



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Asaria  
**Respondent:** Vision Express (UK) Limited

**Heard at:** Watford Employment Tribunal (in person)  
**On:** 22 to 24 April 2024 and 15 May 2024

**Before:** Employment Judge French  
Ms A Moriarty  
Ms M Castro

## Appearances

For the claimant: Ms A Fadipe, Counsel  
For the respondent: Mr R Hignett, Counsel

## RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of being subjected to detriments for making protected disclosures is not well-founded and is dismissed.

## REASONS

### Introduction

1. The claimant was employed as an optometrist by the respondent on 6 June 2022 and continues to be employed by them. By claim form dated 12 January 2023 the claimant brings complaints of being subjected to a detriment for making protected disclosures. In an undated response the respondent denied that the claimant had made any protected disclosures and/or subjected the claimant to a detriment.

### Evidence

2. The Tribunal had a bundle of documents consisting of 369 pages. For the claimant we heard from the claimant herself. For the respondent we heard from Mr Kamel Khetir, the claimant's line manager, Ms Layla Turpin instructed to hear the claimant's grievance and Mr Mark Stevens who dealt with the grievance

appeal. The Tribunal also heard submissions from both parties to include written submissions filed pursuant to the order dated 24 April 2024.

### **The issues**

3. The issues are set out at pages 46 to 48 of the bundle. For completeness these are as follows:

1. The Claimant claims whistleblowing detriments under section 47B ERA 1996.

#### **Qualifying Protected Disclosures**

2. Did the Claimant disclose the following information:

a. On 8 June 2022 to her manager Kamel Khetir's that it was not clinically safe to see two patients in 25 minutes /one patient in 12.5 minutes and refused his instruction to do so.

*b. On 8 June 20223, the Claimant informed the regional manager (Paul Aldridge) about Mr Khetir's actions earlier that day and a call was arranged the next morning (withdrawn)*

c. On 9 June 2022, Claimant spoke to Mr Aldrige on the phone and then followed this up with an email raising a formal grievance about Mr Khetir. The Claimant's evidence is that she informed the regional manager that she could not work if put in a position where she was forced to work against clinical guidelines, risking the health and safety of patients.

d. On 29 July 2022 in the Claimant's appeal against the outcome of the first stage grievance investigation repeated the information contained in her grievance.

3. If so, were any of these disclosures qualifying protected disclosures within the meaning of sections 43B(1) of ERA? In particular:

a. Were they made to the Claimant's employer?

b. If so, did the Claimant have a reasonable belief that the information disclosed tended to show any matter referred to in section 43B(1) (b) (e), namely that:

*i. The Respondent failed and/or was failing to comply with a legal obligation to which it was subject ERA 43B(1)(b) ; and/or (withdrawn)*

ii. The health or safety of any person was being or was likely to be endangered (ERA 43B(1)(d)) and/or

iii. That the Respondent had attempted to deliberately conceal any of the above (ERA 43B(1)(f))

4. If so, did the Claimant reasonably believe that the disclosures were made in the public interest?

#### **Detriments**

5. If so, did the Respondent subject the Claimant to a detriment, because she had made one or more of the alleged protected disclosures?

6. The Claimant relies on the following alleged detriments by the Respondent:

a) On 8 June, when her evidence is that she refused to see 2 patients in 25 minutes, Mr Khetir told her to resign if she was not willing to follow instructions, threatened to replace her as she was still in her probationary period and said she should carry out his instruction if she wanted to continue working, told her that she was being paid too much and that she was a 'dime a dozen', and questioned her harshly about the day's financial conversions in a manner that implied she not made enough money for the Respondent (Detriment 1).

b) The Respondent's failure to invite her to a formal meeting during the grievance investigation (Detriment 2).

c) On 22 July 2022 the grievance outcome - the Respondent's failure to uphold the grievance generally, and in particular to address the issue of being asked to see two patients in 25 minutes and the Claimant's concern about patient safety. (Detriment 3).

d) On 21 September 2022 the grievance appeal outcome – the Respondent's failure to uphold the appeal generally, and in particular to further address the issue of being asked to see two patients in 25 minutes and the Claimant's concern about patient safety (Detriment 4).

