EMPLOYMENT TRIBUNALS

Claimant: **MISS LISA-MARIE GRAHAM**

Respondent: **DISABILITY SOLUTIONS (WEST MIDLANDS) LIMITED**

Heard at: **Midlands West ET (parties attending via video link)**

On: **24-28 June 2024 & 12-14 August 2024**

Before: **Employment Judge Ali**

Members: **Ms M Stewart**
Mr D McIntosh

Representation

Claimant: In person
Respondent: Mr Lanre Fakunle (Solicitor)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Tribunal is:

1. The Claimant's complaints of:
   (1) Automatically unfair constructive dismissal for making protected disclosure(s)
   (2) Detrimental treatment for making protected disclosure(s)
   (3) Harassment related to sex
   (4) Sexual harassment
   (5) Discriminatory dismissal
   (6) Victimisation
   (7) Failure to pay notice pay
   are not well founded and are dismissed.

2. The Claimant's holiday pay claim is dismissed on withdrawal.

REASONS

JUDGMENT having been given orally to the parties on 14 August 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

Introduction

1. The Respondent is a charity based in the Midlands that supports people with disabilities. The Claimant was employed by the Respondent, initially as a Welfare Benefits Advisor but then as a Project Worker, from 2 August 2021 until 12 January 2023.

2. Early conciliation started on 13 January 2023 and ended on 17 February 2023. The claim form was presented on 8 March 2023. The Respondent submitted an ET3 response on 7 April 2023 and defends all the claims being brought.

3. At a Preliminary Hearing before Employment Judge Howden-Evans on 16 August 2023 the issues between the parties were clarified and set out in an agreed list of issues, and case management directions were given.

Preliminary matters at final hearing

4. The parties were told that should they require any reasonable adjustments or breaks during the course of the hearing, or have any questions, these should be raised and the Tribunal would assist.

5. Especially as the Claimant was a litigant in person the Tribunal took care in explaining to her how the hearing process would work and explained issues as they arose.

6. Regrettably the parties had not complied with case management directions in relation to disclosure and witness evidence, and much of the first day of the hearing was taken up dealing with applications from the parties and housekeeping issues.

7. There had been the late disclosure of around 26 pages of additional documents from the Respondent a week or so before the final hearing. The Respondent's explanation was this further disclosure had come to light as witnesses prepared their statements. The Claimant objected to this because it was late in the day and she had not fully digested the contents. Given the evidence was potentially relevant, the Claimant had had a week to consider it, it was only 26 pages, and the Claimant accepted she could consider it and deal with anything that arose from it as part of this hearing, the Tribunal was content for this evidence to be included.

8. On 20 June 2024 the Claimant had obtained witness orders from EJ Meichen for Ms Daniela Santoro and Mr Duncan Walker to give evidence. During the course of the first day, Ms Santoro attended and helpfully explained she could attend on Day 3 to give evidence, and the Claimant confirmed Mr Walker could attend on Day 4 to give evidence and confirmed that he was not abroad. The parties agreed that both these witnesses would be emailed a Bundle, and it was explained to the Claimant that as they were her witnesses she could not cross-examine them.

(1) Ms Santoro helpfully attended on Day 3 at 10am as requested, waited until called, and then proceeded to give evidence.
(2) Mr Walker on the other hand failed to attend at 2pm on Day 4 as scheduled, suggesting to the Claimant by text that his work had unexpectedly sent him away to Nottingham where he had a poor signal and could not connect on his phone. This was odd given it had earlier been understood he was going to be away on leave. It was therefore requested by the Tribunal that he attend on Day 5 at 10am. However at 4.54pm on Day 4 Mr Walker emailed the Tribunal to say, "I did try to join the hearing today but was unable to connect via a mobile phone whilst on holiday. I do not have access to any PC or tablet. I won't be available until next week for the hearing with details attached below". This meant Day 5 could not be utilised as efficiently and as fully as the Tribunal had hoped. To be as fair as possible to the Claimant and Mr Walker, it was proposed he be given one last opportunity to attend and give evidence at 10am on Day 6 of the hearing. However on Day 6 the Claimant had online connection difficulties early in the morning therefore having to join by telephone for Days 6-8. Mr Walker eventually gave evidence on Day 7 at 10.30am.

9. More significantly the Claimant had failed to provide a witness statement for herself. Because of this the Respondent chose not disclose their witness evidence until the evening before Day 1 of this hearing, and also made a strike-out application pursuant to Rule 37(1)(b), (c) and (e) of the 2013 ET Rules. The Respondent argued that the Claimant had deliberately not complied with orders, and had delayed in contacting witnesses, which had caused the Respondent prejudice. Alternatively the Respondent argued that the Claimant should be barred from giving any evidence as part of this trial (which would effectively mean her claims were unlikely to succeed). The Claimant's explanation was that she felt she could rely on the grounds/statement she had added to her ET1 claim form as her witness statement, and she simply had not understood that a further witness statement was needed from her. Although she would prefer to have the opportunity to prepare a detailed witness statement, she was content she could proceed on the basis of her statement attached to the ET1 and the list of issues that had been set out by EJ Howden-Evans on 16 August 2023.

10. The Tribunal's view was that a fair trial was still possible, all the witnesses were present at trial, and the Claimant could rely on her detailed ET1 grounds and the list of issues as her evidence and the basis of her case. Proceeding with this case best furthered the overriding objective. The Respondent was not prejudiced in any material sense and understood the case it had to defend. It was also noted there were less draconian options to a strike-out which the Tribunal had an obligation to consider. It was further noted that the Respondent was not blameless. Their legal representatives had simply forgotten about preparing witness statement due on 22 March 2024 and only raised exchange of statements with the Claimant on 6 June 2024 proposing exchange on 17 June 2024. They had then not disclosed their statements until the evening before Day 1 of the final hearing notwithstanding the Claimant was a litigant in person. The Tribunal determined:
(1) The case would not be struck-out, but would proceed.
(2) The Claimant could rely on her statement/grounds attached to her ET1, and the list of issues set out by EJ Howden-Evans on 16 August 2023 as her evidence and the basis of her claims. She would not be allowed to introduce new witness evidence from herself. This way she could still bring and evidence her claims. This option furthered the overriding objective and struck a balance between the interests of the respective parties. The Tribunal noted the Respondent's witness statements all expressly stated that they were addressing the Claimant's claims on these basis.

(3) The Claimant asked for an extra day to be able to consider the Respondent's witness evidence and prepare her questions for cross-examination. She would be given the whole of Day 2 to do so, which the Tribunal would take as a reading day.
(4) Given Day 1 was taken up until 2.40pm with preliminary matters, and Day 2 was to be a reading day, the Tribunal listed a further 3 days on 12, 13 and 14 August 2024 to complete this case.
(5) Going part-heard for less than 2 months was a far better option in all the circumstances than adjourning this case entirely which meant it was unlikely to be heard for at least 8-9 months.

11. The Tribunal raised on Day 1 with the parties whether there were any issues arising pursuant to Rule 50 as a preliminary matter given the nature of some of the allegations. The only issue raised by the Claimant was in relation to the name of her daughter not being referred to. It was agreed that any references to the name of the Claimant's daughter would be completely redacted, and she would not be referred to by name during the case or in any written judgment. It was also agreed during the course of the hearing that a male employee alleged to have engaged in sexually inappropriate remarks and sexual harassment, but who was not taking part in the hearing should be referred to as employee M in this Judgment.

12. To our great surprise on Day 3 the Respondent indicated for the first time that they wished to call Mrs Lesley Smith as an additional witness, and the Claimant indicated for the first time that she wished to call Alice Dair (Chair of the Respondent) as a witness by seeking a witness summons. This would have inevitably caused further delays to the hearing and necessarily re-opened the question of whether the trial was to be further part-heard or postponed. Sensibly neither party in the end pursued applications to call these witnesses.

