 282):

> 'Degree or equivalent and/or Corporate membership of relevant professional specialist body — APM / RICS / CIBSE / CIOB / RIBA (A)'

The claimant did not meet this essential criterion and despite this, Mr Allen had marked the claimant's interview record sheet as 'meets requirements' on 29/9/2015 (page 330).

24. As suggested by Ms Dibben, the Tribunal finds that for whatever reason, Mr Allen was determined to have the claimant in post.

25. Although it was not in the list of issues, during the hearing it became clear that it was the claimant's position that when she was 'acting up' into the band 8a role, that she was in effect in the band 8c role for that entire period and she was therefore Head of Capital Projects and Planning from 1/2/2015 until 29/9/2017. The claimant accepted however, that she was on the band 8a salary from 1/2/2015 until 28/9/2015.

26. Insofar as this issue needed to be determined, the Tribunal finds the claimant 'acted up' into the band 8a role from 1/2/2015 until she was seconded into the band 8c role on 29/9/2015. There is a clear paper trail in respect of the band 8a role and subsequently of the band 8c secondment.

27. The claimant claims she made two oral protected disclosures to Mr Heafield during a meeting on 27/4/2017. The respondent agrees that a meeting took place, but denies any such disclosures were made.

28. The contemporaneous documentation from the time was considered. Mr Heafield's evidence was that he met with the claimant at the request of one of his direct reports, Mark Nelson. Mr Nelson was a senior employee with whom the claimant had a good relationship. Mr Heafield agreed to meet and arrangements were made. It was an informal meeting, in public and took place in the Ortus Café at the Maudsley Hospital. Mr Heafield set aside an hour in his diary. Mr Heafield was on notice of an email chain which had concerned the claimant as she had referred to it in a text message sent in advance of the meeting (pages 1011 and 1018). Mr Heafield did not make any notes during the meeting and he was not aware of the claimant having taken with her or having made any of her own notes. The claimant said she had a handwritten *aide memoir* she had prepared for the meeting (page 1046). The claimant's note is undated. It does list 15-matters and the 5th and 6th bullet points are:

> 'extension
>
> rates at JWH'

29. These are the two matters which the claimant claims were the subject of protected disclosures[4].

30. Mr Heafield said that his impression was the claimant wanted advice and support on how to handle a difficult situation, in particular, her relationship with her line manager Ms Nsomi-Campbell. Mr Heafield suggested the claimant may wish to use the grievance procedure. As far as Mr Heafield was concerned, the claimant did not raise anything with him during the meeting that required further investigation or action on his part. Mr Heafield is a named person under the respondent's Whistleblowing Policy. The Policy also provides for a process which will be followed, which includes the Nominated/Designated Officer providing updates and details of any action taken as a result of the whistleblowing allegation.

31. The claimant said in her witness statement (paragraph 145):

> 'When I told [Mr Heafield] about these matters I appreciated that they were sensitive and amounted to "whistle-blowing" on my part. I also knew there could be consequences (which turned out to be accurate).'

32. The claimant did not provide any confirmation in writing to Mr Heafield and did not follow-up any outstanding issue with him. The claimant took no formal action under the respondent's Whistleblowing Policy. The Tribunal finds that contrary to

[4] As the Tribunal found the claimant did not make any protected disclosures, there is no need to set out the detail in this judgement.

her witness statement, the claimant did not believe she had made protected disclosures to Mr Heafield in the meeting and that she did not do so.

33. By way of follow-up from Mr Heafield, he had asked the claimant if she was happy for him to mention their meeting to Louise Hall (HR Director) and Altaf Kara (Ms Nsomi-Campbell's line manager). The claimant agreed and Mr Heafield's intention was to put them on notice of a potential issue within the department and he spoke with Ms Hall and Mr Kara about the general situation.

34. The Tribunal accepts Mr Heafield's evidence that he did not refer to the two matters the claimant said she disclosed at the meeting to Mr Kara or Ms Hall. According to the claimant's note, she had given herself 15 prompts/matters she wished to raise in an hour's meeting. The claimant had previously raised the issue of the extension with Ms Nsomi-Campbell in November 2016 and she had looked into it and was satisfied with the response she received (page 657). It was not clear what Mr Heafield would have to gain (or to lose for that matter) in ignoring any genuine concerns the claimant had raised with him. The Tribunal finds that to the extent the matters were referred to, it was in passing and to demonstrate the issues the claimant had with Ms Nsomi-Campbell.

35. The claimant's next interaction with Mr Heafield was on 3/5/2017 when she sent him a further text message (page 1015). The claimant referred to a meeting with Ms Nsomi-Campbell the next day and said Ms Nsomi-Campbell had been saying negative things about her. In reply, Mr Heafield said he had spoken to Ms Hall and said he would call the claimant later.

36. A meeting had been arranged on 4/5/2017 to discuss the Essentia review of the Estates Department and Mr Heafield was aware of this.

37. In her resignation letter of 11/7/2017 to Mr Kara, the claimant referred to (page 1247):

> 'My concerns are not only about how I feel I have been unfairly treated and [Ms Nsomi-Campbell's] harassment, bullying, unprofessional behaviour, poor management skills, undermining my position and knowledge, but also I highlighted issues which I felt put the Trust at risk. I have emails from [Ms Nsomi-Campbell] to senior members of the Trust and others accusing me of not telling the truth, not adhering to her requests and also sending that email to junior members of staff. I have been told she has made disparaging and denigrating remarks about me in meetings.'

38. There was no further explanation as to what matters the claimant considered to be issues which put the respondent at risk.

39. The claimant also wrote to Mr Heafield on 21/7/2017 following her resignation (page 1255). She said:

> 'Dear Gus

I thought I should write to update you on what has been happening over the last couple of months as I find it hard to believe you are fully aware of how I have been treated. I resigned from the Trust last week and I have attached my resignation letter and other emails so you understand the position I feel I have been put in.

After seeing and speaking to you in early May and subsequently seeing my doctor, being signed off with stress, meetings with [Ms Nair] to discuss all my concerns and risks to the Trust l felt were causing my stress, I received a letter informing me that my role would revert back to my previous position and I would no longer be Head of Department. As you can imagine this added to my stress as I saw this as nothing other than a demotion.

I am extremely distressed that after over 18 successful years of loyalty and hard work for the Trust, without any performance issues and progressing to Head of Department being informed of my demotion has made it impossible for me to return to the Trust. I had hoped that I would stay at the Trust until retirement and until 8 months or so ago I believed this would be the case. Now I find myself without a job, concerned about the future, my reputation and not to mention financial concerns.

Effectively after raising my concerns and being signed off l feel I have been treated as if I have been suspended and the Trust has tried to find a way to ensure I would not return.

I am not aware of any restructure being consulted on that does not include a Head of Capital Planning, yet I am asked to return to my previous post as if it's absolutely reasonable and expected. This was not expected. I have not done anything wrong in my job to warrant this treatment.

When I was given the role of Head of Department l was assured by the then Director that as I had done so well as interim Head the simplest way to make it substantive was to advertise the role as a 2 year secondment and that I would have been doing the role-for over the 2 years the post would become substantive (with the possibility of another interview). Indeed others on the interview panel believed they were appointing me to a substantive post. I have performed my role as Head of Department without any issues up to the point where my relationship with the new Director and Head of Estates had broken down.

Now I find myself in a kind of forced redundancy. I see little point in taking out a formal grievance as suggested in Altaf’s email as I have now resigned.

This whole experience has left me feeling deeply unhappy and has shaken my confidence considerably.

I feel I have been made to feel like I have done something wrong when all I did was to highlight the risks I felt the Trust was being put at and also to raise issues of bullying and harassment. After such a long service to the Trust I do not feel like I have been treated fairly or deserved this.

It has been very upsetting for me to inform my colleagues that I have resigned and I received some very supportive emails back. As I understand it the department has been virtually left with no management and morale is extremely low. I worked extremely hard to fulfil the department’s role as did the team and I feel I have let them down by resigning.

> I would however like to thank you for the support you showed me when and after we first spoke about my concerns and I am not sure if you are aware that this has happened.'

40. The claimant did not expressly set out what she meant by 'risk(s)'. The Tribunal finds the 'risks' to the respondent were in reference to the preceding matters which the claimant set out. In the resignation letter this was the claimant's perception of bullying and harassment. The claimant was referring to the meeting with Ms Nair which was summarised in an email (page 1211). Ms Nair referred to 'key concerns' the claimant had about Ms Nsomi-Campbell and 'feelings of mistrust and untenable working relationship'.

