EMPLOYMENT TRIBUNALS

Claimant:	**Mrs F Tiplady**		
Respondent:	**City of Bradford Metropolitan District Council**		
Heard at:	**Leeds**	**On:**	**13, 14, 15, 16, 20, 21 November 2017**
Before:	**Employment Judge Davies**		
Members:	**Mr M Brewer** **Mr G Harker**		

Representation

Claimant:	**In person**
Respondent:	**Mr S Lewis, counsel**

JUDGMENT

1. The Claimant's claims of ordinary unfair dismissal, automatically unfair dismissal for making protected disclosures and being subjected to a detriment for making protected disclosures are not well-founded and are dismissed.

REASONS

1. Introduction

1.1 This was the hearing to decide claims of unfair dismissal (ordinary and automatically for making protected disclosures) and being subjected to a detriment for making protected disclosures brought by the Claimant, Mrs F Tiplady, against her former employer, the City of Bradford Metropolitan District Council. The Claimant represented herself, and did so in a professional and conscientious manner that greatly assisted the Tribunal. The Respondent was represented by Mr Lewis of counsel, for whose careful presentation of the case the Tribunal was also grateful. The hearing documents ran to more than 1000 pages. In addition, the Claimant had produced a "media" file, containing photographs and transcripts of recordings and the Tribunal viewed the originals on a screen helpfully provided by the Claimant when that was required. Documents within the Claimant's supplementary bundle were considered when necessary. The Respondent had produced a bundle of documents referred to as the Yorkshire Water file. The Claimant objected to those documents being admitted in evidence. The Tribunal did not read them in full, but we agreed at the

outset of the hearing that if any party wished to refer to any document within that file during the course of the hearing, the Tribunal would consider whether that document should be admitted. A very small number of such documents was subsequently referred to and there was in fact no objection to the Tribunal considering those documents.

1.2 The Tribunal heard evidence from the Claimant on her own behalf. For the Respondent, the Tribunal heard evidence from Mr J Eyles (Major Developments Manager within the Department of Place); Mr A Lodge (Environmental Health Manager within the Department of Health and Wellbeing); Mr E Smith (Environmental Health Technical Officer); Mr A Raby (Principal Building Control Surveyor (North) within the Department of Place); Mr C Eaton (Development Services Manager within the Department of Place); Mr I Horsfall (Planning Manager (Enforcement and Trees) within the Department of Place); Mr J Jackson (Assistant Director – Planning, Transportation and Highways within the Department of Place); and Ms S Dunkley (Director of Human Resources).

2. Issues

2.1 The issues to be decided were:

Protected Disclosures

2.1.1 Did the Claimant make protected disclosures within s 43B Employment Rights Act 1996 ("ERA") as itemised in her particulars of disclosures dated 13 June 2017 i.e. in respect of any or all of the eight alleged disclosures in that document:

2.1.1.1 Did she disclose information to her employer, to another person to whose conduct she reasonably believed the relevant failure related, or to a person she reasonably believed had legal responsibility for the matter to which the relevant failure related within the meaning of s 43C ERA?

2.1.1.2 In the alternative did she disclose information to a prescribed person within the meaning of s 43F ERA?

2.1.1.3 If so in either event, was the disclosure in her reasonable belief made in the public interest?

2.1.1.4 If so, did the information in her reasonable belief tend to show that a criminal offence had been committed, was being committed or was likely to be committed?

2.1.1.5 In the alternative, did the information in her reasonable belief tend to show that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he was subject?

2.1.1.6 In the alternative, did the information in her reasonable belief tend to show that the health or safety of any individual had been, was being or was likely to be endangered?

2.1.1.7 In the alternative, did the information in her reasonable belief tend to show that information tending to show any of the above matters had been or was likely to be deliberately concealed?

Detriment

2.1.2 If the Claimant made protected disclosures, was she subjected to a detriment done on the ground that she had done so within the meaning of s 47B ERA as set out in the particulars dated 13 June 2017, in which 16 alleged detriments are set out?

Unfair Dismissal

2.1.3 Was the Claimant dismissed, i.e.

2.1.3.1 Was the Respondent in fundamental breach of the contract of employment, in particular the implied term of mutual trust and confidence as set out in the particulars dated 13 June 2017?

2.1.3.2 If so, did the Claimant resign in response to that breach and without affirming the contract?

2.1.4 If the Claimant was dismissed, what was the reason for the Claimant's dismissal, i.e. for the Respondent's fundamental breach of contract:

2.1.4.1 If the Claimant made a protected disclosure was the reason or principal reason for her dismissal that she did so?