Claims and issues

13. Some time was spent at the start of the hearing going through the list of issues set out by EJ Howden-Evans on 16 August 2023 and the claims set out in the ET1 claim form with the parties.
(1) It was noted that EJ Howden-Evans had already dealt with the fact that the Claimant could not bring a claim of ordinary unfair dismissal as she lacked two years service, and that claim had been withdrawn.
(2) It was agreed that the Claimant was also pursuing a claim for notice pay.
(3) The Claimant clarified her outstanding holiday pay claim related to 4 days holiday.
(4) It was agreed that the box ticked for Other Payments in the ET1 was a reference to the protected disclosure claims.
(5) I raised that the ET1 claim form also appeared to be raising a claim of "discriminatory dismissal" and this was to be considered, despite this not being clear from the list of issues.

14. In summary, the claims for determination were therefore as follows:
(1) Automatically unfair constructive dismissal for making protected disclosure(s)
(2) Detrimental treatment for making protected disclosure(s)
(3) Harassment related to sex
(4) Sexual harassment
(5) Discriminatory dismissal
(6) Victimisation
(7) Outstanding holiday pay

(8) Notice pay.

15. The parties otherwise agreed that the list of issues set out at the PH by EJ Howden-Evans on 16 August 2023 (starting at p 51 of the Bundle) set out the claims that required determination at final hearing. That list very helpfully breaks down the relevant factual and legal issues for the Tribunal to determine in this case.

The evidence

16. The Tribunal had before it a documents Bundle of 327 pages.

17. The Tribunal heard oral evidence from the Claimant. She had not produced a witness statement for the final hearing. It was explained to her that she could rely on her ET1 Particulars of Complaint for the purposes of her evidence in chief and the complaints as she had set them out at the PH before EJ Howden-Evans on 16 August 2023.

18. The Claimant also witness summoned Daniela Santoro and Duncan Walker to give evidence. They both gave oral evidence.

19. On behalf of the Respondent, Mandy Rollins, Sarah Ivan-Duke, David Lovatt and Cate Arnold provided written witness statements and gave oral evidence.

20. Both parties provided written submissions and spoke briefly to those submissions.

Findings of fact

21. The Respondent is a charity based in the Midlands that supports people with disabilities. It is a relatively small charitable organisation employing around 19 people.

22. The Claimant was employed by the Respondent, initially as a Welfare Benefits Advisor from 2 August 2021 but then as a Project Worker from 19 April 2022 until the termination of her employment on 12 January 2023.

23. The Claimant was at all times line managed by Mr David Lovatt (he was in the role of Disability Connect Advice Team Lead).

24. Cate Arnold (an Executive Support Officer) was a mentor for the Claimant in her role as Project Worker from 19 April 2022 to the date of the termination of her employment on 12 January 2023.

25. Sarah Ivan-Duke was and remains a member of the Board of Trustees.

26. Mandy Rollins was and remains the Respondent's CEO.

27. Given the allegations in this case it is helpful to deal with each area of factual allegation in turn before turning to our conclusions. We take the headings below broadly from the list of issues set out by EJ Howden-Evans on 16 August 2023.

PD1: In September 2021 (about 6 weeks into her employment), the Claimant says she made a protected disclosure during a private conversation with Mrs Lesley Smith which took place

in a side room off the main office. The Claimant says she told Lesley Smith "I am struggling with the foul language and sexual comments that male staff are making" to which Lesley responded that the Claimant was not the only one to raise these concerns. The Claimant says she told Lesley Smith that she (the Claimant) "had overheard Mr Lovatt discussing a female member of staff's breasts"

28. The Claimant does not make any claim of sexual harassment in relation to any matters she raised with Lesley Smith. And it is noted the allegation does not provide any specific details about the sexual comments and foul language that were allegedly used, other than the one comment about Mr Lovatt allegedly discussing a female member of staff's breasts although no details are given of that staff member. The lack of specific detail caused the Tribunal to question the plausibility of this allegation.

29. Lesley Smith was not giving evidence and we give little weight to an unsigned document dated 2 November 2023 purporting to be a statement from her in the Bundle (p 323). In any event that statement is dealing with discussions Lesley Smith had with the Claimant in the Summer of 2022 rather than September 2021.

30. However we are concerned about the overall implausibility of this alleged protected disclosure taking place. Around this period the Claimant's evidence is she had become "quite close, quite quickly" with Mandy Rollins and that their professional working relationship was enjoying "a honeymoon period". With this in mind there is no good explanation why the Claimant would have not raised such issues directly with Ms Rollins if she had genuinely felt concerned about such matters. She told us she had not done so.

31. Similarly we found it odd that the Claimant says that she was assured by Lesley Smith that what she was telling her would remain anonymous and her name would not be disclosed. Yet the Claimant also told us in her oral evidence that after she had raised these concerns with Lesley Smith she believes Lesley Smith will have disclosed that she had done so to Mandy Rollins, and that this caused a deterioration in her relationship with Mandy Rollins. No real details of this deterioration in the relationship were provided by the Claimant.

32. Ms Rollins denies there was any such disclosure (para 7.1 of her WS). Even though Lesley Smith had been tasked with anonymising concerns that staff had raised and feeding those back to her in 2022, she had never raised any such matters at any point.

33. We also note this allegation was not raised by the Claimant as part of her grievance (p 136) which was a complaint largely about the behaviour of Mr Lovatt. We are surprised that such an allegation would not appear in the Claimant's grievance if Mr Lovatt had commented on a female staff member's breasts.

34. And we note at para 9 of his witness statement that Mr Lovatt denies ever commenting on a female member of staff's breasts, describing this allegation as "very shocking and embarrassing to him". Overall we found Mr Lovatt to be a straightforward, honest and reliable witness.

35. In contrast the Claimant was somewhat unreliable with her recollection and prone to exaggerating her evidence. Therefore, for all the reasons discussed above, the Tribunal finds that on a balance of probabilities it is unlikely that the Claimant had such discussions with Lesley Smith. It is not accepted that this alleged disclosure of information took place.

PD2: In January 2022 the Claimant's best recollection of this conversation is she told Mandy Rollins "Mr Lovatt and employee M were just discussing women quite vulgarly and employee M said to me "You should stop dieting 'cos it is shrinking your tits" and Mr Lovatt's response was to laugh and sort of nod his head in agreement with employee M". The Claimant alleges Ms Rollins responded that her staff had been dealing with some bloody difficult situations and had been working hard during the pandemic and needed to have a vent.

36. There are two matters for us to determine. Did the alleged actions of Mr Lovatt and employee M take place? And were they communicated to Ms Rollins by the Claimant as alleged?

37. The Claimant states these comments took place. We note on the face of it such comments represent quite unpleasant and direct remarks concerning the Claimant herself. Yet she presents no real details of what ways Mr Lovatt and employee M were discussing women vulgarly at all or any real context for how these remarks about her came to be made.

38. Also the Claimant is clearly wrong about the date of this alleged interaction, given she initially alleged it was in January 2022, and later accepted in oral evidence that this could not be correct as employee M only commenced employment with the Respondent in or around August 2022. The Claimant said she might have been confused about the timeline and may not have remembered the correct date. Given the serious nature of this comment which was directed at the Claimant herself, we would expect a much clearer recollection on the part of the Claimant had this comment been made.

39. More troubling still is that this very serious allegation does not appear to have been raised in the Claimant's grievance (p 136). We find if such a comment had been made it would have been something the Claimant would have had in mind and felt strongly about. In cross-examination it was put to the Claimant that she had not mentioned this allegation in either her grievance or her grievance appeal. She said her grievance was about Mr Lovatt, and not employee M. But when it was further put to her by the Tribunal that this complaint was also about Mr Lovatt, she said she was suffering from heightened anxiety so did not raise everything about Mr Lovatt she wanted to. We found this rather implausible given the Claimant would have had time to sit down and prepare her grievance outside the workplace.

40. The Claimant relies on Ms Cate Arnold in support of the alleged comments having been made, but in fairness Ms Arnold was not a witness to this comment actually being made, and can only say that this alleged comment was subsequently communicated to her by the Claimant.

41. Additionally we note David Lovatt "wholeheartedly" denies any such interaction ever took place (para 10 of his WS). His oral evidence denying this interaction was particularly persuasive. He stated, "Miss Graham knows my history of body dysmorphia and eating disorders, and I would never comment on anybody's diet or body. Ms Graham knows that, and of all the comments [allegations], this one has hurt me the most". We accepted this evidence.