41. In the letter to Mr Heafield the claimant referred to meeting with him, being unfit for work and the meetings with Ms Nair. It is not logical on the claimant's case, to whistleblow and say she was subjected to detriments, resign as a result and then not follow up any of the matters she said she had raised. The Tribunal finds the claimant was highlighting her perception that Ms Nsomi-Campbell was unprofessional.

42. The claimant thanked Mr Heafield for his support in her letter. Tellingly, she did not say that she had raised issues with him at the meeting that he had not addressed and were outstanding.

43. The Tribunal finds that at the meeting on 27/4/2017 the claimant complained to Mr Heafield of her poor relationship with Ms Nsomi-Campbell. As part of her complaint she gave examples and used the 15-matters she had listed as key-points by way of a reminder to herself of the matters she wished to discuss with Mr Heafield. The Tribunal finds however, that the claimant did not raise these matters in the manner which she now claims she did.

44. The claimant did not follow-up these matters with Mr Heafield after the meeting and it is inconceivable that she would not do so, if it was her case that she had raised the matters as protected disclosures in the meeting. Nor did she follow it up after she had resigned.

45. Mr Heafield was experienced in dealing with whistleblowing claims and the Tribunal is confident that had he had any concern that the claimant had made protected disclosures to him, he would have asked her for more information and directed the claimant to the Whistleblowing Policy and encouraged her to take steps under it. He did exactly that in respect of what he perceived was a grievance from the claimant and directed her to that process.

46. The claimant is not obliged to follow the respondent's Whistleblowing Policy; however, she is an intelligent and articulate person. She was forthright in her opinions and she certainly had a poor impression of Ms Nsomi-Campbell and was prepared to disparage her, to both of their superiors. The Tribunal finds that is the context in which Mr Heafield viewed the claimant's comments at the meeting. The claimant had the opportunity to 'get matters off her chest' and did so. Mr

Heafield was not concerned enough to take any further action, other than to suggest to the claimant the correct route would be for her to raise a grievance.

47. Mr Heafield mentioned the meeting and the conversation to Ms Hall and Mr Kara as he foresaw the situation escalating and that further action would need to be taken. If, as he suggested, the claimant was to raise a grievance, then the matter would be investigated. If not, then there were underlying issues which would only fester if they were not addressed. This was against the backdrop of the Essentia review being published and further action by way of a restructure, would follow from that. It was therefore important that Ms Hall and Mr Kara were aware of this underlying issue.

48. The claimant had the view that as she had long-service and was senior, if she complained about Ms Nsomi-Campbell (her superior), that her version of events would be accepted and that as an Interim Director who was then on a fixed-term contract, that Ms Nsomi-Campbell would be removed as her line manager. The Tribunal finds this to be a peculiar view and is surprised that it is one the claimant with long-standing public sector experience would hold.

49. The Tribunal also finds that Mr Heafield did not pass on information from the claimant, other than as he said, to Ms Hall and Mr Kara in very general terms; something along the lines of there is an issue in the relationship between the claimant and Ms Nsomi-Campbell and indeed the claimant's relationship with Mr Richards which she also raised. It was the claimant's own case that Ms Nsomi-Campbell and Mr Richards were 'ganging up' on her. This was nothing more than Mr Heafield recognising there was a dysfunctional relationship in the department, him being aware that it was not going to resolve of its own accord and that some action would be required on the part of HR (Ms Hall) and Mr Kara as the Line Manager of Ms Nsomi-Campbell.

50. Furthermore, there was a history of unclear demarcation between the claimant's department and Mr Richards' which pre-dated Ms Nsomi-Campbell's appointment. This led to issues arising (the clamant taking exception when Mr Richards tried to deal with a matter directly with one of her staff, rather than going through her) and to some level of dysfunctionality.

51. There was therefore no link between the meeting with Mr Heafield and the outcome (him flagging up an issue to Ms Hall and Mr Kara) and Ms Nsomi-Campbell then subjecting the claimant to further alleged detriments post 27/4/2017. It was also the claimant's case that Mr Richards subjected her to detriments post 27/4/2017, although this did not feature in the list of issues. There was nothing the claimant could point to which suggested such a link between Mr Heafield and Ms Nsomi-Campbell.

52. It therefore follows that the Tribunal finds the claimant did not make a protected disclosure to Mr Heafield on 27/4/2017 and as such, she cannot have been subjected to any detriments as a result of that.

53. Following the list of issues, item '8' and the sub-items are all alleged to be detriments as a result of whistleblowing. The claimant also relies upon those matters (8.1 to 8.6) as point 10.11 as (amongst others) breaches of her contract. The Tribunal has therefore considered those matters and makes the following findings.

54. 8.1 - In respect of the claim that there was a failure to take meaningful action to protect the claimant from the bullying and victimisation by Ms Nsomi-Campbell, the Tribunal finds that the claimant did not make any specific allegation regarding this 'failure', despite being referred to the Grievance Procedure on at least three occasions. Mr Norman advised her on 31/1/2017 the grievance process was the way forward (page 742). Mr Norman specifically told the claimant his experience of Mr Kara was that he will forward any complaint to HR.

55. The claimant herself mentioned one of her options being to take out a formal grievance when emailing Ms Nair to ask for a meeting on 19/6/2017 but failed to do so (page 1189).

56. 8.2 - In respect of the claim that there were deliberate attempts to make the claimant's treatment at the hands of Ms Nsomi-Campbell and overall position worse, such as dismissing or otherwise ignoring the claimant's efforts to defend herself and her team following the release of the Essentia report that reviewed the claimant's department unfavourably; the Tribunal found that it was open to the claimant to follow up the report if she wished to do so.

57. In fact, the claimant replied on 8/5/2017 by email to Mr Kara, Mr Phillisкirk (of Essentia) and copied Ms Nsomi-Campbell in; and highlighting the areas in the report she felt most strongly about (page 1076). The claimant's GP subsequently signed her off as unfit for work on 8/5/2017 (page 1098). Mr Kara replied later the same day to say he was going to call following an earlier email, but that he would give the claimant some room and not call unless absolutely necessary (page 1098). The stance that the respondent took was therefore a reasonable one and there was no evidence anyone deliberately tried to make the claimant's treatment worse. The view was that the report had been completed and the department should be moving forward (pages 1109 – 1110).

58. 8.3 - In respect of the claim that there was a failure to take steps to facilitate the claimant's return to work – there is no evidence to support this allegation, despite the eight sub-allegations. The respondent followed a structured sickness absence process of contact with the claimant at her own pace and seemingly designed to offer a variety of support mechanisms. After the claimant emailed to say she was unfit for work, both Mr Kara and Ms Nsomi-Campbell responded (and she copied HR into the email exchange). The claimant also directly emailed Ms Hall of HR and requested a meeting. Ms Hall replied and referred the claimant to her HR Business Partner (Ms Nair) (page 1102).

59. The claimant then emailed Ms Nair and requested a meeting to discuss her concerns and requested the meeting took place at her home (1168). Ms Nair replied and set out her understanding that the claimant would not want to meet at a place where she worked and suggested meeting at a site in Bromley as it was 'neutral'. In reply the claimant said she did not want to visit one of the respondent's sites and asked again to meet at her home. Ms Nair replied that it was not the respondent's process to offer home visits unless the individual was unable to travel or terminally ill. Ms Nair referred the claimant to the staff counselling and occupational health service (OH) and the new Employee Assistance Programme (page 1167).

60. On 23/5/2017 the claimant agreed to meet Ms Nair the following week, but did not give a specific date. Ms Nair contacted the claimant again on 30/5/2017 and in reply on 31/5/2017 the claimant said she was not feeling up to it (page 1165). Ms Nair responded and said to let her know when the claimant was ready to meet and sent her further information on the respondent's support programmes.

61. On the 7/6/2017 the claimant emailed Ms Nsomi-Campbell to say she was sorry she had missed a call from her on her personal telephone and to say she had been signed off until 8/8/2017. Ms Nsomi-Campbell replied and said that after speaking to HR, she was going to refer the claimant to OH, wanted to arrange a meeting under the respondent's sickness absence procedure and said if the claimant needed any further support to contact her.