### **Remedy**

It the Claimant succeeds in any of her claims, to what remedy is she entitled

4. The Tribunal are grateful to the parties for narrowing the issues as set out below.
5. The respondent accepts that the protected disclosure at 2(c) is a qualifying protected disclosure. Detriments 2, 3 and 4 are admitted on the facts and the issue is whether the claimant was subjected to those detriments on the ground that she made a protected disclosure.
6. The claimant conceded in submissions that the disclosure at paragraph 2b was not a protected disclosure and withdrew the same.
7. The claimant also conceded that there was no breach of legal obligation, and her reasonable belief was that the information tended to show the matters outlined at issue 3(b)(ii) and 3(b)(iii) on the list of issues.

### **Time limit issue**

8. At the outset of the hearing no issue was identified in relation to the Tribunal's jurisdiction in this matter. In submissions the respondent observed that the Order of Employment Judge Daly dated 25 September 2023 did not make a final determination on the issue of time limits which had been before him.

9. The claimant agreed with the respondent's understanding of that order however considered that it was unfair for this to be raised at this stage.
10. The Tribunal accepted that it would have been better for this issue to have been raised at the outset but considered that it could not be ignored because it went to the issue of jurisdiction. The Tribunal considered that Employment Judge Daly applying the case of Arthur v London Eastern Railway [2006] EWCA Civ 1358 to which he refers, left the determination for the final hearing.
11. Due to insufficient further time, the Tribunal made further directions in this regard as per the Order of Employment Judge French dated 24 April 2024. The Tribunal are grateful for the parties' written submissions pursuant to that order.

## **Fact finding**

### **Background**

12. The claimant was employed as an optometrist at the respondents Harrow store from 6 June 2022. Prior to her employment the claimant had worked as a locum for the respondent for a number of years, over numerous stores.
13. The Harrow store was managed by Mr Khetir. In her locum role the claimant had worked with Mr Khetir in the past but on few occasions. She was however familiar with Vision Express policies and the Harrow store itself.
14. During the covid 19 pandemic a practise of ghost clinics was introduced to deal with fewer footfall at the respondent's firm. This was a common practise across the eye examination industry during this time. The practise of ghost clinics involves an extra patient being booked into an already filled appointment slot so that if the main clinic patient does not attend, the ghost clinic patient can be seen instead.
15. The term clinic refers to a diary of appointment slots, consisting of 25 minutes each, which is the required time for the optometrist to perform the eye test.
16. The General Optical Council (GOC) provides guidance in relation to the appropriate use of ghost clinics to include that they should not be used in busy stores where there are not normally cancellations and to ensure that each patient gets a full appointment slot of 25 minutes.
17. The respondent monitors whether following an eye test, a customer who needs glasses or any other product goes on to make such a purchase. This is known as conversion rates.
18. In summary, the claimant's case is that during a meeting with her line manager on 8 June 2024 she was informed she would need to see her own clinic as well as the ghost clinic. In response she reported that this was clinically unsafe and states that she was subjected to detriments as a result. The claimant made a grievance in relation to the matter which is relied upon as a further protected disclosure and states she suffered further detriments.

8 June 2022

19. The Tribunal find that there was a discussion on the shop floor about conversion rates. This was as part of a daily team brief and was directed at the whole team and not the claimant alone. The Tribunal find this because they accept the evidence of Mr Khetir that there are regular team briefings in this way. This is supported by the meetings with the two witnesses as part of the investigation at pages 116 and 121 which confirm this.
20. As a result, the claimant requested a meeting in private with Mr Khetir. We find that once in the office the conversation was related to the conversion rates as had been discussed on the shop floor and which had led to the private meeting. This is evidenced in Mr Khetir's witness statement at paragraph 33 and the claimant's witness statement at paragraph 32.
21. We find that the claimant was defensive about the conversion rates. Her evidence was as a locum, she had not previously been required to deal with conversion and her primary role was to perform eye tests and patient care. The Tribunal understands the claimant's position in this regard given her account that she had not yet had training on conversion and the importance of patient care. The Tribunal also considered that the claimant was rightly defensive about the conversion rate that was put to her as she considered the correct rate was higher. Mr Khetir later accepted it was the wrong figure and as such she was right to question that.
22. We do not accept that Mr Khetir questioned the claimant harshly about the conversion rates. The panel do however consider that Mr Khetir was likely to be somewhat defensive in relation to the claimant's defensive stance because he was her line manager.
23. We find that the issue of 'did not attend' (DNAs) was raised as evidenced by Mr Khetir at paragraph 31 of his witness statement because this was raised as the reason why the conversion may have been low. The claimant accepts that the issue of DNA's was raised at paragraph 32(b) of her witness statement albeit in the context of being questioned about the number of tests she was performing.
24. We find that in response to that, the issue of ghost clinics was raised, this being a standard industry practice of dealing with the issue of DNAs. The panel do not consider that it was discussed in the context of an ongoing 'tirade' by Mr Khetir as set out in the claimant's statement at paragraph 32(d). In that regard the Tribunal relies on its general findings about the evidence of each witness discussed below.
25. The Tribunal find that the claimant did not approve of the practice of ghost clinics. Although her evidence was that she had done them in other stores without issues, she also stated in re-examination that she had gone to a store previously where a ghost clinic had caused her to go into her lunch break and therefore as a locum, she decided not to go back to the store again.
26. The Tribunal note that the claimant reports that she had been questioned on the 7 June 2022 about the reason why the clinic had run over on the 3 June and was