42. Taking all this into account, on a balance of probabilities, the Tribunal do not accept this interaction with Mr Lovatt or employee M took place as alleged by the Claimant or at all.

43. Nor does the Tribunal accept that this alleged interaction was reported to Ms Rollins or that she had ever responded that her staff had been dealing with some bloody difficult situations and had been working hard during the pandemic and needed to have a vent. We note Ms Rollins denies this with "absolute certainty" in her WS at para 7.2, and we find it highly implausible that had she become aware of such an offensive comment she would have responded in the dismissive way alleged by the Claimant.

44. In her oral evidence the Claimant said very clearly that she had been discussing this complaint with Miss Arnold in the lunch area, when Ms Rollins came in and this issue was raised with her too in the presence of Miss Arnold. But the allegation as formulated in the list of issues refers to this disclosure as "a private conversation between just the Claimant and Mandy Rollins" (p 53). We find that given the gravity of this allegation, it is odd for the Claimant to be mistaken about such important detail. And we note Ms Arnold is unaware of the Claimant raising any such issue with Ms Rollins (para 6.2 of her WS). For these reasons we do not accept the Claimant's evidence in relation to this alleged protected disclosure taking place, and find that it did not.

On or around 13th October 2022, when the Claimant said she was going to use the ladies (toilet) with Cate Arnold, did employee M ask the Claimant if he could come and watch?

45. The Claimant asserts this comment was made when they were in the main office and the comment was witnessed by Cate Arnold, who also confirms this version of events in her witness statement. Additionally Mr Lovatt accepts such a comment was made by employee M. The Tribunal accepts this evidence.

46. In oral evidence the Claimant could not recall when this comment was made by employee M. The Tribunal asked the Claimant how she felt about this alleged comment, and she explained it made her "feel sick" especially given her history with employee M's inappropriate comments. The Tribunal accepts the Claimant was offended by this comment.

47. The Tribunal finds that this comment was likely made on 5 September 2022 and not as alleged on 13 October 2022. We have had particular regard to contemporaneous meeting minutes dated 5 September 2022 (p 325) in which Mr Lovatt challenges and reprimands employee M for making such a comment in a meeting on the same day as the comment was made and documents the same.

48. We also accept that Mr Lovatt told the Claimant she could raise a formal complaint about employee M in relation to this comment but she chose not to do so.

49. We bear in mind Mr Lovatt's swift response to employee M here, as a basis for the Tribunal finding elsewhere that it was implausible that had sexually inappropriate comments been raised before Mr Lovatt that he would not have acted on them.

PD3: The Claimant alleges on 6 October 2022, (during a team building day) when they were stood in a mock street at the Black Country Museum, the Claimant made a protected disclosure to Miss Rollins and Mr Lovatt (and there were only the 3 of them present). The Claimant alleges she told Miss Rollins and Mr Lovatt "I was just sitting on a bench in a public area, with a couple of other members of staff and there were young children and families present, when employee M approached me and asked me very loudly "Who did I have sex

with to get that" and he pointed to my lunch of fish and chips. I didn't respond so he then said very loudly "You either had sex with them or gave them a really good blow job".

50. There are two alleged offensive comments from employee M, and we need to determine if such comments were made by employee M. Thereafter we need to determine if the Claimant disclosed to Miss Rollins and Mr Lovatt these comments as alleged.

51. The Tribunal finds that on 6 October 2022 employee M did say to the Claimant words to the effect, *"who did you have to sleep with [or shag] to get that"* referring to the large portion of fish she had as part of her lunch. We find this did cause upset for and offence to the Claimant. However we find employee M did not make the further comment, *"You either had sex with them or gave them a really good blow job"*. And further the Tribunal finds that any inappropriate comments from employee M were not communicated by the Claimant to Ms Rollins or Mr Lovatt as alleged on 6 October 2022. Our reasons for so finding are as follows.

52. Daniela Santoro confirmed in her oral evidence to the Tribunal that the first part of the comment was made, and that employee M had said words to the effect, "who did you have sex with or sleep with to get that large fish" but she did not suggest the second part of the alleged comment had been made. She said the Claimant was clearly uncomfortable about this comment and moved from the table to a nearby table. Thereafter Ms Santoro left for a while, and she was therefore unaware if the Claimant returned to the same table and continued in conversation with employee M or shared her fish and chip meal with him. Importantly Ms Santoro confirmed that after lunch had been eaten she walked with the Claimant and Mr Walker, and they all bumped into Ms Rollins and Mr Lovatt. The Claimant put to Ms Santoro that at this point she relayed employee M's remarks to Ms Rollins and Mr Lovatt. Ms Santoro did not recall that taking place. We note Ms Santoro had a good memory of events and had been open and candid. We found she is unlikely to be mistaken or have forgotten if this serious issue had been relayed to the CEO of the organisation.

53. At para 6.3 of Cate Arnold's WS, she confirms she was present and the first comment was made, but is "absolutely certain" no second comment about a blowjob was made as she would have challenged employee M again had he made the comment.

54. Having candidly accepted and remembered that the first comment was made, which is of a similar sexual nature to the second comment, it would be odd for both Ms Santoro and Ms Arnold to be mistaken about the second comment not having been made. We accept their evidence on this point.

55. Further, in their witness evidence both Ms Rollins and Mr Lovatt are adamant that there was no such disclosure made to them at this event regarding any sexual comment from employee M. We accept their evidence on this point as correct.

56. The Claimant in oral evidence confirmed that on 6 October 2022 she had been having lunch and employee M and Ms Santoro were at the same table. She had ignored employee M's comment, "Who did you have sex with to get that" as he pointed to her lunch of fish and chips because she had an unusually large portion of fish. She says he then said, "You either had sex with them or gave them a really good blow job" and upset by this comment she moved from the table and sat at an adjacent bench. She says the comment was not challenged and that she certainly did not interact with employee M or share her lunch with him thereafter. After lunch, she explained, she walked off with Ms Santoro, bumped into Ms Rollins and Mr Lovatt and told them what had occurred.

We are surprised the Claimant gave no detail as to the reaction of Ms Rollins or Mr Lovatt when she disclosed this to them, and we find it highly implausible that they would have taken no action whatsoever, or not responded in some sort of manner, especially if the information had been relayed in front of a witness, Ms Santoro. We also note the other 3 people in this alleged conversation (Ms Santoro, Ms Rollins and Mr Lovatt) deny that this conversation took place.

57. Finally Mr Duncan Walker gave evidence on this issue, which we found to be of very limited assistance. He stated he had not heard any conversation during lunch about any comment employee M had made to the Claimant, but was only told about this subsequently by the Claimant. And although he saw the Claimant go and meet Ms Rollins and Mr Lovatt later in the day after he had encouraged her to raise these issues with them, he was not a party to that discussion and so could not say what was in fact discussed.

58. Overall we prefer the evidence of Ms Santoro, Ms Arnold, Ms Rollins and Mr Lovatt in this regard. The Tribunal finds that this alleged protected disclosure was not made to Ms Rollins and Mr Lovatt.

That on 30th November 2022 the Claimant had to hang up during a telephone conversation with a client as Mr Lovatt was standing next to the Claimant's desk when he shouted to another staff member "fuck off – you are going dogging really"

59. At para 5 of the ET1 Grounds of Complaint (p 20) the Claimant describes this incident, and states she responded to it by asking Mr Lovatt to stop swearing. The Claimant also raised this event in her grievance complaint (p 136) and it was investigated. When interviewed about it as part of her grievance by Duncan McNaught on 11 January 2023 (pp 160-162) again the Claimant's concern had been about Mr Lovatt swearing and using unprofessional language in so doing.

60. The Claimant rejected Mr Lovatt's version of events when these were put to her in cross-examination and stood by her own version. Although the Respondent pointed to an invoice (p 146) which suggested Mr Colin Greenshill had been in the office on 17/11/22, the Claimant stood by the comment having been made on 30/11/22 and stated Mr Lovatt's comments had been shouted over the office at Mr Dave Stubbs. We found nothing much turns on whether this alleged comment was made on 17 November 2022 or 30 November 2022.