3. Relevant legal principles

Protected disclosures

3.1 Protected disclosures are dealt with in s 43A to 43L Employment Rights Act 1996. By virtue of s 43B, a qualifying disclosure means a 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 prescribed matters. A qualifying disclosure made a worker's employer or other responsible person is, by virtue of s 43C and 43A, a protected disclosure.

3.2 A qualifying disclosure must involve a disclosure of information, not merely the making of an allegation: see *Cavendish Munro Professional Risks Management v Geduld* [2010] ICR 325. Furthermore, a reasonable belief means that the worker must subjectively hold that belief, but that it must be, in the Tribunal's view, objectively reasonable: see *Babula v Waltham Forest College* [2007] ICR 1026 CA.

3.3 The proper approach to the requirement that the worker reasonably believes that the disclosure is made in the public interest was the subject of guidance from the Court of Appeal in *Chesterton Global Ltd v Nurmohamed* [2017] IRLR 837. The question depends on the character of the interest served, not simply on the numbers of people sharing the interest. Where the disclosure is of a breach of the worker's contract, it may still be reasonably believed to be in the public interest if a sufficiently large number of employees share that interest, although Tribunals should be cautious about reaching such a conclusion given that the purpose of the public interest requirement is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers. Where the disclosure relates to an interest that is personal in character, features that may make it reasonable to regard the disclosure as being in the public interest include: how many people's interests are served by the disclosure; the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed; the nature of the wrongdoing disclosed and the identity of the alleged wrongdoer.

3.4 Under s 47B ERA a worker has the right not to be subjected to a detriment by any act or deliberate failure to act done on the ground that he or she has made a protected disclosure. Something is done "on the ground" that the worker made a protected disclosure if it is a "material factor" in the decision to do the act. The decision must be in no sense whatsoever because of the protected disclosure: see e.g. *Fecitt and others v NHS Manchester* [2012] IRLR 64 CA. Under s 48(2) ERA, it is for the employer to show the ground on which any act or deliberate failure to act was done. The ERA itself does not define "detriment" but it is well-established that the Tribunal should ask whether a reasonable worker would take the view that the treatment had, in all the circumstances, been to their disadvantage: see by analogy *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285.

3.5 Section 47B falls within Part V ERA, which is headed "Protection from suffering detriment in employment." It affords to workers the right not to be subjected to detriment by their employer, its workers or agents.

3.6 The Respondent submits that the protection afforded by s 47B is confined to detriments to which a worker is subjected as a worker, rather than in their private or non-work capacity. Mr Lewis was unable to identify any authority directly on point, but he submitted that the corresponding approach taken in the discrimination field should be adopted by analogy. He helpfully referred the Tribunal to the decision of the EAT in *London Borough of Waltham Forest v Martin* UKEAT/0069/11/SM. There, the Claimant was employed by the local authority as a bus Driver and lived within its area. The local authority prosecuted him as one of its local residents in respect of his housing and Council tax benefit claims. He brought claims of race discrimination under the Race Relations Act. The EAT held that the decision to prosecute him was not capable of amounting to an act of discrimination over which the Employment Tribunal had jurisdiction. Reliance was placed on the decision of the House of Lords in *Shamoon*, in which it was held that the provisions making it unlawful for a person to discriminate against its employee by "subjecting him to any other detriment" must mean detriment in the field of employment. The EAT also referred to the provisions within the Race Relations Act providing remedies for discrimination in other fields. There is no corresponding provision in the public interest disclosure provisions. Nonetheless, the Tribunal accepted Mr Lewis's submission that the protection afforded by s 47B was confined to detriment in the employment field and did not embrace detriment in the purely private capacity. Parliament has used the same or equivalent language – protection from suffering detriment in employment – and it should be approached in the same way. Further, the EAT referred to the difficulty to which the alternative construction would give rise – namely that those who happened to work for a public authority which had other functions would otherwise have additional rights compared with other members of the public. They would, for example, be able to bring a complaint of discrimination in an Employment Tribunal if their planning application was refused, when any other member of the public would not. The same would apply if the whistleblowing provisions were construed as enabling a person who happened to work for a public body with relevant statutory functions to complain of being subjected to a detriment for making a protected disclosure if, say, their

planning application was refused, when such a remedy was not open to any other resident.