62. Ms Nair then referred the matter to Ahmed Nawaz (HR adviser) and Ms Dibben and asked if Mr Nawaz had met with Ms Nsomi-Campbell. The claimant had been referred by Ms Nsomi-Campbell to OH on 6/6/2017 (page 1170). By the time the claimant met with OH on 1/8/2017 she had already resigned from her role on 11/7/2017 (pages 1257).

63. The meeting between the claimant and Ms Nair took place on 22/6/2017 and on 23/6/2017 Ms Nair set out a summary of the meeting in an email (page 1211).

64. Other more specific complaints regarding these events were then made and are set out at 8.3.1 to 8.3.8.

65. 8.3.1 – The claimant referred to 'all the members of staff mentioned above/in the grounds of complaint (and subsequently in the witness statement)', other than the members of staff referred to by name, it is not clear if there were any additional members of staff against whom the claimant made allegations.

66. The claimant also claims Senior Management 'must' have been aware of Ms Nsomi-Campbell's 'behaviour'. The only evidence of any interaction the claimant had in this regard was her reference to Ms Nair on 17/2/2017 (page 807). Ms Nsomi-Campbell copied Ms Nair into an email as HR Business Partner. The

claimant requested a meeting with Ms Nair present. Ms Nair asked what the purpose of the meeting was (she asked whether it was to discuss the ligature works or other discussion topic). On 22/2/2017 the claimant informed Ms Nair that she had met Ms Nsomi-Campbell the previous day and that they had 'resolved our issues and can move forward in a positive manner'. Other than that, Mr Heafield was aware from the meeting on 27/4/2017 that the claimant was unhappy, however he steered her to the grievance procedure and mentioned the situation to Ms Hall and Mr Kala.

67. This allegation however refers to failures to facilitate the claimant's return to work and the matters referred to in the previous paragraph clearly pre-date the claimant's sickness absence on 8/5/2017.

68. The claimant has not established a link between failures following her sickness absence and knowledge of the Senior Management Team.

69. 8.3.2 – Ms Nair accepted she said in a meeting to the claimant on 22/6/2017 that Ms Nsomi-Campbell was 'going nowhere', however the claimant has taken the remark out of context. Ms Nair said words to the effect of Ms Nsomi-Campbell was 'going nowhere' unless the claimant took out a grievance. Clearly, although the claimant did not understand this, the respondent was not going to remove the claimant from Ms Nsomi-Campbell's line management merely on her (the claimant's) say-so.

70. 8.3.3 – Ms Nair did not say it would be futile to raise a grievance and she along with other senior members of the respondent's staff referred the claimant to the grievance process. Ms Nair advised the claimant the grievance process was available on the intranet and at the time, the claimant had not made up her mind whether or not she wanted to raise a formal grievance. There was no evidence that the statement from Ms Nair was dismissive or unsupportive. Even if that had been the case (and the Tribunal finds it was not) the claimant had been referred to the grievance process by other senior members of staff.

71. The claimant's solicitor wrote a detailed and lengthy eight-page letter to the respondent on 29/8/2017. The claimant's employment did not terminate until 11/10/2017. It was open to her solicitor to raise a grievance on behalf of the claimant.

72. 8.3.4 – At the meeting on 22/6/2017 Ms Nair did bring up the issue of the claimant's secondment ending on 29/9/2017. Ordinarily, Ms Nsomi-Campbell as line manager would have had this discussion with the claimant, due however to the claimant's sickness absence, they were not able to meet. Although the claimant may have been misled by Mr Allen as to the outcome at the end of the secondment, the claimant had signed the paperwork agreeing to a two-year secondment and the fact that when it ended, she would revert to her band 7 role. The end of the secondment had to be broached at some point.

73. It is agreed that Ms Nair could have given the claimant prior notice that she wished to discuss the secondment and/or that the discussion could have taken place at another meeting. Given however that it had taken some time for Ms Nair to arrange this meeting it was not unreasonable of her to do so on this occasion. It cannot have been to the claimant's disadvantage or detriment to be informed on 22/6/2017 that the secondment was coming to an end on 29/9/2017 as it gave her more time to explore other options. For example, she could have sought an extension to the secondment.

74. Ms Nair denied she opened the meeting by discussing the end of the secondment. In view of the fact the respondent was in receipt of the Essentia report and that it was damning of the claimant's department, it was not irrelevant to remind the claimant she was on secondment. It was prudent for Ms Nair to discuss this in person before the letter was sent. It is not clear how reminding the claimant of her status as a secondee related to a failure to facilitate her return to work. Nor is it clear what is wrong with this being discussed at the start of the meeting if that were so.

75. In any event, the view of the Tribunal is that Ms Nair gave a credible explanation of the meeting, the issues discussed and the order in which they were discussed. Clearly Ms Nair had decided to raise the issue of the secondment before the letter was sent out by Ms Nsomi-Campbell confirming the return to the claimant's substantive post. It is unlikely Ms Nair, the claimant's HR Business Partner would start a meeting which the claimant has requested in such a way. The Tribunal finds the structure of the meeting was reflected in Ms Nair's follow up email (page 1211).

76. The claimant suggested she should have been put on notice of intention to raise the termination of the secondment in advance of a meeting. The Tribunal finds that something has to go first; either the matter is raised in a meeting followed by a letter (as per this instance), or, a letter is sent and the matter is then subsequently discussed in a meeting. The Tribunal finds the claimant sought to criticise and be negative about any action the respondent took. Had a letter preceded the meeting, she would have taken issue with that.

77. 8.3.5 - It was explained to the claimant that if she raised a formal grievance then she would report to someone other than Ms Nsomi-Campbell. The claimant emailed Mr Kara and told him she had met with Ms Nair and asked to report to him as she was considering taking out a formal grievance. Mr Kara replied and said to continue reporting to Ms Nsomi-Campbell, however if a formal grievance was raised by the claimant, he would act as the point of contact (page 1208).

78. This is an entirely appropriate response to an employee raising issues. In the Tribunal's view it would be wrong to simply change reporting lines every time an employee makes an adverse comment about their line manager. If the employee

made a formal complaint, through an established grievance policy, then they have committed their concerns in writing under an express process. It follows that for the period of investigation of that grievance, a different reporting line may be established, but that was not the case here.

79. 8.3.6 – The allegation is that the claimant's department was told not to contact her whilst she was ill, leading to her feeling isolated and detached. The claimant's department was told not to contact her on work matters only. The wording was very clear and at no point did the claimant present evidence that the team were told not to contact her personally or as a friend. A separate allegation (10.1.18) was that the claimant was continually harassed when she was off sick as she was copied in on five work emails between 10/5/2017 and 15/5/2017 by Ms Nsomi-Campbell. It is disingenuous to complain about feeling isolated and detached and then to take issue with five work emails innocently sent. The email the claimant complains about simply said do not contact the claimant for any capital planning related issues or advice (page 1233). Furthermore, the claimant did not take issue with the email at the time.

80. 8.3.7 – Ms Hall did not say she was 'too busy' to meet with the claimant on 9/5/2017 (page 1102). Ms Hall suggested the claimant meet with Ms Nair. Ms Hall gave a reasonable explanation for not arranging to meet the claimant, as she only had slots available in her diary for late June and early July and she did not want the claimant to wait that long to meet with someone from HR. The Tribunal finds it was sensible and practical to direct the claimant to Ms Nair in the first instance, with whom she had an established relationship and indeed who she had approached directly in the past.

81. 8.3.8 – The final allegation made under this section was that the claimant was not invited for an exit interview. Where this is referred to as a breach of contact leading to the claimant's resignation (10.11), it cannot be something which led to the claimant's resignation. The claimant cannot have resigned in response to not being offered an exit interview as there is clearly no onus to offer an exit interview until after the claimant has resigned.

82. The Tribunal heard that at the time of the claimant's resignation there was no procedure for exit interviews and the claimant subsequently did not request one. The respondent's case quite simply was that if the claimant had requested an exit interview, then it would have provided her with one. The claimant resigned on 11/7/2017 and her resignation could not be unilaterally withdrawn. The position therefore is that even if the respondent had offered and held an exit interview and if that process had led the claimant to reconsider her position, it does not necessarily follow that the respondent would have allowed the claimant to rescind her resignation.

83. It is clear to the Tribunal that the reasonable and sensible course of action would have been to raise a grievance and to have allowed that process to conclude.