61. The Tribunal asked the Claimant how she felt about this alleged comment, and she explained she found it "offensive personally", it was "vulgar" and she did not find it to be "jokey or funny".

62. Mr Duncan Walker gave evidence and largely supported the Claimant's version of events on this issue. He stated Dave Stubbs said he was going to go and check on his dog who was in his vehicle, and Mr Lovatt responded to this by saying, "No he isn't, he's going fucking dogging". Mr Walker said conversations of this nature were common in the workplace.

63. At para 17 of his WS Mr Lovatt explains he did not use the words "fuck off" but used the words "dipshit". And in his oral evidence he explained that the "dipshit" comment had been made on a different day to the dogging comment. Further he explains there was a discussion that started in the office on 17 November 2023 as he was sat at his desk situated in front of the Claimant and to the side of David Stubbs. He overheard some staff and volunteers talking however it wasn't until after the

volunteer said "Hanchurch woods gets busy" that this drew his attention and he said to a colleague, "are you on about dogging really". Mr Lovatt then spun around to two staff members Dave Stubbs and Duncan Walker who were sat at their desks and said "you're on about dogging what the hell" before the conversation then came to a swift stop. This version of events is broadly consistent with a contemporaneous statement Mr Lovatt provided to the Respondent on 17 December 2022 when matters were first raised with him following the Claimant's grievance (p 148) and in his grievance interview statement on 11 January 2023 with Duncan McNaught (pp 180-183).

64. We have found this allegation particularly difficult to determine. We are mindful that if the Claimant was on the phone she was more likely to be distracted and mistaken. But we are also mindful that she is supported in her version of events by Mr Walker. Overall we find that Mr Lovatt did engage in a conversation with others, whilst in close proximity to the Claimant, in which "dogging" was discussed and this is a term of a sexual nature.

65. However we note from the list of issues at pp 58-59 of the Bundle that the "dogging" comment is not relied on by the Claimant for the purposes of her section 26 harassment claims.

Mr Lovatt's comments about Mr Walker on 8 December 2022

66. The Claimant alleges that on 8 December 2022, Mr Lovatt had called Duncan Walker "a prick" and had later asked the Claimant and Ms Arnold "if I stab Duncan will you give me an alibi" and that Cate Arnold had witnessed part of this incident.

67. In cross-examination the Claimant said she stood by her allegation that Mr Lovatt called Mr Walker "a prick" even when it was put to her that Mr Lovatt denied making this comment, and Ms Arnold denied it was ever witnessed by her. We prefer the evidence of Mr Lovatt and Ms Arnold on this point.

68. Further the Tribunal was surprised that had the "prick" comment been made on 8 December 2022 that it was not referred to in the Claimant's grievance just a week later on 15 December 2022. Especially as the grievance contained complaints about Mr Lovatt's threatening to stab Mr Walker with a chair. In these circumstances, we find that Mr Lovatt did not refer to Mr Walker as a "prick".

69. We next turn to the allegation that Mr Lovatt had commented about stabbing Mr Walker with a chair.

70. It was raised with the Claimant in cross-examination that she had in effect embellished the allegation and made it look more serious by relaying it at the PH (p 54) as Mr Lovatt saying "if I stab Duncan will you give me an alibi", when he had in fact said, "if I stab Duncan with a chair will you give me an alibi" (as the Claimant had reported in her grievance at p 137). The Claimant had no particular explanation for this discrepancy, saying it was an unintentional omission. The Tribunal does not consider much turns on this omission.

71. The Claimant, Ms Arnold and Mr Lovatt all agree that the comment made by Mr Lovatt was as alleged, namely "if I stab Duncan with a chair will you give me an alibi". The Tribunal accepts this evidence.

72. However what was particularly relevant for the Tribunal to consider was the context in which this comment was made and the reasonable impression it gave to the Claimant. We note the comment was about stabbing Mr Walker with a chair, something inherently implausible and odd. The Claimant suggested that she did not believe this comment was made out of sheer frustration, but believed there was a lot of anger and aggression behind it and that Mr Lovatt was intending to be violent against Mr Walker. This we consider to be wholly unpersuasive in all the circumstances. It was clear to us that Mr Lovatt was frustrated with Mr Walker and was letting off steam, we accept his evidence in this regard. He had no history of having been violent, and the fact that he was proposing stabbing someone with a chair and seeking an alibi from colleagues, in all the circumstances, suggests this was not a comment that anyone could have reasonably believed actually seriously involved a threat of violence. We also note he immediately apologised for the comment, which again indicated that he was in no way being serious.

PD4: The Claimant alleges that on 8th December 2022 she had a meeting alone with Cate Arnold (Ms Rollins PA) during which the Claimant explained "the catalogue of events" and Cate Arnold made notes of their meeting. The Claimant alleges during this meeting she told Cate Arnold that employee M's and Mr Lovatt's behaviour was making her (the Claimant) physically sick with anxiety, that it was all having "a knock on effect" on her and that the Claimant "couldn't just brush it off any more". The Claimant alleges that during this conversation she told Cate:
1. that on 8th December 2022, Mr Lovatt had called Duncan "a prick" and had asked "if I stab Duncan will you give me an alibi" – Cate had witnessed part of this incident
2. that on 30th November the Claimant had to hang up during a telephone conversation with a client as Mr Lovatt was standing next to the Claimant's desk when he shouted to another staff member "fuck off – you are going dogging really"
3. that employee M had said to the Claimant "You should stop dieting 'cos it is shrinking your tits" and Mr Lovatt's response was to laugh and sort of nod his head in agreement with employee M".
4. that employee M had said to the Claimant "Who did you have sex with to get that" as he pointed at her lunch of fish and chips and then said, "You either had sex with them or gave them a really good blow job". Cate had witnessed this event at the Black Country Museum.
5. that employee M had asked to "come and watch" when the Claimant had said she was going to the toilet – Cate had witnessed this event

73. The Claimant explained in her oral evidence that she had a friendly relationship with Ms Arnold and they got on well, so much so that she was raising with her concerns about things going on in the workplace with which she was unhappy on a daily basis. They would message each other outside work. This suggests a friendly professional working relationship existed between the two of them.

74. In her WS Cate Arnold denies the Claimant raised points 2, 3, 4, and 5 above at this meeting, but that only point 1 was raised (except the "prick" comment part). We prefer the evidence of Ms Arnold on this.

75. The Claimant had no explanation when giving oral evidence as to why Cate Arnold took a different view to her. Ms Arnold had no reason to lie and in relation to some other comments she has supported the Claimant's version of events.

76. Indeed in relation to item 5, the Claimant herself accepted in her oral evidence that she could not "recall", and then later that she "did not" relay, this comment made by employee M to Cate Arnold at the meeting on 8 December 2022 as Ms Arnold was a witness to the incident and was already aware of it.

77. The minutes of this meeting on 8 December 2022 (p 113), taken by Ms Arnold, do not record any of the above comments being raised, but we note the minutes were not shared with the Claimant straightaway or agreed with her. She only saw them as part of the grievance process.

78. A key issue in this case more generally is whether or not the Claimant disclosed the information she alleges she did as part of both PD4 (on 8 December 2022) and PD6 (on 12 December 2022). That she did is largely denied by the Respondent. The Tribunal notes:
    (1) During her cross-examination it was put to the Claimant that she had failed to raise many of the complaints in her grievance of 15 December 2022 which she now raises in these claims, and she responded that this was because she was only complaining about Mr Lovatt in her grievance and not about employee M or other things that had happened.
    (2) However later in her cross-examination when asked why she would be raising issues about employee M and other matters on 12 December 2022 to the Board of Trustees when she had only gone to meet them about the inappropriate text message from Mr Lovatt, she responded that she could only get across the seriousness of the text message incident and how it affected her by giving the full background circumstances to the Board with details of much of what had gone on in the workplace which she had found inappropriate.
    (3) The above statements are inconsistent.
    (4) The Tribunal was very surprised that the Claimant was verbally able to allegedly relay all this information to Miss Arnold in some detail on 8 December 2022, and to the Board of Trustees on 12 December 2022, but not when preparing her written grievance just 3 days later on 15 December 2022. When the Tribunal asked the Claimant about this, her explanation for the omissions from the grievance was that she had been having panic attacks and suffering from anxiety.
    (5) We found this explanation unconvincing given the proximity in time between the 8 December 2022 and the 15 December 2022, and the likelihood of the Claimant being less panicked and less anxious when sitting down alone at home to set out her concerns in her own time and without the pressure of relaying those concerns face to face before other people in the workplace.
    (6) We further note Ms Arnold and Ms Sarah Ivan-Duke deny much of the disclosures alleged. We prefer their evidence in this regard.