likely to be sensitive to that given that she had ensured all patients were seen on that day. The Tribunal also note that the claimant gives the 3 June 2022 as an example of when a ghost clinic had not worked and had caused her lunch break to be cut short and her working day extended which also goes to her view on ghost clinics.

27. The Tribunal also note that the claimant is part of a dialogue within the profession which voices its concerns over the practice of ghost clinics which is evidenced at pages 295 to 308.
28. We find that Mr Khetir did not tell the claimant 'And the ghost clinic...you are required to see the ghost clinic as well as your own one'. We find this because he has been a manager for 10 years, and was well aware of standard practice and the time of 25 minutes being required for an eye test. His evidence was that he was not aware of an optometrist ever being asked to see two patients in one slot and confirmed he had never done so. He was familiar with the concept of ghost clinics and how they are managed. He gave an explanation as to how the clinic would be managed if two patients arrived at the same time which would not lead to two patients being seen in the same 25 minutes slot. For example, his evidence was that management of this situation would include pre-screening of one patient, one patient being asked to wait or re-scheduled or asked to look at glasses on the shop floor. The Tribunal find it would be implausible that Mr Khetir would have suggested that the claimant was required to see the ghost clinic as well as her own (referred to within the proceedings as seeing 2 patients in 25 minutes) when it would never be practice.
29. The Tribunal consider that this was supported by Mr Stevens' evidence that there had been no previous incidents where Mr Khetir was reported to have said that 2 patients must be seen in 25 minutes or any other complaints about him. This supports the finding that it would be implausible for him to suddenly start saying that two patients must be seen in a 25 minute slot. At the point of the incident on 6 June the practice of ghost clinics had been in place for a number of years.
30. For the same reason we do not find that Mr Khetir would have said to the claimant that he can do this (make the claimant see 2 patients in 25 mins) because he is the manager, and this is Vision Express policy. Mr Khetir knew it was not policy and has never required anyone else to do this.
31. On balance the Tribunal find that the claimant did not say 'that's 12.5 minute ST and I do not think that is allowed'. We also find that she did not inform him we cannot clinically safely see a patient in that time. This is because of the findings we have made around Mr Khetir's evidence on other issues. This casts doubt over the claimant's recollection of other aspects of the incident on 8 June.
32. Further the Tribunal considers that the claimant is misconceived when she says it would mean she would have to see patients in 12.5 minutes. She said she was aware of the ghost clinics and knew what the practice was. The claimant had been a locum with the respondent over her 20 year career and admits that she was never asked to do this. This goes to the issue of why this would be requested now.

33. The Tribunal were taken to the claimant's complaint at pages 74-76, which was made to Paul Aldridge the following day 9 June 2022. In relation to that document the panel note that the document is not just a statement of fact. It is not limited to what happened but includes her feelings and views on the same. In that regard Tribunal note that the claimant did say in oral evidence that she was distressed by the incident. She did not sleep prior to creating the document on her own evidence and the Tribunal consider that she had clearly been ruminating on matters.
34. The Tribunal note that at places the claimant says things in quotation marks, but other things said to have been spoken are not in quotation. The claimant's explanation in this regard was that she was not focused on the grammar of the document however, coupled with it being intertwined with her feelings on matters it is difficult to determine what is fact and what is interpretation and therefore the document as a contemporaneous note is of little use.
35. The Tribunal note that the claimant states she did start writing notes as soon as she arrived at her sisters after the incident and these notes are lost or destroyed. Although the claimant says the document at pages 74-76 was prepared from those original notes, she accepted in cross examination that she had added to them and therefore we do not have sight of the notes made immediately following the incident.
36. The Tribunal further note paragraph 4 of page 75 and the claimant's witness statement at paragraph 32d. Within those, the claimant does not state that Mr Khetir said she needed to see 2 patients in 25 minutes; she says that he said 'you are required to see the ghost clinic as well as your own one' meaning that she was required to see 2 patients in 25 minutes. The Tribunal consider the word meaning supports that it was her interpretation of what he said as opposed to what was actually said.
37. As to Mr Khetir's response to the incident at page 77 we do not consider that its brevity means his account is not to be believed. He replies promptly stating his recollection of events which is maintained. We accept his reference to staff morale was that he was left the following day without an optometrist because the claimant did not attend and although a locum was re-arranged promptly the Tribunal accept the explanation of the impact that this would have had on the team namely dealing with at least a partly cancelled clinic.
38. The Tribunal find that Mr Khetir did not say 'so 25 minutes per test is your final answer' and on the claimant replying yes, that he told her to resign. This is because on the findings the Tribunal have made about seeing two patients in the same 25 minutes namely that we do not consider that this was done. As such it follows that this part of the conversation is unlikely to have happened. The panel re-iterate that the evidence was that he had never asked anyone else to do this before nor had the claimant ever been requested to do this.
39. The Tribunal therefore find that Mr Khetir did not tell her to resign because it is not likely he would tell her to resign over something he has not asked her to do. The Tribunal note the implications explained by Mr Khetir when he did not have