Depending upon the outcome of that process and if the claimant then remained unhappy, she could resign from her role.

84. The Tribunal was also told that the only scenario which would persuade the claimant to return to work, was the removal of Ms Nsomi-Campbell as her line manager. As Ms Nair told her, that was not going to happen in the absence of a formal complaint. Potentially, Ms Nsomi-Campbell could have been removed if a grievance was upheld, if disciplinary action followed and if that was the outcome. There were obviously many other disciplinary options open to the respondent. In light of that, it is not clear that an exit interview would have resulted in facilitating the claimant's return to work.

85. Furthermore, the Tribunal did not hear any evidence as to why having an exit interview would lead to the claimant reconsidering her position. The claimant had the chance to raise a grievance and never did so. The claimant was expressly invited to raise a grievance in response to her resignation letter by Mr Kara (page 1254).

86. There was a debate as to when an exit interview should have been held, at the start or at the end of the notice period? Although this is not relevant, it was the claimant's argument that it should have been held at the end of the notice period. The respondent pointed out that this served the claimant's position in respect of the time limit.

87. 8.4 – This allegation referred to affecting a demotion to a role the claimant had held 2.5 years earlier.

88. As per the findings above, the Tribunal was presented with clear evidence of a written secondment contract, which both the claimant and Mr Allen had signed. In light of that and those findings, there was no demotion. In any event, the claimant did not set out her concerns; instead she resigned in response to being informed her secondment was coming to an end and she was to return to her substantive role.

89. It should be noted that in cross-examination, the claimant was asked why she had resigned rather than raising a grievance. The claimant replied that she was too unwell to raise a grievance (the evidence was in July 2017 she was considering the option of raising a grievance) and that she resigned as she could not go back to a position she had held 2.5 years ago. The Tribunal finds the reason for her resignation was the expectation that upon the end of the secondment, she was expected to return to her substantive role being put in writing. It is also noted that at the time, the claimant did not set out her case that she was not expecting to return to her substantive role until she wrote to Mr Heafield on 21/7/2017 post resignation (page 1255).

90. In its deliberations, the Tribunal considered that if, the claimant had not made any protected disclosures to Mr Heafield on 27/4/2017 (with the result that there were no detriments resulting as there had been no disclosure(s)) why did she resign? In light of the evidence and the claimant's answer to questions in cross-examination, she resigned, simply as she said, that she could not face returning to her substantive role.

91. 8.5 – It is unclear who it is the claimant says made it clear that raising a grievance would not resolve any issues. The difficulty is that the claimant did not test this and did not raise a grievance. The finding is that the claimant was pointed to the grievance procedure on more than one occasion, was invited to raise a grievance and had every opportunity to raise a grievance.

92. 8.6 – the failure to offer an exit interview was considered under allegation 8.3.8 above.

93. It should be noted that when the claimant resigned, she was not aware of the matters going on in the background (for example the conversations the respondent was having regarding home visits or the respondent not wanting to undermine Ms Nsomi-Campbell as line manager) and therefore, they cannot have been breaches over which she resigned.

94. 8.7 - Whether or not the whistleblowing detriments were out of time? If the last detriment was the omission to offer an exit interview, then if that omission occurred around the time of the claimant's resignation (11/7/2017) the whistleblowing detriment claim is out of time. If the last detriment was on 18/7/2017 (seven days after the resignation by when the respondent could have been expected to have taken steps to hold an exit interview), then the primary three-month time limit expired on 17/10/2017. Acas early conciliation occurred between 17/10/2017 and 7/11/2017 and the claim form was presented on 16/1/2018. The claim should have been presented by 7/12/2017 and is therefore out of time.

95. 8.8 - Was it reasonably practicable to present the claim in time? The Tribunal finds that it was reasonably practicable for the claimant to present her claim in time. The claimant now relies upon her ill health at the time and cites that as a reason for not raising a grievance. The claimant said one of her options was to raise a grievance on 19/6/2017 (page 1189); she did not say she was aware she had the possibility of raising a grievance, but was too unwell to do so.

96. In addition, not only was the claimant in receipt of professional legal advice, but she was also able to give detailed instructions, presumably during August or at least post-resignation (or even pre-resignation), which resulted in a detailed and eight-page letter before action on 29/8/2017. In light of that, the Tribunal finds it was reasonably practicable for her to present her claim in time.

97. The claimant's constructive dismissal claim was set out in the list of issues at paragraph 10. Issue 10.1 was a very general allegation that the claimant was subject to bullying, harassing and intimidating behaviour by Ms Nsomi-Campbell over several months. That was then expanded to include but not limited to, the sending of a substantial number of demeaning, intimidating and harassing emails. They are summarised in points 10.1.1 to 10.1.17. After the claimant was certified as unfit for work and the allegation (10.1.18) relates to the period 8/5/2017 to 11/7/2017.

98. The claimant itemised 17-emails in the 5-6 month period from 11/11/2016 until 20/4/2017 (before the period of sickness absence).

99. The Tribunal found it was the claimant's own case the relationship between her and Ms Nsomi-Campbell was fine until she returned from annual leave in January 2017. There was one email dated November 2016, three dated January 2017, seven in February 2017, none in March 2017 and six in April 2017.

100. The Tribunal, upon reviewing all the evidence, including the wording in the emails, found no evidence that they were demeaning, intimidating and harassing. By way of example, the Tribunal failed to see how an email sent from the Ms Nsomi-Campbell to the claimant, copied into five people including several senior members of staff, about something that was not the claimant's remit, could be seen to be demeaning, intimidating or harassing (page 687 and allegation 10.1.2).

101. This email appeared to be the prompt for the claimant to raise the issue of the content of emails with Ms Nsomi-Campbell on 16/2/2017 after 11 of the 17[5] emails had been sent (page 789). The claimant requested that Ms Nsomi-Campbell speak with her in the first instance if there were any issues. Ms Nsomi-Campbell responded the next day, copied to Ms Nair of HR and apologised (page 806). The claimant responded and asked for a meeting with Ms Nair present on 20/2/2017 (page 806). When Ms Nair followed this up, the claimant confirmed she had met with Ms Nsomi-Campbell on 21/2/2017 and they had resolved their issues, they could move forward in a positive manner and so the meeting was not necessary (page 805). The Tribunal finds these were not the actions of someone who felt bullied, harassed and intimidated by their line manager.

102. The Tribunal finds that the emails were simply not demeaning, intimidating or harassing.

103. The next allegation (10.1.18) was that there were 'constant emails from [Ms Nsomi-Campbell] to the claimant from 8/5/2017 to 11/7/2017'. The claimant was signed off as unfit for work during this period.

[5] The claimant's list of issues does not list the emails in chronological order, the first 11 emails are 10.1.1, 10.1.2, 10.2.3, 10.1.4, 10.1.5, 10.1.6, 10.1.7, 10.1.8, 10.1.9, 10.1.14 and 10.1.15.

104. The Tribunal considered the emails sent from Ms Nsomi-Campbell to the claimant during this time. On 8/5/2017 the claimant informed Ms Nsomi-Campbell that she was certified as unfit for work (she did not give a reason) until 9/6/2017 (page 1093). The emails can be separated into two discrete themes; firstly where the claimant continued to be copied into work emails (totalling five emails between 10/5/2017 and 15/5/2017). Secondly, there were four emails relating to the claimant's sickness absence, including the initial one on the day she went off on sickness absence. The final email from Ms Nsomi-Campbell to the claimant was the confirmation on 30/06/2017 that she had sent a letter to her in the post about the ending of the secondment (page 1236). The Tribunal found the emails could not be considered to be *constant* emails and this point is unfounded. In fact on 25/6/2017 the claimant emailed Mr Kara to say she was to meet with OH when Ms Nsomi-Campbell had provided her with the details. As such, the Tribunal finds the claimant accepted Nsomi-Campbell was directly managing her under the Sickness Absence Policy (page 1208). Furthermore, it was noted the emails were sent to the claimant's work email address and did not contain any matters for her to action. They were either sent to her by oversight or as part of using the reply all function.

105. The following paragraph in the list of issues read:

> 'As already mentioned, the Claimant does not have access to her work emails and disclosure has not yet taken place. Accordingly, there may be further emails in the period from October 2016 to 11 July 2017 that were demeaning, harassing and/or intimidating to which the Claimant does not currently have access.'