79. The Tribunal therefore finds that the Claimant only discussed with Ms Arnold at this meeting that Mr Lovatt had said to Mr Walker, “if I stab Duncan with a chair will you give me an alibi”. Indeed Ms Arnold was a witness to him saying so, and so it is not clear what new information the Claimant was in fact disclosing to her.

9 December 2022 text message from Mr Lovatt to the Claimant

80. The Claimant’s evidence is that at 9pm on 9 December 2022 she received a text message out of the blue from Mr Lovatt reading, “Random question, you got a bath or shower?” (a copy of the text message is at p 115 of the Bundle). There was no context or follow up to this text. The Claimant alleges the text resulted in her arguing with her boyfriend because he thought she might have been flirting with Mr Lovatt. The Claimant states she felt the text message was inappropriate and “pervy” and she was upset about it, particularly as she considered her professional relationship with Mr Lovatt had deteriorated from around October 2022 and therefore she did not expect him to be texting her.

81. The Tribunal at various points questioned the Claimant on what had caused her relationship with Mr Lovatt to deteriorate from around October 2022. The Claimant responded, "There were lots of little things, constantly. I had been away for two weeks with Covid, and when I had come back Mr Lovatt who was the Team Lead had not dealt with the clients who had been complaining. These all added to the breakdown". The Tribunal struggled to understand how this alone resulted in the serious breakdown of the working relationship with Mr Lovatt as the Claimant alleged.

82. The Tribunal found Mr Lovatt sent the same text to other individuals also, including his mother and a male friend. The reason for sending the text was because he was considering purchasing Christmas presents for them (bath bomb gift sets). Previously at Christmas 2021 and then again for his birthday in 2022 the Claimant had given him presents, and he wished to reciprocate by buying her a Christmas gift.

83. In his oral evidence Mr Lovatt responded to the Claimant's cross-examination on this issue by stating, "I was aware our relationship had difficulties, but I was not aware it had broken down completely. I thought it was from client issues following your Covid leave. I presumed you would have been happy to receive a present from me". And further he denied the text could be seen as a sexual message relating to the Claimant's bathing habits, commenting, "I was not asking how they bathe, so I could not see how they might consider it to be of a sexual nature".

84. The Tribunal accepts Mr Lovatt's purpose in sending the text message in question was genuinely for helping decide Christmas gifts and was not for the purposes of making any sexual or otherwise inappropriate remark. The date of the text was 9 December 2022 just weeks before Christmas.

85. The Claimant accepted in oral evidence that when she showed the text to Ms Arnold, one of the likely explanations offered by Ms Arnold for the text message was that Mr Lovatt was extending "an olive branch" and considering a Christmas present for her. Mrs Arnold confirms in her witness statement that this was the case. In cross-examination the Claimant was asked if this explanation altered her perception of the text message, and her response was that she still continued to consider the text message was "pervy". The Tribunal was surprised this was the case.

86. Mr Walker's oral evidence to the Tribunal was that he was surprised and shocked by the text message because the working relationship had broken down between the Claimant and Mr Lovatt, and because "it was an odd message to send to someone who you were not speaking to".

87. Overall the Tribunal finds that this was an odd text message for Mr Lovatt to send, because the message lacked context and that the Claimant was surprised to receive it. But we do not accept that any reasonable person in the Claimant's position receiving this message would consider it was of a sexual nature or related to her sex. Nor do we accept the Claimant reasonably considered this to be the case, and we simply do not accept the Claimant's evidence in this regard. We are of the view that the text message speaks for itself and contains no sexual references of a direct or indirect nature. We have had regard to all the circumstances of this case.
Our view is largely supported by the reaction of some of the witnesses to this text message. For example we note Ms Arnold's reaction to seeing the text was that Mr Lovatt might be buying the Claimant a Christmas gift, Ms Santoro's reaction was that the Claimant should simply speak to Mr Lovatt and get an explanation from him, and Mr Walker's view that it was simply an "odd" message. These reactions do not suggest they considered the message "pervy" or of a sexual nature or related to sex.

PD5: The Claimant alleges on 12 December 2022 at 8.30am whilst in the office she was shaking and heaving which prompted Daniella Santoro (Senior Benefit Adviser) to check she was ok. The Claimant showed Daniella the text she had received from Mr Lovatt. Mr Walker (Senior Benefit Adviser) noticed the Claimant crying and joined the conversation (which was taking place near Daniella's desk in the office) and asked the Claimant if she was ok. The Claimant alleges she told Mr Walker she was "struggling with being in the office" to which Mr Walker replied he had seen everything that had been going on. Daniella told the Claimant to show Mr Walker the text. Mr Walker read the text and said the Claimant should report it and said he would raise the issue in a meeting he was attending with the Board of Trustees later that day. After the meeting with the Board of Trustees, Mr Walker told the Claimant the Board of Trustees wanted to speak to the Claimant

88. What this alleged protected disclosure is, who is making it, what is being disclosed, and to who, is far from clear. However the Tribunal accepts the factual version of events set out in this allegation.

89. Daniela Santoro confirmed in her oral evidence that on 12 December 2022 she had approached the Claimant who was upset because she had received a text from Mr Lovatt. The Claimant then came to Ms Santoro's desk and showed her the text, Mr Walker was also present. Her initial advice was for them both to go and discuss it with Mr Lovatt, but the Claimant said she would be uncomfortable doing this. She then suggested they both go and discuss it with Mandy Rollins, but she was away training. Thereafter Ms Santoro heard Mr Walker suggesting the Claimant go and raise it with the Board of Trustees.

90. Mr Walker's oral evidence to the Tribunal was that he was surprised and shocked by the text message because the working relationship had broken down between the Claimant and Mr Lovatt, and because "it was an odd message to send to someone who you were not speaking to". He advised her to go and raise it with the Board of Trustees.

91. Both Ms Santoro and Mr Walker found the Claimant to be upset that day, but it is likely her upset was caused by an accumulation of multiple matters relating to the workplace rather than just this text message that had been sent days earlier on 9 December 2022. The Claimant had described to us increasing anxiety over several months when going into the workplace.

PD6: The Claimant alleges that on 12 December 2022 the Claimant spoke to the Board of Trustees and showed them Mr Lovatt's text and told them
1. that during the team building day at the Black Country Museum employee M had said to the Claimant "Who did you have sex with to get that" as he pointed at her lunch of fish and chips and then said, "You either had sex with them or gave them a really good blow job".
2. that she had reported these comments (at the Black Country Museum) to Mr Lovatt and Ms Rollins
3. that employee M had said to the Claimant "You should stop dieting 'cos it is shrinking your tits"
4. to which Sheila (one of the members of the board) had said "that's disgusting"
5. to which the Claimant had explained Mr Lovatt's response was to laugh and sort of nod his head in agreement with employee M instead of protecting the Claimant.

92. Please see the discussion in this regard above (at paragraph 78), discussing the implausibility of the Claimant having raised issues on 8 and 12 December 2022 in

oral conversations with Ms Arnold and the Board of Trustees, but then omitted to have raised them in her written formal grievance on 15 December 2022.

93. In her evidence Ms Sarah Ivan-Duke stated that at the Board meeting on 12 December 2022 the Claimant had only raised the issue of the text message from Mr Lovatt, and some of the comments made by employee M at the team building day at the Black Country Museum. She advised the Claimant to raise a grievance with Ms Rollins. We found Ms Ivan-Duke to be a very straightforward and honest witness who appeared to have a good recollection of events. We accept her evidence and version of events on this issue.