an optometrist the next day and this supports the fact that he would not have told the claimant to resign and left the store in that position.

40. We find it unlikely in this context that Mr Khetir told the claimant that she was paid too much. The Tribunal accept the evidence of Mr Khetir that whilst he was aware of what the claimant was paid it was human resources that dealt with the level of pay.
41. The Tribunal do find that the issue of the claimant being of probation was raised. The Tribunal consider this would have been likely in the context of conversion rates being issued and the claimant's defensive position. As an employed optometrist conversion was part of her job role and as such it is relevant to her performance on probation and there was a requirement for that to be achieved. The Tribunal considers that this may have also been linked to why the claimant may have believed or inferred that she was told to resign because her probation period was raised.
42. The Tribunal accept Mr Khetir's evidence regarding the alleged comment that the claimant was 'a dime a dozen and could be replaced with ten others' and find that he did not say this. Mr Khetir's evidence was that he had to look up the expression 'dime a dozen' as he did not know the meaning of it. We accept that because we note the level of his spoken English and limit of his range of vocabulary in his oral evidence before the Tribunal. If he did not know the phrase, we conclude he did not use it.
43. It is accepted that the claimant raised the issue about wishing to speak to human resources. When Mr Khetir was asked about this as part of the investigation (at page 139) he stated that he was not aware of the claimant wanting to go to human resources. The claimant states this is an inconsistency with the account he gave in relation to what the claimant's reservations were at paragraph 36 of his statement, whereby he confirmed the reservations were here wanting to go to human resources. The Tribunal note the inconsistency but considers that the notes of the meeting do not appear to be verbatim notes and in any event, the question asked of him could have been open to interpretation. For example, at what stage had she asked to see human resources.
44. The claimant states that Mr Khetir told her to leave the office as described in paragraphs 32(f) and 34 of her witness statement. On balance we find it was likely that Mr Khetir did tell the claimant to leave the office because there had been a discussion around conversion rates which was not progressing. However, we do not find that this was said in the context as described by the claimant, namely that he said 'well done for arguing with your manager in the first week' and then yelled as described in paragraph 34. This is because our findings of the meeting as a whole do not support that there was a tirade of abuse that progressed to this level.
45. In determining the meeting's events on 8 June 2024, the Tribunal was faced with diametrically opposed accounts. The Tribunal make the following general observations on the evidence and if not expressly stated where we have preferred the evidence of Mr Khetir it is for these reasons.



46. On balance we prefer the evidence of Mr Khetir when making findings about events of 8 June because his account is supported by other shop workers as to initial conversation discussion being a team brief and not directed at the claimant as she describes.
47. It is also supported by the fact that on the claimant's account before Mr Khetir shut the door (as outlined by the claimant at para 4B page 75 and para 32(e) of her witness statement) she says the door was open and staff passed. Her account was that by this time Mr Khetir had torn into her and been aggressive. The Tribunal considers that if the door was open until that point, and Mr Khetir had already been confrontational in the manner described, it calls into question why this was not heard by others. This in turn supports Mr Khetir's account that the exchange was on the whole calm and friendly.
48. The Tribunal do note that the accounts at page 116 and 121 were not in the form of witness statements and evidence from those witnesses was not called and as such could not be challenged. However, in circumstances where the Tribunal is having to determine two completely opposed accounts, it forms part of the evidence before the Tribunal that has weighed into the balance of whose account is preferred. Both accounts indicate no hostility or unprofessional behavior observed.
49. In assessing the claimant's evidence, the Tribunal considers that the claimant was wrong about the door having been locked by Mr Khetir. This was checked by both Ms Turpin (page 151) and Mr Stevens (page 280) as part of their investigations and neither found that the door could be locked. We accept their evidence because they both independently looked at this issue and reached the same conclusion.
50. If the claimant is incorrect on the issue with the door lock and as to the initial discussion on the shop floor about conversion as per our findings above, the Tribunal concludes that she may be mistaken on other aspects of the incident.
51. The Tribunal has also already made our observations that much of what the claimant describes as having happened is linked with her feelings of what has happened or how she interpreted that, as opposed to what has actually been said. The Tribunal therefore considers that there has been a blur between what factually happened and the claimant's feelings and interpretation of the same such that her evidence is less reliable.