3.7 In reaching that view, the Tribunal bears in mind what was said by the EAT at paragraph 23 of *Martin*. There may be indirect consequences in the employment field that arise from the private or personal matter – for example in that case the bringing of disciplinary proceedings as a result of the criminal proceedings of which the employer became aware. Furthermore, it seems to the Tribunal that there will not always necessarily be a clear line between what lies in the private sphere and what lies in the employment sphere. As the Claimant submitted, the *Martin* case concerned a bus Driver and benefit irregularities. In her case, there is a closer overlap factually because there were private matters relating to her house, which were dealt with by the very same part of the organisation in which she was employed. It seems to us that the Tribunal must be careful to assess whether, on the facts, what in fact took place was the subjecting of a worker to detriment *in the employment field* but we accept the submission that the detriment must be *in the employment field*. The mere fact that a person happens to work for the body in question is not enough: the detriment must be in the employment field and does not include detriment in the private or personal capacity.

Dismissal

3.8 It is well-established (see *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221) that in considering whether an employee has been constructively dismissed, the issues for a Tribunal are:

3.1.1 Was there a breach of the contract of employment?

3.1.2 Was it a fundamental breach going to the root of the contract, i.e. such as to entitle the employee to terminate the contract without notice?

3.1.3 Did the employee resign in response and without affirming the contract?

3.9 It is an implied term of the contract of employment that the employer will not, without reasonable cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee: *Malik v BCCI* [1997] IRLR 462. This is a demanding test. The employer must in essence demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract: see *Frenkel Topping Ltd v King* UKEAT/0106/15/LA at paragraphs 12-15. Furthermore, individual actions taken by an employer that do not by themselves constitute fundamental breaches of any contractual term may have the cumulative effect of undermining trust and confidence, thereby entitling the employee to resign and claim unfair dismissal. The final act in such a series (or "last straw") need not be of the same character as the earlier acts but it must contribute to the breach of the implied term: see *Omilaju v Waltham Forest BC* [2005] IRLR 35 CA.

3.10 Once dismissal is established, s 98 of the Employment Rights Act 1996 requires the employer to show that the reason for the dismissal was a potentially fair one. In a case of constructive dismissal, that is the reason for which the employer breached the contract of employment: see *Berriman v Delabole Slate Ltd* [1985] ICR 526 CA.

3.11 By virtue of s 103A ERA, an employee who is dismissed is to be regarded as unfairly dismissed if the reason or principal reason for the dismissal is that the employee made a protected disclosure. That is a different and higher threshold from the one that applies in a claim of being subjected to a detriment for making a protected disclosure, as the Court of Appeal in *Fecitt* confirmed.

3.12 The reason or principal reason for dismissal is a question of fact to be determined by a Tribunal as a matter of direct evidence or by inference from primary facts established by evidence. The reason for dismissal consists of a set of facts which operated on the mind of the employer when dismissing the employee. They are within the employer's knowledge and in this case it is for the employer to show the reason or principal reason for the dismissal. The proper approach is set out in the case of *Kuzel v Roche Products Ltd* [2008] ICR 799 CA.

4. Determination of the claims

Preliminary matters

4.1 The Tribunal was presented with over 1000 pages of documents. The Claimant's witness statement was 88 pages long and the Tribunal heard evidence from eight witnesses for the Respondent. It is not necessary or consistent with the overriding objective for the Tribunal to set out detailed findings of fact dealing with every matter canvassed. We took careful account of all the evidence to which we were referred and of both parties' careful written submissions, which they supplemented orally. We set out below our findings and reasoning on the matters in dispute, giving the context to the extent necessary and proportionate. For ease of comprehension the judgment is structured so as to include relevant findings of fact and determination of issues in a number of discrete sections. We have of course taken care to review the totality of the findings in considering the constructive dismissal complaint and to ensure that each of the protected disclosures said to give rise to any particular detriment was considered in assessing whether the detriment was done on the ground that the Claimant had made protected disclosures.

4.2 We start by making some preliminary findings about the witnesses. The Tribunal found that all of the Respondent's witnesses gave honest evidence. Each witness was doing his or her best to give an accurate and objective account of events, some of which took place some time ago.