94. Therefore the Tribunal finds that on 12 December 2022 the Claimant only raised with the Board of Trustees the text message from Mr Lovatt, and some of the comments made by employee M at the team building day at the Black Country Museum.

PD7: The Claimant's grievance dated 15 December 2022

95. Again the Claimant has given no specific detail about what elements of her grievance raised public interest disclosures, and so the Tribunal has to do the best it can with the information it has.

96. The Tribunal has a copy of the Claimant's grievance dated 15 December 2022 addressed to Ms Rollins (p 136) and in it the Claimant raises in particular complaints about: the dogging comment from Mr Lovatt; Mr Lovatt's comment about stabbing Mr Walker with a chair; and his text message of 9 December 2022. The Tribunal accepts the Claimant submitted a grievance on or around 15 December 2022 raising these issues.

97. The Claimant was invited to and attended a grievance interview on 11 January 2023.

After the Claimant had sent the grievance (15th December 2022), did Ms Rollins completely ignore and not acknowledge the Claimant? The Claimant asserts every morning Ms Rollins would walk around the office and say good morning to most members of staff but would completely ignore / not acknowledge the Claimant.

After the Claimant had sent the grievance (15th December 2022), did Ms Rollins shout at the Claimant (for referring a client to debt agency) and belittle the Claimant in the main office in front of the whole office team? The Claimant asserts this happened on or shortly after 15th December 2022.

98. It is helpful to consider both these alleged acts of detriment together for the purposes of our findings of fact.

99. The Tribunal finds that after the Claimant raised her grievance on 15 December 2022 she went home and did not return to the office until early January 2023. The Claimant's usual working pattern was to only work two days per week in the office. The Claimant returned to work in the office on 3 January 2023, the morning of 5 January 2023, and on 9 January 2023. Thereafter the Claimant did not return to the office until the date and time of her grievance hearing of the 11 January 2023, after which she immediately left the office. The next day on 12 January 2023 she resigned.

100. In cross examination the Claimant stated that after she had raised a grievance, other than two occasions when Ms Rollins shouted at her, she "completely ignored" her in the office. The two occasions were when she allegedly shouted "morning" to the Claimant in an aggressive manner, and on another occasion when she started shouting at the Claimant about referring a client to Step Change which is a debt advising agency.

101. We have considered carefully how these matters were raised by the Claimant during her grievance meeting. The Claimant stated to grievance officer Duncan McNaught on 11 January 2023, "since I've raised this grievance, you know, I'm going so far as saying that Mandy's actively been aggressive towards me, like Monday [9th January] she shouted, "Good morning"" (p 175). And further C told the grievance officer, "And then Monday she shouted really loudly, "Morning," but then because I didn't answer her straight away, I was actually debating whether I wanted to stay in the office because of how sick I felt and how anxious. And I hadn't taken my coat off, I think I stood by my desk for about ten minutes trying to breathe properly and calm myself down. And then she's just-, she shouted it again and then there-, it was a client that wants some debt advice, that it was not-, I don't do-, well, we as an organisation don't do debt advice, however this lady needed signposting to Citizens Advice or Step Change, who do, do debt advice, and I don't deal with benefits on my project so I batted it back to the advice team. Mandy came to me and said, "What's this?" And she made me feel like I was a child, to be honest, the way that she spoke to me" (p 176).

102. Mr Walker was broadly supportive of the Claimant's position, but we note he was very vague on detail. He said he couldn't remember specific dates, but did remember the Claimant being excluded by Ms Rollins. When questioned further on this by the Tribunal he said the Claimant was excluded by Ms Rollins because she would loudly speak to other members of staff but not the Claimant. He could provide no other evidence to support his suggestion of the Claimant being excluded by Ms Rollins.

103. We consider these complaints are not made out and are examples of the Claimant's perception of matters being inaccurate or of her embellishing what took place. We reject her evidence on these alleged detriments for a number of reasons.

104. First we note that far from being hostile to the Claimant after she raised her grievance, Ms Rollins was pro-active in being supportive towards the Claimant. For example email communications on 16 December 2022 (p 127) show Ms Rollins offering the Claimant the option of deciding her own working arrangements so she was comfortable in light of her workplace issues. By way of another example, on 19 December 2022 (p 129) Ms Rollins emailed the Claimant to wish her a wonderful Christmas. These emails are friendly and supportive.

105. Further the Tribunal asked the Claimant if Ms Rollins had ignored her when she had at any time previously raised complaints about Mr Lovatt, and she says she had not. There is no good reason or obvious explanation for why Ms Rollins would have started to ignore the Claimant on this occasion.

106. At times the Claimant was very confused about these alleged detriments. At one point in response to Tribunal questions she suggested she did not return to work in the office at all after 15 December 2022 and therefore both these acts of alleged detriment occurred on 15 December 2022. This was clearly mistaken. Had such detrimental behaviour actually taken place, especially from the CEO of the organisation with whom the Claimant had previously enjoyed a friendly relationship,

the Tribunal expects the Claimant would have had a clearer and better recollection of events.

107. Importantly we note Ms Rollins, who was a truthful and straight-forward witness, denies this happened in her witness statement (at paras 7.8 and 7.9), and the Claimant did not cross-examine or challenge her on this evidence, despite the Tribunal advising the Claimant that she ought to challenge those matters of evidence she disagreed with Ms Rollins on, and with the Tribunal citing these alleged detriments as examples to the Claimant for this purpose. We accept the evidence of Ms Rollins on this issue.

108. Mr Lovatt was questioned by the Tribunal about Ms Rollins ignoring the Claimant and shouting at the Claimant after 15 December 2022. He denied this, stating "Ms Rolins would say "morning" to the office as a whole, rather than individually. One day she said "morning" but no one responded, so she said a second time "good morning". If she had shouted, we would have heard. All interactions I witnessed between Mandy and Ms Graham were rational and civil". We found his evidence persuasive.

109. Overall the Tribunal finds Ms Rollins was not in any way hostile to the Claimant after the Claimant had raised her grievance. We find she did not shout at her or exclude her, but was friendly and supportive in a difficult situation. We find she did not shout at the Claimant as alleged, but was simply greeting staff more generally and repeating herself when she got no response and going about her normal work activities. We find the Claimant's perception of events in this regard to be mistaken. She was not subjected to the detriments alleged.

The Claimant's resignation

110. The Claimant resigned with immediate effect by way of a letter dated 11 January 2023 received by the Respondent on 12 January 2023 (a copy of which is at p 202 of the Bundle). In that letter C states, "As has been well documented, I have suffered sexual harassment, bullying and harassment on an ongoing basis. I could further not work in an environment where my manager continually uses inappropriate language and threats of physical violence against my colleagues, especially Mr Duncan Walker, who has always helped me due to the further aspect of a chronic lack of training and support from my manager".

Notice pay

111. If the Claimant is found to have resigned without notice she would not be entitled to any notice pay. If she was constructively dismissed, as per her contract of employment (see p 79 of the Bundle), she would be entitled to 4 weeks' notice pay. At the hearing the Respondent accepted that, contrary to what it had stated in its Counter Schedule of Loss, it had not paid the Claimant any notice pay.

Holiday pay

112. The Claimant's annual leave year ran from 1 April to 31 March and the annual entitlement to leave was 28 days. The Claimant resigned with immediate effect on 11 January 2023. The Respondent's position is the Claimant was owed 8 days of

annual leave when she resigned and this was paid to her along with her basic pay on the scheduled payroll date of 20 January 2023. The payslip is at p 295.

113. Despite the Claimant being sure on Day 1 that she had 4 days outstanding holiday pay, on Day 4 she explained she was not sure how many holidays she had actually taken and how many days were outstanding. The Respondent had unhelpfully failed to set out in the Bundle or in the witness evidence how much holiday the Claimant had taken and when. Despite repeated prompting by the Tribunal on Day 3, it was only during the lunch hour on Day 4 that limited information regarding holiday taken was provided to the Tribunal and the Claimant by the Respondent. Bizarrely at that point the Respondent's representative was still unclear about the holiday year, the holiday entitlement and the Respondent had still not provided details on the reasons recorded for holidays. Equally bizarrely the Claimant now wished to have disclosure of her holiday request forms, and suggested she could only recollect having taken 2 days holidays in the entire holiday year because she had not checked her iDiary recently, despite being sure on Day 1 that she only had 4 days holiday outstanding.