106. The claimant had asked Ms Nsomi-Campbell's EA to forward onto her any emails which were relevant when she was considering raising a grievance in 2017 prior to resigning. The claimant said that forwarding the emails was not with a view to this claim, however clearly any email(s) which were relevant to a grievance would potentially be related to this claim. The Tribunal was surprised to see the claimant's email address at the respondent still appeared to be 'live' in October 2018 when an email appeared to be forwarded from the claimant's SLaM email address to her personal one (page 1002). There was no adequate explanation for the email string appearing to be sent from Ms Nsomi-Campbell's account to the claimant's personal email address on 20/4/2017 at 17:02 (page 1002) when the original email appeared to be sent to Mr Richards and others (who appeared to be the intended recipients of the email at 17:03) (additional documents page 6). The respondent also stated that despite asking the claimant, the original emails were never provided[6].

107. It is not clear therefore, what further access the claimant required.

[6] The Tribunal however does not need to make any finding on this point.

108. 10.2 – this was another general allegation aimed at Ms Nsomi-Campbell, said to include, but not be limited to, regularly making last-minute requests for action. The claimant then particularised three emails on: 24/1/2017, 30/1/2017 and 3/3/2017 (pages 698, 739 and 874). One email was sent by Ms Nsomi-Campbell's EA on her behalf. Three emails over two months is not 'regular'. There is nothing bullying, harassing or intimidating about the requests, in fact they are courteous. The first email was copied to a colleague of the claimant in addition to her and if it is not directed primarily at the colleague, it is a request jointly of the two of them. The claimant did not reply, say the requests were unreasonable or that she cannot comply within the timeframe or proposed an alternative time-frame.

109. The emails amount to nothing more than a reasonable management request.

110. It is also surprising that the claimant chose to pursue this allegation when she could only point to three examples.

111. 10.3 – This allegation cites 22 examples between 11/11/2016 and April 2017 of bullying, harassing, intimidating and undermining of the claimant by Ms Nsomi-Campbell. Overall, the Tribunal found that the examples cited did not demonstrate bullying, harassing and intimidating behaviour, nor did they openly criticise the claimant, take from her actions which were in her remit, renege on agreements or collude with others to undermine the claimant.

112. Taking one particular example (10.3.2), the specific allegation is against Ms Nsomi-Campbell, that the claimant was undermined, her concerns were ignored and her expertise was ignored. In fact the opposite was the case, as the emails, when read on anything like a reasonable interpretation, demonstrated. Ms Nsomi-Campbell adopted the claimant's concerns, raise the issue herself with Mr Richards (so that he did not know the issue had originally been raised by the claimant) and it was established this was not an extension and that the budget for the works was minimal (pages 653-660). The claimant has singularly failed to set out how this exchange came within her allegation, as it stood, framed against Ms Nsomi-Campbell.

113. To take another example (10.3.7), the claimant complained Ms Nsomi-Campbell (and Mr Richards) did not send to her an 'important "blue-light bulletin"'.[7] Factually the bulletin was first sent on 1/2/2017 at 18:12 (page 744). Ms Nsomi-Campbell does not appear to have been a recipient (however the bulletin has been sent to email 'groups' so that fact is not certain). The bulletin was then forwarded to the claimant by two different colleagues on 2/2/2017 at 9:43 (page 744) and 11:10 (page 746). It appears the bulletin was forwarded to Ms Nsomi-Campbell (and to Mr Richards again) on 2/2/2017 at 10:13 (page 747). The chronology therefore appears to be that the claimant received the bulletin before

[7] The claimant's allegation was that Ms Nsomi-Campbell who bullied her out of her role not Mr Richards.

Ms Nsomi-Campbell. Assuming Ms Nsomi-Campbell did not then forward the bulletin onto the claimant, she also did not forward it onto Mr Richards, the claimant's peer.

114. It can also be said that when the email was forwarded onto Ms Nsomi-Campbell at 10:13, copied in were Ms Hall, Mr Kara, Mr Heafield and Ms Pithouse (who was cited as a member of the senior management team who was friendly/sympathetic towards the claimant and someone upon whom she could rely/approach). It did not occur to any of these individuals to forward the email to the claimant, not even to Mr Kara, Ms Nsomi-Campbell's line manager (page 747). If Ms Nsomi-Campbell was deliberately excluding the claimant and (as per the claimant's case) 'setting her up to fail', there is no allegation directed at Mr Kara (or his colleagues) that they failed to include the claimant. The subject matter of the bulletin was the well-being of the patients. It is incredulous to suggest that the claimant was 'left out of the loop/deliberately excluded from communications on this serious matter and her authority was undermined'. If it was so imperative that the claimant was made aware of this matter, members of the senior management team would have taken steps to ensure that was the case. Indeed, two other members of staff did take that step and the claimant received it before Ms Nsomi-Campbell.

115. The Tribunal's conclusion is that in respect of this (and the other unfounded allegations) the claimant has retrospectively found instances to be 'offended' about.

116. Ultimately, the Tribunal went through every allegation and found nothing which substantiated the claimant's claim, either individually or collectively. The claimant did not raise any of these matters at the time. In respect of the bulletin, if it was so important that the claimant was immediately made aware of this and the risk was so great, she did not raise it and did not refer to it when she met with Mr Heafield to discuss the concerns she had at that time.

117. This leads the Tribunal to conclude, that possibly other than a mild irritation, that none of these matters concerned the claimant at the time and she did not resign as a result of them.

118. 10.4 – this complaint is framed as Ms Nsomi-Campbell sending to the claimant a 'genuine barrage of abusive emails'. The claimant then listed three emails sent on 16/2/20217, 17/2/2017 and 20/2/2017, This is an example of the claimant's exaggeration and of her in these proceedings, revisiting events and attempting to turn them into an allegation of a detriment or of a breach of contract.

119. The actuality is that the claimant objected to other senior members of staff being copied in on an email. She pointed this out to Ms Nsomi-Campbell and asked that they speak directly in future (on 16/2/2017 page 789). As set out above, the claimant asked in an email to meet with Ms Nsomi-Campbell with Ms

Nair present. The claimant and Ms Nsomi-Campbell met and resolved their issues and the claimant informed Ms Nair her presence at a meeting was no longer required. Ms Nsomi-Campbell also apologised in an email.

120. The claimant's allegation went on to accuse Ms Nsomi-Campbell of refusing to have a telephone conversation with her, unless the telephone was on loud speaker and there was someone else present. She does not give specific dates, but does refer to 'refusals'[8] taking place in February and March 2017.

121. Ms Nsomi-Campbell said that once the claimant was on sickness absence (from 8/5/2017), under the respondent's absence management policy, she would telephone on speakerphone the claimant with Mr Nawaz of HR present in order that he could observe the conversation. In addition, she said she would speak to the claimant on speakerphone when Ms Ridsdale (Interim Consultant) was present.

122. This allegation is illogical. It is the claimant's own case that she initiated a meeting with Ms Nsomi-Campbell and that at that time they resolved their issues. She said to Ms Nair on 22/2/2017 (page 805):

> 'I met with [Ms Nsomi-Campbell] yesterday and I think we have resolved our issues and can move forward in a positive manner, therefore I don't think a meeting will be necessary after all.
>
> [Ms Nsomi-Campbell] – is that ok with you?'

The Tribunal finds it to be the case that they had resolved this issue at the time and had met in person to do so. This was a clear example of them meeting one-to-one in late-February 2017.

123. Even if it was the claimant's claim Ms Nsomi-Campbell would not speak to her on the telephone unless there was someone else present ('would never speak to me one-on-one' claimant's witness statement paragraph 97), clearly, the claimant cannot have known this to be the case, unless she was told of this by Ms Nsomi-Campbell or someone else. Ms Nsomi-Campbell agreed that she spoke to the claimant on speakerphone with Mr Nawaz of HR[9] present, when she was managing the claimant's sickness absence.

124. Ms Nsomi-Campbell also said that she would speak to the claimant on speakerphone with Ms Ridsdale present, presumably either so that Ms Ridsdale

[8] Paragraph 10.4 '[Ms Nsomi-Campbell] refused to have a telephone conversation with the claimant without having the phone on loudspeaker and without another person present in the room.'