4.3 By contrast, the Tribunal did not find the Claimant to be a persuasive witness. We accepted that she was, for the most part, doing her best to give an accurate account of events but the Tribunal considered that her account was to some extent distorted by reviewing the events retrospectively. The Tribunal considered that with the benefit of hindsight the Claimant had given events an interpretation that did not accurately reflect what in fact took place at the time. She may have been genuinely convinced that events transpired in the way she described but it seemed to the Tribunal that that was not always right. The difficulty was compounded by the fact that her witness statement did not set out a simple factual account of what was said or done and when. It was much more in the nature of argument and submission. The Claimant seemed to lack the ability to

see events from the Respondent's perspective. For example, at various points she expressed criticism of the Respondent for not accepting what she had said because she was an experienced planning officer. She did not appear to recognise that from the Respondent's perspective in exercising its statutory functions in respect of the Claimant's private property it was not appropriate for it to rely on what she said. Rather its officers were required to form their own view as they would in any other case. Another example relates to the outbuilding that was the subject of a complaint (see below). The Claimant's position was and is that the outbuilding was simply a garden shed. It is a substantial stone built structure. She did not seem to recognise that there might have been a question about the nature of the structure or that it might have been appropriate for the Respondent as local planning authority to satisfy itself that this was indeed a garden shed.

4.4 In addition the Tribunal considered that the Claimant's account of events was characterised by hyperbole to the extent that events were sometimes misrepresented by the use of extreme language. For example, the Claimant referred to the position on 12 March 2014 in her witness statement. At that stage (see below) and through no fault of the Respondent a sewer had been discovered under the rear extension of her property. Yorkshire Water ("YW"), the relevant statutory undertaker, were involved but were proposing a solution that the Claimant and her husband disagreed with. Mr Smith, one of the Respondent's EH technical officers, had visited. The Claimant took the view that he had given approval to YW's proposals. In fact, the following day a different solution was agreed to by Mr Tiplady and YW. The Claimant's description of that situation in her witness statement was as follows: "On 12 March 2014 we realised that the Respondent had destroyed our house. The Respondent had rendered it unfit to live in, forever, by supporting dangerous proposals and supporting the imminent use of the courts to implement those proposals. The Respondent had shown a complete disregard for the health of any of us including the children in number five. The Respondent supported solutions that would successfully remove all our future privacy and allow YW access to our house whenever they liked. The house was worthless. We could not even walk away." The whole of the Claimant's evidence was characterised by the use of such language.

4.5 The Claimant's interpretation of documents and events seemed at times to the Tribunal to be perverse. For example, the Tribunal was referred to an email from Mr Driver to Ms Hemingway on 12 March 2014 responding to an email from Mr Tiplady, which had the heading "URGENT ES poisoning children" (see below). In full, Mr Driver wrote:

> I sent the email below to Edward Smith. I later received a call from Fiona (Tiplady) who told me that her husband has since been in touch with Edward's line manager (whoever that is) who is investigating it. Mr Tiplady has also been in touch with YW again and someone – possibly an area director – of theirs is to visit the property tomorrow to hopefully sort something out.
>
> It seems like there was a muddle between Edward and YW which hopefully will be sorted out soon. It is a rather odd situation all round! In the meantime I have suggested to Fiona that in view of the rather emotive heading of these emails and given the steps mentioned above it might be an idea for her husband to follow up his email explaining what is going on so that we do not spend any more time than is necessary in looking to respond to his first email.

4.6 The Claimant said that by sending this email Mr Driver, "took steps to silence the complainant.". She said that it was her employer silencing her and instructing her to silence her husband. She said that she was being told to withdraw her husband's complaint so that the Respondent did not have to investigate it. It was put to the Claimant in cross-examination that Mr Driver was not saying that she needed to get her husband to withdraw his complaint rather he was asking for another email and manifesting an intention to do more once that was received. The Claimant disagreed. She said that Mr Driver was, "shutting it all down," he was not asking for another email and there was no intention to do more. It seemed to the Tribunal that the email could not sensibly be read as seeking to silence her and ensure that the complaint was withdrawn. Rather, recognising that events may well have moved on, it was suggesting that Mr Tiplady provide an update on the situation to avoid unnecessary time being spent responding to the first email if it was no longer up-to-date.

4.7 Another example related to an entry in the Environmental Health ("EH") log of events concerning the Claimant's property. On 12 August 2014 (see below) Mr Lodge made an entry recording that he had discussed matters as they then stood with Mr Major and Mr Dermot Pearson. He wrote, "Dermot has discussed with complaints team and been advised that this is not a formal complaint but a request for guidance!" In her witness statement the Claimant said that this showed that Mr Pearson, "stopped the investigations again by cancelling any complaint." She said that he could and should have overridden any complaint team decision and that he was therefore responsible for the suppression. It was put to her in cross-examination that this was simply logging what someone in the complaints team had said. She disagreed. She said, "No. Dermot has downgraded it." Her attention was drawn to a letter written by Mr Pearson three days later, in which he invited Mr Tiplady to ask for his complaint to be considered at stage 2 of the Respondent's corporate complaints procedure and provided appropriate contact details. She agreed that that was what the letter said, but she did not alter her position that Mr Pearson was trying to suppress the complaint.