114. Frustrated with the time being taken to deal with what should be a simple matter the Tribunal ordered on Day 4 that:
    - 14 days before the resumed hearing in August 2024 the Respondent was to provide a clear schedule setting out (for the Claimant's last holiday year): her holiday period, her holiday entitlement, what holidays she had taken and copies of her holiday request forms. If this was not done the Tribunal would consider striking out the Respondent's defence to the Claimant's holiday pay claim.
    - By Day 6 of this hearing which was resuming in August 2024 the Claimant was to have checked her diary and notes and the schedule provided and be able to clearly set out her holiday pay claim.

115. At the resumed hearing on Day 6, following further disclosure from the Respondent, the Claimant accepted that she had been fully paid all her holiday entitlement and was content for her holiday pay claim to be dismissed on withdrawal. She confirmed this in an email sent to the Tribunal on 5 August 2024.

The law

116. Section 43B(1) of the ERA 1996 provides:

> (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.

117. There are two separate requirements here – (a) a genuine belief that the disclosure tends to show a relevant failure in one of the five respects (or deliberate concealment

of that wrongdoing); and (b) that belief must be a reasonable belief. Reasonableness involves applying an objective standard to the personal circumstances of the discloser.

118. Additionally, there must be a reasonable belief on the part of the worker that the disclosure was in the public interest. This requirement has two components – first a subjective belief, at the time, that that the disclosure was in the public interest; and secondly, that the belief was a reasonable one.

119. In summary, to be a "qualifying disclosure" all the conditions set out section 43B(1) of the ERA 1996 must be met. These were broken down into five elements in the guidance given by the Employment Appeal Tribunal in *Williams v Brown* UKEAT/0044/19/OO as follows:
    (1) First, there must be a disclosure of information;
    (2) Secondly, the worker must believe that the disclosure is made in the public interest;
    (3) Thirdly, if the worker does hold such a belief, it must be reasonably held;
    (4) Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f) of section 43B(1);
    (5) Fifthly, if the worker does hold such a belief, it must be reasonably held.

120. In *Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436, the Court of Appeal rejected the suggestion that there was a rigid distinction between the two categories of "information" and "allegation" and rejected the contention that the two were mutually exclusive. Thus, some (but by no means all) allegations may contain sufficient information to satisfy the requirement of disclosing information. It will depend on the factual context and whether the disclosure has "sufficient factual content and specificity" to be capable of showing a relevant failure.

121. In *Chesterton Global Ltd v Nurmohamed* [2017] EWCA Civ 979 the Court of Appeal considered the public interest element of the definition. It held that: "where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker."

122. Qualifying disclosures are protected disclosures if made to the claimant's employer (section 43C) or to someone else in accordance with sections 43D to 43H of the ERA 1996.

123. Section 47B(1) of the ERA 1996 provides:

    (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.

124. 'Detriment' is given a wide interpretation. It means doing something that a reasonable worker would consider to be to their detriment (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11).

125. Section 103A of the Employment Rights Act 1996 provides that 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.

126. Sections 26(1)-(2) and (4) of the Equality Act 2010 provide:

> (1) A person (A) harasses another (B) if—
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
> (b) the conduct has the purpose or effect of—
> (i) violating B's dignity, or
> (ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
> (2) A also harasses B if—
> (a) A engages in unwanted conduct of a sexual nature, and
> (b) the conduct has the purpose or effect referred to in subsection (1)(b).
> (3) …
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
> (a) the perception of B;
> (b) the other circumstances of the case;
> (c) whether it is reasonable for the conduct to have that effect.

127. Harassment under section 26(1) must be related to a relevant protected characteristic, in this case sex. Harassment under section 26(2) need not be related to a relevant protected characteristic, but must be of a sexual nature. In both cases, the conduct must be unwanted and must have the proscribed purpose or effect.

128. The test in section 26(1)(b)(i) requires the conduct to have violated the dignity of the claimant. In *Betsi Cadwaladr UHB v Hughes* UKEAT/0179/13/JOJ Mr Justice Langstaff gave guidance that the words 'violating dignity' are "significant" and "strong" words. Offending against, or hurting, dignity is not sufficient. The words "look for effects which are serious and marked" and that "Tribunals must not cheapen the significance of these words". The test in section 26(1)(b)(ii) requires the conduct to have created a "degrading, hostile, humiliating and offensive environment" for the claimant. In *GMB v Henderson* [2015] IRLR 451 Mrs Justice Simler gave guidance that the conduct complained of "must reach a degree of seriousness" before it can be regarded as harassment, in order not to "trivialise the language of the statute". She went to say that if an incident of conduct is not sufficiently serious, it remains just that, an "incident" rather than the "creation of an environment".

129. Sections 27(1)-(2) of the Equality Act 2010 provide:

> (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
> (a) B does a protected act, or
> (b) A believes that B has done, or may do, a protected act.
> (2) Each of the following is a protected act—
> (a) bringing proceedings under this Act;
> (b) giving evidence or information in connection with proceedings under this Act;
> (c) doing any other thing for the purposes of or in connection with this Act;
> (d) making an allegation (whether or not express) that A or another person has contravened this Act.

130. Section 39(2) of the Equality Act 2010 provides:

> (2) An employer (A) must not discriminate against an employee of A's (B)—
> (a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
(c) by dismissing B;
(d) by subjecting B to any other detriment.

131. Section 123(1) of the Equality Act 2010 provides:

(1) [Subject to [[section] 140B]] proceedings on a complaint within section 120 may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.

Conclusions

132. The Tribunal sets out its conclusions on the claims and issues in this case below.

The alleged protected disclosures

133. The Tribunal has found that out of the 7 alleged protected disclosures:
(1) PD1, PD2, and PD3 never took place.
(2) In relation to PD4 on 8 December 2022, the Claimant only raised with Ms Arnold at a meeting that Mr Lovatt had said about Mr Walker, "if I stab Duncan with a chair will you give me an alibi".
(3) In relation to PD5 on 12 December 2022, the Claimant disclosed to Ms Santoro and Mr Walker the text message she had received from Mr Lovatt on 9 December 2022.
(4) In relation to PD6 on 12 December 2022 the Claimant only disclosed to the Board of Trustees the text message from Mr Lovatt, and some of the comments made by employee M at the team building day at the Black Country Museum.
(5) In relation to PD7, on 15 December 2022 the Claimant sent a grievance addressed to Ms Rollins (p 136) raising in particular complaints about: the dogging comment from Mr Lovatt; Mr Lovatt's comment about stabbing Mr Walker with a chair; and his text message of 9 December 2022.

134. The Tribunal needs to consider pursuant to section 43B(1) of the ERA 1996 whether the disclosure of information was in the reasonable belief of the Claimant made in the public interest.

135. In the case of *Chesterton Global Ltd v Nurmohamed* [2017] EWCA Civ 979 at paras 34 and 37 it was explained that a tribunal in deciding whether a disclosure was in the public interest would have to consider all the circumstances, and it was suggested that the following factors would normally be relevant:
(1) the numbers in the group whose interests the disclosure served;
(2) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;
(3) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(4) the identity of the alleged wrongdoer – the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest.

136. The Tribunal is of the view, PID4-7 were not made by the Claimant in the reasonable belief that they were in the public interest. The information found to have been disclosed by the Claimant essentially amounted to complaints about her treatment from work colleagues, and that treatment was about inappropriate and sexual comments being directed at her or made in her presence. Having regard to the relevant considerations we found the disclosures were relevant to only a small number of people at the Respondent workplace; involved personal issues related to those small number of people rather than wider issues of public interest; although the wrongdoing alleged was arguably deliberate its gravity and seriousness was limited in relative terms having regard to its likely effect on the wider public; and the identities of the alleged wrongdoers were fellow colleagues, employee M and Mr Lovatt, as opposed to a larger more prominent wrongdoer.