#### Grievance procedure and appeal

52. Detriments 2 to 4 are accepted on the facts by the respondent and the panel make no further findings on the same at this stage. We address the application of the law to those detriments in our conclusions below.

#### The law

53. Under section 47B of the Employment Rights Act 1996.

"(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."

54. An employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B: see section 48(1A).

#### Time limits

55. Section 48 (3) of the 1996 Act provides that an employment tribunal shall not consider a complaint under section 48 unless it is presented-

" (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

56. Where there is a series of similar acts, then time runs from the last of those acts. Such a series could involve a number of acts of detriment by different people where there is *"some link between them which makes it just and reasonable for them to be treated as in time and for the complainant to be able to rely on them"*: Arthur v London Eastern Railway Ltd (t/a One Stansted Express) [2007] ICR 193, CA.

57. If the last of the acts is dismissed as unfounded or because it was not on grounds of a protected disclosure and that act is the only act within the primary limitation period, then the entire series will be out of time: Royal Mail Group Ltd v Jhuti EAT 0020/16.

#### Qualifying disclosure:

#### Disclosure of information

58. In Kilraine v London Borough of Wandsworth [2018] ICR 1850 Sales LJ set out the following test for determining whether the information threshold had been met so as to potentially amount to a qualifying disclosure : the disclosure has to have *"sufficient factual content and specificity such as is capable of tending to show"* one of the five wrongdoings or deliberate concealment of the same. It is a matter *"for the evaluative judgment of the tribunal in the light of all the facts of the case"* (paras 35-36).

59. However, the Tribunal will need to assess whether, given the factual context, it is appropriate to analyse a particular communication in isolation or in connection

with others. In Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 (EAT), Slade J (at para 22) said that “an earlier communication can be read together with a later one as embedded in it, rendering the later communication a protected disclosure, even if taken on their own they would not fall within Section 43B(1)(d)<sup>3</sup>”. Whether or not it is correct to do so is a question of fact.

Reasonable belief disclosure tends to show ‘relevant failure’

60. s.43B of the ERA provides:

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, 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.

61. 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.

62. If the disclosure has a sufficient degree of factual content and specificity, then that belief is likely to be regarded as a reasonable belief (*Kilraine* at paragraph 36). The belief has to be that the information in the disclosure tends to show the required wrongdoing, not just a belief that there is wrongdoing. The disclosure may still be a protected disclosure even if the information does not stand up to scrutiny. A belief may be a reasonable belief even if it is wrong: *Babula v Waltham Forest College* [2007] ICR 1026.

Reasonable belief that disclosure is made in the public interest

63. 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.

#### Method of disclosure

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

#### Detriments

65. If a reasonable worker might regard the treatment as a detriment, and the claimant genuinely does so, that is sufficient to establish there has been a detriment. There does not necessarily need to be any physical or economic consequences. An unjustified sense of grievance cannot amount to a detriment (*Derbyshire v St Helen's MBC* [2007] ICR 841). Detriments are defined to include "any deliberate failure to act".

#### Causation of the detriments

66. The statutory test is whether the worker was subjected to the detriment by the employer "on the ground that" he or she had made a protected disclosure. It is for the worker to prove, on the balance of probabilities that there was a protected disclosure, that there was a detriment and the employer subjected the claimant to the detriment. If so, then the burden shifts to the employer to show the ground on which the detrimental act was done: Section 48(2) ERA. If a Tribunal rejects the reason advanced by the employer, then it is not bound to accept the reason advanced by the worker, namely that it was on the ground of a protected disclosure: it is open to the Tribunal to find that the real reason for the detriment was a third reason.