[9] Noting that any conversations at which HR was present can only have taken place after the claimant's sickness absence commenced on 8/5/2017 and this was not in February/March 2017.

was kept informed of the discussions or for her to benefit from the experience/make notes. The claimant did not give specific examples and made a general allegation. The Tribunal finds that Ms Nsomi-Campbell would have told the claimant when she was communicating with her via speakerphone and there was someone else present and on other occasions, she did speak or indeed meet with the claimant on a one-to-one basis. This is standard workplace practice and there is nothing untoward about this.

125. This suggests and the Tribunal finds that if the claimant genuinely at the time had an issue with Ms Nsomi-Campbell's conduct on the telephone, she would have raised it directly with her and with HR. As she did over the email of 16/2/2017.

126. 10.5 – Ladywell Windows (University Hospital Lewisham).

127. There was a background to this matter, however, it is not something upon which the Tribunal will make any findings. The respondent had an outstanding project to replace the windows at Ladywell due to ligature risk.

128. The claimant went into a meeting with Ms Nsomi-Campbell, Mr Richards and Ms Ridsdale on the 21/2/2017. The claimant said Ms Nsomi-Campbell told them she had had a meeting with a Director from University Hospital Lewisham and had been told as landlord he would not consent to replacing the windows as the lease was running out; whereas Ms Nsomi-Campbell took the view they still needed replacing as they were a ligature risk. The claimant 'just did not believe' Ms Nsomi-Campbell. The claimant then checked Ms Nsomi-Campbell's diary and discovered no meeting with the Director.

129. The claimant said:

> 'The next day [Ms Ridsdale] sent me a note of the meeting but the point about [Ms Nsomi-Campbell] saying that the Ladywell window replacement was not going ahead was not in the note.

(witness statement paragraph 83)

130. It is not clear why, if the claimant did not believe Ms Nsomi-Campbell and if the fact the project had been cancelled was not covered in Ms Ridsdale's note; she did not query it. She could have queried it with any of the attendees at the meeting, other than Ms Nsomi-Campbell. She had checked whether or not Ms Nsomi-Campbell had, according to her diary, had a meeting with the Director and had concluded that she had not[10]. Yet she did not query this further.

[10] Ms Nsomi-Campbell said that she had bumped into the Director at a SEL meeting in Southwark and it was not a dedicated meeting with the Director.

131. Due to her misunderstanding, the claimant then said in an email on 20/4/2017 that the Ladywell windows project was not being taken forward due to a decision taken by Ms Nsomi-Campbell (page 1020). This was questioned by the Deputy Director of Nursing, copied to Ms Nsomi-Campbell and the Chief Operating Officer raised the issue directly saying that it was now urgent and asked for a response. Ms Nsomi-Campbell replied 90 minutes later and apologised for the delay. In a detailed email Ms Nsomi-Campbell explained her position (page 1018). That email was critical of the claimant, in the circumstances however, it was not unjustified.

132. Even if the claimant had misunderstood what Ms Nsomi-Campbell had said about the Ladywell windows at the meeting on 21/2/2017 and even if she was distracted by matters which preceded that meeting, the claimant's own case was that she did not believe Ms Nsomi-Campbell that the project was no longer proceeding, that was not confirmed in Ms Ridsdale's note and having investigated, she found no record of a meeting with the Director.

133. In a text message to Mr Heafield setting up a meeting for the 27/4/2017 the claimant referenced her unhappiness at the email (Mr Heafield had been copied in, he did say however that he received so many emails that he did not necessarily scrutinise ones that were not directly addressed to him) (page 1011). It also appeared the email was on the list of matters the claimant prepared to discuss with Mr Heafield (page 1046).

134. The email robustly set out Ms Nsomi-Campbell's position following a misunderstanding and nothing more. It did not, for example, accuse the claimant of lying as she interpreted it.

135. 10.6 – The claimant said Ms Nsomi-Campbell took actions which caused her to believe she was being set up to fail. To the extent they have not previously been covered, the Tribunal finds they were viewed subjectively from the claimant's point of view. The claimant did not give evidence of any consequences or disadvantage.

136. Allegation 10.6.1.1. and 10.6.1.2 referred to incidents on 24/10/2016 and November 2016 and to Ms Nsomi-Campbell ignoring matters which the claimant raised. It is noted these events occurred during a time when it was the claimant's case that her relationship with Ms Nsomi-Campbell had not deteriorated (paragraph 46 of her witness statement).

137. The issue of the rates for JWH is misrepresented (10.6.1.3). The Tribunal finds Ms Nsomi-Campbell was aware that ratings had been changed in the past for differing use of individual floors in a building and wanted this to be considered for JWH. Ms Nsomi-Campbell was concerned that the rates for JWH at £240,000 were high when compared with the entire Bethlem site of £270,000 (page 698). Ms Nsomi-Campbell was not being underhand or seeking to do

anything unlawful. Furthermore, she was not acting contrary to advice from Montague Evans[11]. She was entitled to challenge her staff (including the claimant) and the respondent's advisors, and she had a duty not to allow public funds to be overspent unnecessarily. In any event, even if somehow the Local Authority was misled over the use of JWH, the Tribunal was told that it would inspect the building and determine how it was being used, which in turn would impact on the rateable value.

138. Next, the claimant complains Ms Nsomi-Campbell ignored her comments on a Disposals List (10.6.2). It is not clear how this would undermine the claimant, rather than Ms Nsomi-Campbell.

139. The claimant complains she was left out of conversations (10.6.3) and gives one example (10.6.3.1)[12] of being left out of a meeting on 25/1/2017 which was 'outrageous'. The claimant was copied into emails along with her colleagues on the CIPs. It was also the case that Mr Richard's department was separate to the claimant's and it may well have been appropriate for Ms Nsomi-Campbell to meet him separately, without inviting the claimant.

140. It is also noted that unlike the incident on 16/2/2017 when the claimant raised her concerns with Ms Nsomi-Campbell and Ms Nair when she disagreed with Ns Nsomi-Campbell's actions, she did not do so in respect of these matters. If the claimant genuinely thought that it would be outrageous to be left out of a meeting, based upon her email of 16/2/2017, it is not unreasonable to have expected her to have raised it at the time.

141. 10.7 – Categorised as unprofessional behaviour of Ms Nsomi-Campbell. The evidence in relation to this was disputed. Ms Nsomi-Campbell denied some allegations (such as swearing) but admitted others (such as giving the claimant a hug). There was no complaint from anyone else, for example about Ms Nsomi-Campbell swearing. In fact evidence from Mr Whitfield was that he had not noticed anything out of the ordinary (the satsuma incident) until the claimant mentioned it to him after the meeting and he felt that the claimant was seeking to make an issue out of something that was not there.

142. Even if Ms Nsomi-Campbell did swear[13], it was not directed at the claimant. On the claimant's case, when talking about being given a fixed-term contract, Ms Nsomi-Campbell said something along the lines of: 'for those of you who wanted me to piss off, I'm afraid I'm staying'. Apart from this example in respect of using other profanities, other than setting out the swear word used, no other detail was provided (other than to say 'at numerous internal departmental

[11] The respondent's property advisers.

[12] 10.6.3.2 repeats by cross-referencing 10.6.1 and 10.6.2.

[13] 10.7.1

meetings'). The Tribunal finds that even if proven, swearing of this nature does not amount to a breach or contribute to a breach of the implied term of trust and confidence.

143. Allegation 10.5 (Ladywell windows) is repeated in this section (10.7.2) and is framed as Ms Nsomi-Campbell 'lying about previous conversations'. The findings made above are repeated and the Tribunal finds that the claimant misunderstood what Ms Nsomi-Campbell had said about the project not continuing and if there was any undermining, it came from the claimant. Ms Nsomi-Campbell did not lie.

144. The next sub-allegation (10.7.3) was that Ms Nsomi-Campbell openly criticised other members of staff. There is a double standard here as the claimant criticised her colleagues. The only example given by the claimant in an email (rather than orally) was of Ms Nsomi-Campbell 'suggesting' Nigel Bryant had not followed industry standards (page 738). Ms Nsomi-Campbell simply asked Mr Bryant for a window schedule and referred to it being 'standard' to have a schedule; this was not criticising him. Whereas in her email correspondence of 7/11/2016, the claimant referred to a colleague, saying (page 542):

> 'She is so stupid – fancy sending out a report knowing it was all wrong!!! What are we going to discuss – sacking her!!!?'