137. During cross-examination the Claimant was asked how raising a complaint about communication from her line manager was in the public interest, and her response was that her disclosures were in the public interest because the organisation deals with vulnerable adults and that potentially vulnerable adults could have heard some of the language being used whilst on the phone to colleagues. We consider that such an explanation is implausible and we do not accept it. There was no evidence that any vulnerable adults in fact ever heard any of the alleged conversations, and in relation to many of the complaints (such as the comments made at the away day regarding the fish and chip lunch) it is just not clear how they would have potentially heard such comments.

138. Additionally in relation to PD4 we found this was not a disclosure of information that anyone could have reasonably believed actually involved a threat of violence, and so we find the Claimant could not have reasonably believed this information tended to show:
    (1) that a criminal offence has been committed, is being committed or is likely to be committed
    (2) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, or
    (3) that the health or safety of any individual has been, is being or is likely to be endangered.

139. For all these reasons we do not accept the Claimant made any qualifying protected disclosures at all in this case.
    Because we do not consider that the disclosure of any information which took place was in the reasonable belief of the Claimant in the public interest, we have not found it necessary to address all the other relevant considerations for each alleged protected disclosure as set out in *Williams v Brown* UKEAT/0044/19/OO.

Detrimental treatment for making protected disclosure(s)

140. This claim fails not only because we found there were no qualifying protected disclosures as alleged by the Claimant, but we also found that the Claimant had not been subjected to any detrimental treatment as alleged.

Automatically unfair constructive dismissal for making protected disclosure(s)

141. For the sake of completeness, this claim also fails not only because we found there were no qualifying protected disclosures as alleged by the Claimant, but we also found that the Claimant had not been subjected to any detrimental treatment as alleged.

Victimisation

142. For her victimisation claim the Claimant relies on the same acts of detriment as those relied on for the public interest disclosure detriment claims (see list of issues at p 60). Given our findings of fact that the Claimant was not subjected to the alleged detriments this claim also fails. We do not need to consider therefore whether or not any of the 7 alleged protected disclosures constituted "protected acts" pursuant to section 27 of the Equality Act 2010 for the purposes of this Judgment.

Harassment related to sex and sexual harassment

143. We considered the Claimant's alleged harassment claims pursuant to section 26(1) and also alternatively section 26(2) of the Equality Act 2010 as set out in the list of issues.

144. The Tribunal found only two incidents had occurred that could, and did, amount to harassment of a sexual nature as set out in the list of issues. They were as follows:
    (1) On 6 October 2022 employee M did say to the Claimant words to the effect, *"who did you have to sleep with [or shag] to get that"* referring to the large portion of fish she had as part of her lunch. We find this comment was unwanted conduct of a sexual nature and that this did cause upset for and offence to the Claimant.
    (2) On 5 September 2022 when the Claimant said she was going to use the ladies toilet with Cate Arnold, employee M ask the Claimant if he could come and watch. Again we find this comment was unwanted conduct of a sexual nature and that this did cause upset for and offence to the Claimant.

145. However given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 14 October 2022 is on the face of it out of time. Therefore both these claims are out of time.

146. We moved on to consider whether there were any just and equitable grounds for extending time bearing in mind that the burden rested on the Claimant to satisfy the Tribunal that time should be extended. In *Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23*, the Court of Appeal provided some guidance on the approach to extensions of time in discrimination cases. In this reported case there was a delay of just 3 days and time was not extended on just and equitable grounds. Underhill LJ explained:
    (1) At paragraph 24 "that there is a public interest in the enforcement of time limits and that they are applied strictly in employment tribunals".
    (2) And at paragraph 37, "The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay"."

147. In this case the length of the delay was at least 7 days (even accepting the two comments were part of a continuing state of affairs) which is not an insignificant period. And further the Claimant was not able to persuade the Tribunal that there was any good reason for the delay with bringing her claims. When the Tribunal questioned the Claimant during her oral evidence about not raising complaints within the 3 month time limit, by reference to the comments made by employee M, her response was, "ACAS said to raise it because it might be considered, but I accept I did not raise this in the 3 month time limit. I was not clear on times back then as I am now". This does not suggest there was a good explanation for why the Claimant could not have brought her claims within the 3 month time limit. We note that the Claimant was finding matters in the workplace stressful, but equally it would not have been onerous for her to look into making a claim and discovering that she had a 3 month time limit to initiate the process for so doing.

148. In all the circumstances the Tribunal is not persuaded to extend time on just and equitable grounds. These claims therefore fail.

Discriminatory constructive dismissal

149. The Claimant confirmed in oral evidence and in her letter of resignation that acts of sexual harassment did contribute to her reasons for resigning, as did the threats of violence directed at Mr Walker by Mr Lovatt regarding the stabbing with a chair comment.

150. The Tribunal does not accept the stabbing with a chair comment was of a particularly serious nature, and certainly of itself would not amount to a repudiatory breach of contract entitling the Claimant to resign.

151. The Claimant suggested in oral evidence that the last straw were the detriments she was allegedly subjected to by Ms Rollins after she had raised a grievance on 15 December 2022, but the Tribunal has already found that there were no such detriments and therefore any claim for constructive unfair dismissal fails in any event because there was no qualifying last straw. The Tribunal has had regard to the case of *Omilaju v Waltham Forest London Borough Council* [2004] EWCA Civ 1493 in relation to this point.

152. However for the sake of completeness, and in case we are wrong above, we considered whether the two acts of section 26(2) harassment found to have taken place contributed to the Claimant's dismissal and resulted in her constructive unfair dismissal being discriminatory (albeit those claims are of themselves out of time and do not succeed as stand alone claims).

153. In *De Lacey v Wechseln t/a The Andrew Hill Salon* (UKEAT/0038/20/VP) at paragraphs 72-75 the EAT held where discriminatory acts, that appear to be well outside tribunal time limits, form part of a chain of events that lead up to a 'last straw' constructive dismissal, and those acts sufficiently influenced the overall repudiatory breach in response to which the employee ultimately resigned, then a claim for discriminatory constructive dismissal may still be in time, as time will run from the resignation, even though all later within-time events in the chain were not discriminatory. The relevant test is "did the discriminatory matters sufficiently influence the overall repudiatory breach so as to render the constructive dismissal discriminatory".

154. We concluded the two acts of discrimination by way of sexual harassment we found to have occurred did not sufficiently influence the overall repudiatory breach (if any) so as to render the constructive dismissal discriminatory. We had regard to the following points in reaching this conclusion:
    (1) Neither of these discriminatory acts were specifically and expressly referred to by the Claimant in her letter of resignation, whereas other incidents such as threats of violence towards Mr Walker are mentioned in the resignation letter.
    (2) Neither of these discriminatory acts were mentioned by the Claimant in her grievance on 15 December 2022. We found this to be a particularly relevant point. If these acts of discrimination were not sufficiently influential for the purposes of the Claimant's grievance, we consider it inherently unlikely that they were sufficiently influential in her reason for resigning on 12 January 2023.
    (3) We found the material reasons for the Claimant resigning was her perceived breakdown in relations with Mr Lovatt and Ms Rollins rather than comments made to her by employee M several months earlier.
    (4) We note that the Claimant raised no formal complaints about the two acts of harassment we found, despite on both occasions her having had witnesses to the incidents and her having been advised by other colleagues that she could make formal complaints. This too suggests that these acts of discrimination though unpleasant when they took place, going forward were unlikely to be sufficiently serious to influence the Claimant's decision to resign.

155. For all these reasons the claim for discriminatory constructive dismissal also fails.

Notice pay

156. The Claimant having been unsuccessful with her automatic unfair dismissal claim for making public interest disclosures and her claim of discriminatory constructive dismissal, is not entitled to claim notice pay as she resigned with immediate effect.

Holiday pay

157. As noted above the Claimant asked for this claim to be dismissed on withdrawal.

Summary

158. All the Claimant's claims are therefore dismissed.

Signed by: Employment Judge Ali

Signed on: 15 August 2024