67. The Tribunal must consider what, consciously or unconsciously, was the employer's reason for the detriment. Causation will be established unless the employer can show that the protected disclosure played no part whatsoever in its acts or omissions: Fecitt v NHS Manchester [2012] ICR 372, CA. The result is that there will be a sufficient causal connection if a protected disclosure was one of several reasons for the detriment, even if it was not the predominant reason. It is enough if it was a material influence, in the sense of being more than a trivial influence.

68. When considering the employer's potential liability, the tribunal must focus on the mental processes of the individual decision maker, in asking whether the employer was materially influenced by a protected disclosure. This will require the decision maker to know of the protected disclosure. If one worker influenced by a protected disclosure procures a detrimental decision by another unaware of the protected disclosure, that detrimental decision will not be on the ground that the claimant has made a protected disclosure (Malik v Centos Securities plc UAEAT/0100/17/RN).

## Conclusions

### Protected disclosure (issue 2a) - 8 June

69. For the reasons given above we find that the claimant did not say words to the effect of '12.5 minutes per patient, that is clinically unsafe'. That means that the claimant did not make a protected disclosure on the 8 June as identified at issue 2a because we find that the words relied upon as the protected disclosure simply were not spoken.

### Protected disclosure (issue 2b)

*70. Withdrawn*

### Protected disclosure (issue 2c) - 9 June email to Paul Aldridge

71. This document appears at pages 74 to 76 of the bundle. It was sent to Paul Aldridge the day after the incident on 8 June. Although not lodged as a formal grievance it was later treated by the respondent as the same.

72. The respondent accepted that this is a qualifying protected disclosure subject to the Tribunal being satisfied that the claimant had a reasonable belief that this tended to show a matter in s43B(1).

73. The Tribunal find that the claimant did have a reasonable belief that the disclosure tended to show that health and safety of any person was likely to be endangered. All parties agreed that the minimum test requirement was 25 mins. Although the Tribunal find that the claimant was misunderstood in her interpretation of events from the 8 June, the Tribunal do consider that when reporting the matter on 9 June that was her genuine belief.

74. The Tribunal note the claimant's reference in paragraph 38 of her witness statement whereby a child's serious eye condition was missed during an eye test. The Tribunal note that the claimant prided herself on doing a good job and that patient safety was of paramount importance.

75. The Tribunal does not consider that the claimant had a reasonable belief that the information disclosed tended to show that the respondent had deliberately concealed any of the matters in s43B(1). There is reference within the email (page 74 paragraph 2) to the diary having been deleted however the claimant does not go further in this regard as to what that showed.

76. The evidence before the Tribunal in that regard was that the diary does not evidence whether 2 patients are being seen in 25 minutes in any event and we accept that. We were taken to pages 365-366 and although this does show double booking at certain times, the explanation provided was that those patients are managed as described by Mr Khetir. There were also entries where you could see the matter had not been progressed to an eye test which again supports that it does not evidence seeing 2 patients in 25 minutes. We consider that the claimant was aware of how the diary works and that its deletion would

not amount to a concealment and as such do not consider that she had a reasonable belief that its deletion was an attempt at concealment.

77. The Tribunal also notes at page 135 during interview that the claimant believed the diary was entry so 'I could not show how many people I had seen' and does not suggest it was done to conceal health and safety breaches. This further supports the claimant's belief around the deletion of the diary.

Protected Disclosure - (Issue 2d) – appeal against grievance.

78. The claimant states that she made a further protected disclosure within her grievance appeal at page 164 and in particular relies upon paragraph 7. The respondent disputes that this is a protected disclosure because it is a complaint regarding the process, and it not being investigated properly and does not state the words relied upon.

79. As a matter of fact, this document does not repeat the claimant's grievance. At paragraph 7 it does refer to ghost clinics and 'double booking'. It is referred to with reference to her original grievance because she is appealing the outcome of the same. Applying Norbrook Laboratories (GB) Ltd v Shaw the Tribunal considers that this communication should not be read in isolation and although may not in itself be a protected disclosure, in the context of the previous disclosure renders it a further protected disclosure.

80. The Tribunal considers that taken together with the grievance there is a disclosure of information which tends to show that the health and safety of a person was likely to be endangered. We consider the claimant did hold a reasonable belief that the information tended to show such wrongdoing for the same reasons in relation to protected disclosure 2c.

81. We find that the claimant did hold a reasonable belief that the information in this disclosure tended to show that the respondent had also attempted to deliberately conceal a breach of health and safety. This is because the claimant refers to consideration needing to be given to why evidence was missing.