145. The claimant's response when this was put to her in cross-examination was unimpressive. She said the recipient of the email was a friend and they were being silly, having a laugh and that it was a bit of banter between friends. She distinguished Ms Nsomi-Campbell by saying she was more senior and criticised other senior staff at the respondent. The claimant's response is not well-founded in view of the criticism she levelled at Ms Nsomi-Campbell.

146. The next allegation was inappropriate use of language regarding mental health (10.7.4). In the first sub-allegation (10.7.4.1), the claimant does not say what was said that was inappropriate.

147. The next sub-allegation (10.7.4.2) related to a discussion about lifts in a new building, which Ms Nsomi-Campbell agreed she made. There was a discussion of risks for clinical staff and patients at a meeting on 20/4/2017 and the minutes record this (page 1006). Again, the comment was not directed at the claimant and she has failed to establish how it undermined her.

148. The allegation was that Ms Nsomi-Campbell spoke to clinicians at meetings 'as if she knew more about mental health and what was required than they did' (10.7.4.3). Even if Ms Nsomi-Campbell did, which she denied, this does not undermine the claimant. The particulars the claimant set out (10.7.4.3.1 and 10.7.4.3.2) did not further the claimant's case. She accused Ms Nsomi-Campbell of saying (in a patronising tone) 'this is what you need to have' and 'if it worked

there, then it can work here'. The comments were not, on the claimant's case directed at her.

149. The next allegation in this section was very thin (10.7.4.4), that at various meetings Ms Nsomi-Campbell referred to service users as 'mad people'. The allegation is framed as Ms Nsomi-Campbell using this terminology on more than one occasion. There was no reference to the claimant taking this up with HR as would be expected, particularly as the claimant had previously approached HR and asked Ms Nair to intervene and the Tribunal finds Ms Nsomi-Campbell did not use such a term.

150. The final allegation in this section was that Ms Nsomi-Campbell invaded employees' (including the claimant's) personal space with inappropriate physical contact (10.7.5).

151. Ms Nsomi-Campbell did hug the claimant on the 4/5/2017 (10.7.5.1). She said the claimant was upset after a meeting at which the Essentia report, which was critical of the claimant, was discussed. She said she asked the claimant if she needed a hug and the claimant replied yes. On Ms Nsomi-Campbell's case the contact was not unwanted.

152. Mr Heafield also recalls the claimant telling him she had been hugged and in response, he told her to raise this with Ms Nsomi-Campbell and if she felt she could not do so, to speak to HR.

153. Even if on the claimant's case this act amounted to a breach of the implied term of trust and confidence; there was no further physical contact and therefore any breach was waived by the claimant. The claimant did not resign as a result of this. She expressly told the Tribunal that she resigned as she was told she would return to her band 7 substantive role, once the two-year secondment came to an end.

154. The remaining two allegations in this section are the satsuma incident (10.7.5.2) and that Ms Nsomi-Campbell was flirtatious in meetings and on one specific occasion, in April 2017 (no actual date was given) touched Mr Whitfield's arm and giggled (10.7.5.3).

155. The Tribunal preferred and accepted Mr Whitfield's evidence on this. Mr Whitfield was a credible witness and was extremely candid. The Tribunal finds that the incident did not happen as the claimant described. It accepted Mr Whitfield's account that he saw nothing untoward and that it was the claimant who tried to make something out of this such that he remembers her bringing it up.

156. Ms Nsomi-Campbell denied flirting and said she was too old. Mr Whitfield's reaction, when it was put to him that Ms Nsomi-Campbell had touched his arm and giggled, replied: 'definitely not no'. He then appeared to realise the

allegation was Ms Nsomi-Campbell had flirted with *him* and he said: 'With me? No, jeez, no.' His reaction was genuinely incredulous.

157. 10.8 – After the meeting to discuss the Essentia report on the 4/5/2017, but prior to the hug, the claimant alleges that Ms Nsomi-Campbell sought to persuade the claimant to assist her in removing Mr Kara as her line manager, called Mr Kara a liar and wanted to replace him with Mr Heafield.

158. The claimant does not explain, why on her case, someone who has been bullying, harassing her and undermining her since at least the start of the year would seek her assistance in this manner. It is not credible that Ms Nsomi-Campbell wanted to oust the claimant, but also wanted her to help her to change her own line management reporting.

159. Ms Nsomi-Campbell's evidence made far more sense. She denied this had happened and said that Mr Kara was her temporary line manager for six months. She would therefore have no reason to try and remove him. Ms Nsomi-Campbell's own contract was for one year from April 2017, yet on the claimant's case, having accepted that contract, in less than a month she was plotting with the claimant to remove Mr Kara. This is just not accepted.

160. 10.9 – This is a repeat of allegation 10.7.5.1.

161. 10.10 - This related to the claimant's sickness absence. The contact with her whilst she was off was appropriate and in line with the respondent's sickness absence policy. The request to have Mr Kara as her contact whilst off, rather than Ms Nsomi-Campbell was denied but it was stated that if she were to lodge a grievance against Ms Nsomi-Campbell her contact would be changed.

162. The claimant has misrepresented the email which was sent to her colleagues on the 30/6/2017 (page 1233). The email was sent on behalf of Ms Nsomi-Campbell and Ms Nair. It stated:

> 'Dear Colleagues
>
> You are aware [the claimant], Head of Capital Planning and your line manager ls currently on sickness absence which began on 9th May and we have been told will continue till 8th August 2017.
>
> We have been in contact with [the claimant] during the past weeks to know how she is doing and for any support we can offer her which will be helpful towards returning to work and to her team. Recently [Ms Nair] met with [the claimant] where she mentioned that some of you from the Capital Planning team have contacted her and discussed capital planning matters with [the claimant]. Please do not think that [the claimant] was upset or complaining about this contact made by her team because this is not the case at all.

> Whilst we fully appreciate that you may be very concerned for [the claimant's] health and wellbeing and we know from [the claimant] that there are friendships that exist within the team members, it is important that as employees of the Trust we respect [the claimant's] right to rest, relax and recover while she is away from her workplace, it is therefore important that we ask you to not contact [the claimant] for any Capital Planning related issues or advice, We absolutely do not want to do anything that will have a negative impact on [the claimant's] recovery.
>
> During this time Altaf Kara, [Ms Nsomi-Campbell] and [Ms Nair] will be the nominated persons within the Trust who will maintain contact with [the claimant] and share with her key updates. For Capital Planning matters please email or discuss directly with [Ms Nsomi-Campbell].
>
> Please feel free to come discuss this email with either [Ms Nair] or me if you would like to.'

163. The email was carefully considered, perfectly appropriate and intended to ensure the claimant was able to distance herself from work pressures. It is entirely disingenuous to allege that telling the claimant's colleagues not to contact her regarding work issues left her feeling like she had been suspended. The intention behind the email was perfectly clear. It made clear that contacting the claimant as a friend was permitted. What her colleagues were asked not to do, however, was to contact the claimant on any work-related issue. By no means can the email be said to be vindictive or unpleasant.

164. There are two further observations. Firstly, the claimant said in evidence that she would not have minded if her colleagues had contacted her to say Ms Nsomi-Campbell had raised something with them. That is contrasted with her complaint that Ms Nsomi-Campbell herself harassed her during her sickness absence by merely copying emails to her. Secondly, the email was sent jointly from Ms Nsomi-Campbell (who said the email had been drafted by HR) and Ms Nair, yet the criticism is aimed at Ms Nsomi-Campbell alone.

165. Finally, Ms Nsomi-Campbell's actions did not undermine or breach the claimant's contract. As submitted by the respondent, the claimant was hypersensitive and in respect of any action taken or not taken by Ms Nsomi-Campbell and she viewed absolutely everything from a negative perspective.

166. The claimant's case is that Ms Nsomi-Campbell's treatment of her amounted to a repudiatory breach of her contract, such that she was entitled to resign and claim constructive dismissal from at least January to late-April 2017. Then following the meeting on 27/4/2017 that Ms Nsomi-Campbell's treatment of her escalated severely such that there were further fundamental breaches which the claimant then accepted by resigning. It must be the claimant's case that the treatment escalated as otherwise, there is no link to the whistleblowing. If on the claimant's case the poor treatment simply continued, then as it had been happening before 27/4/2017, it cannot have been caused by any whistleblowing.

Putting the issues in this way simply shows how contrived the claimant's case was.

167. The claimant has listed numerous allegations. The Tribunal finds the claimant did not accept Ms Nsomi-Campbell's line management of her. Due to the claimant's discord with Ms Nsomi-Campbell's approach, this resulted in the claimant taking the view that if Ms Nsomi-Campbell disagreed with her or even asked the claimant to provide something as part of a normal and reasonable management instruction, that Ms Nsomi-Campbell was undermining her. The Tribunal finds this was not the case and the claimant was determined to be negative about anything Ms Nsomi-Campbell did or did not do.

168. The Tribunal saw one email Ms Nsomi-Campbell sent to the claimant which it finds was robust on 20/4/2017 (page 1027). Ms Nsomi-Campbell also sent an email challenging Mr Richards on 28/11/2016 (page 655). This email was also forceful and could even be described as patronising in that Ms Nsomi-Campbell, who was new in post said: 'Just to let you know I have been an architect long enough to know the difference between new works and repairs.' The claimant was copied into this email and she had not raised any concern about it. Ms Nsomi-Campbell was supporting the claimant in investigating a concern she had. This demonstrated that Ms Nsomi-Campbell was not targeting the claimant.

169. The Tribunal was also disturbed at the claimant's unwarranted attack on Mr Richards in her witness statement. Had there been any application from a member of the public or press to inspect the witness statements, the Tribunal would have ordered those paragraphs be redacted (this was referred to at the commencement of the hearing which it was confirmed the Tribunal did not expect Mr Moretto to address those allegations). The section entitled 'Estates and issues with [Mr Richards]' was unnecessary. There was no allegation directed specifically towards Mr Richards in the list of issues (which had presumably been agreed well in advance of the final hearing due to commence in April 2020). As such, there were no 'allegations' Mr Richards would have expected to answer in his witness statement (unlike Ms Nsomi-Campbell who was aware of the allegations against her and she did have the opportunity counter them). Mr Richards can quite rightly feel aggrieved that such superfluous allegations were made against him, without the opportunity for him to respond.

The Law

170. Section 94 of the Employment Rights Act ("ERA") states that an employee has the right not to be unfairly dismissed by his employer.

171. As the claimant resigned her employment and relies upon a constructive dismissal, she must establish that she terminated the contract under which she was employed (in this case with notice) in circumstances in which she was

entitled to terminate it by reason of the respondent's conduct (s.95(1)(c) Employment Rights Act 1996):

> (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if)—
>
> …
>
> (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
>
> (2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—
>
> (a) the employer gives notice to the employee to terminate his contract of employment, and
>
> (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;
>
> and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

172. The relevant principles are found in Western Excavating (EEC) Ltd v Sharp [1978] ICR 221. The test of a constructive dismissal is a three-stage one:

> was there a fundamental breach of the employment contract by the employer;
>
> did the employer's breach cause the employee to resign; and
>
> did the employee resign without delaying too long and thereby affirming the contract and losing the right to claim constructive dismissal?

173. The House of Lords in Malik and Mahmud v BCCI [1997] ICR 606 described the implied term of trust and confidence as being an obligation that the employer shall not:

> 'Without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.'

174. In Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347 the EAT held that it is implied in a contract of employment a term that the employer will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and

confidence between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation since it necessarily goes to the root of the contract. The Tribunal's function is to look at the employer's conduct as a whole and determine whether its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

175. In the case of Spafax Ltd v. Harrison & Spafax Ltd v Taylor [1980] IRLR 442 wherein the Court of Appeal ruled that lawful conduct is not something which is capable of amounting to a repudiation. Paragraph 17 states:

> 'I can find nothing in anything that the Master of the Rolls said in either of those cases to make lawful conduct something which is capable of amounting to a repudiation. There must, in my judgment, be a breach of some term of the contract, express or implied, and indeed it must be fundamental — so fundamental as to evince an intention not to be bound by the contract and to be capable of amounting to a repudiation.'

176. Section 98 ERA states:

> (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
>
> (a) the reason (or, if more than one, the principal reason) for the dismissal, and
>
> (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held
>
> (2) A reason falls within this subsection if it—
>
> (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
>
> (b) relates to the conduct of the employee,
>
> (c) is that the employee was redundant, or
>
> (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
>
> …
>
> (3) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case

177. The claimant pleads that she has made a protected disclosure under s. 43B of the ERA. She also claims she was subjected to a detriment under s. 47B ERA and automatically unfairly dismissed per s. 103 ERA.

> 43B Disclosures qualifying for protection.
>
> (1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
>
> (e) that the environment has been, is being or is likely to be damaged, or
>
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

> 47B Protected disclosures.
>
> (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
>
> (1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—
>
> (a) by another worker of W's employer in the course of that other worker's employment, or
>
> (b) by an agent of W's employer with the employer's authority,
>
> on the ground that W has made a protected disclosure.
>
> (1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.
>
> (1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

> 103A Protected disclosure
>
> An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

178. In Kilraine v London Borough of Wandsworth [2018] ICR 1850 the Court of Appeal said that the word 'information' in S.43B(1) ERA has to be read with the qualifying phrase 'tends to show'; the worker must reasonably believe that the

information 'tends to show' that one of the relevant failures has occurred, is occurring or is likely to occur. Accordingly, for a statement or disclosure to be a qualifying disclosure, it must have sufficient factual content to be capable of tending to show one of the matters listed in S.43B(1)(a)–(f) ERA. An example was given of a hospital worker informing their employer that sharps had been left lying around on a hospital ward. If instead the worker had brought their manager to the ward and pointed to the abandoned sharps, and then said 'you are not complying with health and safety requirements', the oral statement would derive force from the context in which it was made and would constitute a qualifying disclosure. The statement would clearly have been made with reference to the factual matters being indicated by the worker at the time.

179. Section 43B(1) ERA requires that, in order for any disclosure to qualify for protection, the person making it must have a 'reasonable belief' that the disclosure 'is made in the public interest'. That amendment was made to avoid the use of the protected disclosure provisions in private employment disputes that do not engage the public interest.

Conclusions

180. The claimant did not make a protected disclosure to Mr Heafield on 27/4/2017. Putting her case at its highest, she may have referred to the extension and rates at JWH, but in the context of her complaining about Ms Nsomi-Campbell and their working relationship. It was no more than that and the Tribunal expressly rejects the claimant's evidence that she knew she had blown the whistle to Mr Heafield during that meeting.

181. The claimant cannot therefore have been subjected to any detriments as a result of that meeting.

182. There was also no causal link between the discussions at the meeting and any claimed detriment which post-dated the meeting. For example, Ms Nsomi-Campbell did not hug the claimant on 4/5/2017 as a result of anything the claimant said to Mr Heafield.

183. The claims that the claimant was subjected to detriments pursuant to s. 47B ERA and automatically unfairly dismissed contrary to s. 103A ERA fail.

184. The claimant has failed to demonstrate there was a fundamental breach of the implied term of trust and confidence. If her case was there was a series of breaches, culminating in an email on 11/7/2017[14], it is not accepted the matters

[14] The date of 11/7/2017 is referenced in allegation 10.1.18 and is set out as constant emails from Ms Nsomi-Campbell to the claimant between 8/5/2017 and 11/7/2017. The 11/7/2017 is of course the date of the claimant's resignation (page 1247). The last email the Tribunal can find from Ms Nsomi-Campbell to the claimant was on 30/6/2017 which confirmed the end of the secondment (page 1236), which the claimant acknowledged receipt of on 11/7/2017 (page 1244). That assumes the bundle is in

complained of formed a breach or a series of breaches. The claimant's allegations were not made out or accepted, save for the hug and one robust email and those events alone or in tandem do not amount to a breach. Furthermore, there was no conduct which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the respondent and the claimant.

185. As there was no breach, there was no fundamental breach entitling the claimant to resign. The claimant resigned, as she said, upon receipt of the letter informing her the two-year secondment would end on 29/9/2017 and that as per the terms of the secondment, she would be returning to her substantive band 7 role.

186. The claim of constructive dismissal also fails.

187. As the claims fail in their entirety, they are dismissed.

188. A provisional remedy hearing was listed for 8/10/2021 will no longer be required.

_____
Employment Judge Wright
Date: 26 May 2021

chronological order. That also ties in with the claimant's statement that the reason she resigned was the letter dated 30/6/2017 and that she could not return to her substantive role upon the end of the secondment.