Public interest

82. It is accepted that the claimant reasonably believed that the disclosures were made in the public interest.

Detriment 1 (issue 6a) - 8 June

83. On the Tribunal's finding the claimant did not make a protected disclosure during the meeting on 8 June 2024. As such anything that was said in the meeting afterwards could not have been because she made the protected disclosure because there was no disclosure.

84. The Tribunal also note that in any event one of the issues within this detriment was being questioned harshly about conversion rates. On the claimant's own evidence, the discussion on conversion happened before the alleged protected

disclosure. It therefore follows that even if there had been a protected disclosure this part of detriment is alleged to have occurred prior to it.

Detriment 2 (issue 6b) – not invited to formal Grievance meeting.

85. As a matter of fact, it is accepted that the claimant was not invited to a formal grievance meeting. The Tribunal must therefore consider if this was “*on the ground that*” she had made a protected disclosure.
86. In determining the issue, the Tribunal note that the respondent did not treat the claimant’s initial complaint (pages 74 to 76) as a grievance. In the first instance Sam Adebare (human resources) suggested the matter may be resolved by informal discussions (page 90). It was later treated as a formal grievance.
87. Once treated as a grievance Ms Layla Turpin was tasked to investigate the grievance. Her evidence was that she was instructed to investigate the matter by Paul Aldrige. She stated that she has experience of dealing with disciplinary investigations but had not previously dealt with a grievance.
88. Ms Turpin confirmed that whilst she was aware of the grievance policy at page 57 of the bundle, she did not read this before starting her investigations because she assumed that the process was the same as with a disciplinary investigation for which an individual is not invited to a formal meeting. The Tribunal accept the evidence of Ms Turpin in this regard. She remained consistent in her evidence throughout and made appropriate concessions where necessary.
89. Ms Turpin stated that she was aware of the complaint made by the claimant although did not know or recognise that this amounted to whistleblowing. Applying Malik even if Ms Turpin was not aware that it was a protected disclosure, she was aware of the complaint itself and the Tribunal consider that this knowledge is sufficient.
90. The Tribunal note the email from Ms Turpin to human resources at page 104 of the bundle. Here she raises the concern that she had not appreciated that she should have invited the claimant to a formal grievance meeting. The Tribunal considers that supports that Ms Turpin made a genuine error when she failed to invite the claimant to a formal meeting which she subsequently recognised.
91. The Tribunal conclude therefore that the failure to invite the claimant to a grievance meeting was Ms Turpin’s inexperience and incorrect understanding of the procedure and that it was not on the ground that she had made a protected disclosure.
92. This detriment was therefore not on the ground that the claimant had made a protected disclosure.

Detriment 3 (issue 6c) - failure to uphold grievance and address the 2 patients in 25 minutes issue

93. As a matter of fact, it is accepted that the claimant's grievance was not upheld and that the issue of having to see 2 patients in 25 minutes was not concluded upon. Again, the Tribunal must consider whether this was on the ground that the claimant had made the protected disclosure.
94. In cross examination Ms Turpin was challenged on whether she specifically asked Mr Khetir about 2 patients in 25 minutes. Her evidence was that she believed that she had although considered that she had covered the issues raised by the claimant of which there were several. Ms Turpin was very clear that her view was that she simply did not consider that Mr Khetir would have requested the claimant to see 2 patients in 25 minutes because it was not policy and he was not like that as an individual. Her evidence was that this was simple inconceivable, and this is supported by the evidence that the Tribunal heard namely there was a clear policy in place regarding the use of ghost clinics and they were used appropriately. The Tribunal consider that any failure to address the 2 patients in 25 minutes was therefore due to Ms Turpin's belief that this was simply inconceivable and not on the ground that the claimant had made the protected disclosure.
95. Ms Turpin was also criticised for failing to make conclusions about what occurred in the office. It was suggested that she failed to make conclusions about seeing 2 patients in 25 minutes because she was aware it was the most serious allegation. The Tribunal note that in the grievance account at page 192 Ms Turpin states that 'we are unable to verify the context of what was discussed in the office room between yourself and KH'. The Tribunal do consider that when faced with completely opposed accounts Ms Turpin was entitled to conclude that the complaint was inconclusive or could not be determined.
96. In submissions the claimant also suggested that Ms Turpin had agreed that the fact that Mr Khetir would face serious repercussions over such an incident was the reason why Ms Turpin had left this issue out of the grievance outcome letter. Ms Fadipe conceded that her note of this may be inaccurate. The Tribunal's note of this evidence was that Ms Turpin expressly stated, 'that was not the reason it was not in the letter.' Ms Turpin was very clear that she did not deliberately gloss over this issue. The Tribunal therefore do not take issue with Ms Turpin's credibility in this regard.
97. The Tribunal also has regard to page 191 of the bundle being the grievance outcome and Ms Turpin's evidence that her understanding of the grievance was that it was mainly about conversion rates. As such based on her understanding that was her focus.
98. The Tribunal note that Ms Turpin was a manager of another store. She is aware of usual practice. The Tribunal considers that Ms Turpin has done her best to determine the grievance based on the information available to her and that this has not been influenced by the protected disclosure. Ms Turpin took into account what the other witnesses had informed her and made a decision that what occurred in the office was inconclusive. The Tribunal are satisfied that this was her genuine belief, and it was not influenced by the protected disclosure.



99. In addition, Ms Turpin was able to physically check the complaint about the lock by the claimant and on examination her conclusion was that this could not be locked from the inside. This supports her conclusion not to uphold this part of the grievance and supports that it was her genuine conclusion rather than being influenced by the protected disclosure.
100. This detriment was therefore not on the ground that the claimant had made a protected disclosure.

Detriment 4 (issue 6d) - failure to uphold grievance appeal and address the 2 patients in 25 minutes issue

101. It is a matter of fact that the grievance appeal was not upheld and the issue of seeing 2 patients in 25 minutes was not concluded upon. The Tribunal must consider whether this was on the ground that the claimant made the protected disclosure in her original grievance and the appeal letter itself.
102. Mr Stevens' evidence was that at the time the appeal came before him the claimant's focus was on ghost clinics as a whole rather than the particular issue of 2 patients in 25 minutes. The Tribunal note that this is supported in paragraph 7 of the claimant's appeal at page 165. This does not say '2 patients in 25 minutes' but instead refers to ghost clinics and double bookings. The Tribunal conclude that this would support why he assessed it as a wider issue of problems with the ghost clinics as a whole.
103. This is further supported by the grievance appeal meeting notes which the Tribunal considers supports Mr Stevens' account that the claimant's focus was on ghost clinics as a whole rather than the express issue of 2 patients in 25 minutes. The Tribunal does note at page 231 reference to 'clinically this is not allowed to go below 25 minutes', however reading that paragraph as a whole with the rest of the meeting notes the concern seems to be with ghost clinics as a whole. The Tribunal also notes that the question asked of the claimant was 'why this is important to you' and her immediate response is to give an example of when a ghost clinic had not worked.
104. That would in turn explain why the issue of 2 patients in 25 minutes is not addressed. The Tribunal notes that Mr Stevens does in fact address the issue of ghost clinics as a whole, in his outcome letter at page 281 and as such he has addressed what he understood to be the complaint. The Tribunal conclude that this is the reason why he did not address the 2 in 25 minutes issue and that this was not on the ground of the protected disclosure.
105. Mr Stevens states that as part of his investigation into the appeal he visited the Harrow store and looked into their use. He spoke to staff and was satisfied that there was no unauthorised use. Based on his understanding of the claimant's complaint in this regard, he was satisfied that the original outcome was appropriate. That is the reason he did not uphold the appeal.

106. Mr Stevens confirmed that in relation to the issue of 2 patients in 25 minutes, he agreed with the conclusion of Ms Turpin that there were only two people in the room and no other evidence to go on. His evidence was that he agreed there was 'no mileage to take this further.' The Tribunal accept this conclusion because of the observations we have made ourselves regarding Ms Turpin's original conclusions.
107. Mr Stevens also stated that he did ask Mr Aldrige whether there had been any issues with Mr Khetir's management of ghost clinics in the past and there had not been. This was then supported by his own investigation when visiting the Harrow store, namely that it was not used inappropriately.
108. This detriment was therefore not on the ground that the claimant had made a protected disclosure.
109. In conclusion therefore the unanimous decision of the Tribunal is that the complaint of being subjected to detriments for making protected disclosures is not well-founded and is dismissed.

Time limits

110. In order to resolve the issue of time limits it has been necessary for the Tribunal to consider the merits of the claim. This is because if the final detriment was not on the ground that the claimant had made a protected disclosure it would break the link in the series of acts.
111. Due to our findings, we have not gone on to make a decision on the time limit because even if the claim was presented in time, it does not succeed on the merits.

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Employment Judge French

Date: 4 June 2024

Sent to the parties on:6 June 2024....

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For the Tribunal Office