4.8 The Tribunal makes one further preliminary observation. In this case there were hundreds of letters and emails from Mr Tiplady to a wide range of the Respondent's officers, ranging from those involved on a day-to-day basis right up to the chief executive. Mr Tiplady's correspondence raised at length concerns about the issues affecting the property owned by him and the Claimant and about the conduct of the Respondent's officers. Many of them were in what might be described as inflammatory language. He made regular and repeated allegations of incompetence, corruption and collusion. It is against that sea of correspondence that the very small number of communications that actually emanated from the Claimant, and were said by her to amount to protected disclosures, and the Respondent's response to them, must be viewed.

The parties

4.9 The Claimant started working for the Respondent in 2005. At the time of the offence with which the Tribunal was concerned she was a Senior Planning Officer in the Major Developments Team. She was a valued and valuable

member of staff. Her performance reviews during the period of the events with which the Tribunal was concerned were of the highest calibre. Indeed in her most recent appraisal she received the maximum possible scores.

4.10 Sometime before February 2013 the Claimant and her husband bought a property in a Conservation Area in Haworth. We refer to that property as Number Three. The property lies within the Respondent's metropolitan district area.

4.11 The Respondent is the City of Bradford Metropolitan District Council. One of the Respondent's departments is called the Department of Place. Mr Eaton is the Development Services Manager in that department. He reports to Mr Jackson. Within Mr Eaton's span of control are Planning and Enforcement, and Building Control ("BC"). The Claimant worked in Planning and Enforcement. Her manager was Mr Eyles, Major Developments Manager. In a separate part of Planning and Enforcement Mr Horsfall worked as Planning Manager (Enforcement and Trees). So far as BC was concerned Mr Raby was Principal Building Control Surveyor (North). Mr Hill was a BC officer who reported to him. EH fell within the Respondent's Department of Health and Well-being. Mr Lodge was an Environment Health Manager within that department and the EH Technical Officers, including Mr Smith, reported to him.

February to March 2014: Disclosures 1 and 2, Detriment 1

4.12 In February 2014 Mr Tiplady was digging up the concrete floor in a rear extension at Number Three. The extension was referred to by the Claimant as the back kitchen. It is a single-story- single skinned extension to the back of the property outside what would have been the back door. One of its walls is the external wall of a neighbouring property. Mr Tiplady uncovered a sewer passing under Number Three. That sewer took foul drainage from three properties and as such it was a public sewer and an asset of YW. The sewer was shown in a different place, not under Number Three, on the relevant maps. Mr Tiplady contacted YW on 28 February 2014. By 2 March 2014 Mr Tiplady had contacted his local Councillor, Councillor Poulsen, who emailed Mr Lodge in EH. She said that she had had a very distressed resident on the phone who had discovered an old Victorian sewage pipe under his property. He had been trying to get YW to visit and when they came out they had the wrong equipment to investigate. He said that all the gases were venting to the next door property where two children lived. He had rung the Council on Saturday and got the out of hours service. Councillor Poulsen asked whether there was anything the Council could do and suggested that open sewage and venting gases could be deemed an EH issue particularly with young children involved.

4.13 It is apparent that Mr Tiplady had also contacted the Council on 3 March 2014. His query was referred to EH. The referral recorded Mr Tiplady as saying that he had rung YW who were refusing to do anything because they said it would cost too much. He had also rung Ofwat, who were "useless."

4.14 Mr Tiplady had also emailed the Respondent's BC service on 3 March 2014. He requested a visit by a building inspector, reporting that there was an immediate problem to solve that involved a YW drain open under the floors of his and his

neighbours' houses. He said that the immediate works were in relation to safeguarding the house from the public sewer. He added, "there is a conflict of interest with Bradford Council, as an employee, and so we must have an inspector from another Council. The use of our data needs to be restricted within Bradford Council." BC opened a handwritten log relating to Number Three. On 3 March 2014 Mr Hill recorded the receipt of the email and noted that he had telephoned Mr Tiplady. Mr Tiplady had confirmed that he was the Claimant's husband. He said that the proposed work was to enclose an open sewer, replace a timber lintel and replace the ground floor with a concrete beam and block floor. Mr Hill raised the issue of inspecting a fellow officer's work with Mr Raby. Mr Raby in turn raised the matter with Mr Eaton. Mr Eaton told the Tribunal that he considered the project Mr Tiplady was proposing to be a minor matter with no potential for a significant profit on resale. Also the Claimant was not employed in BC. In the circumstances he considered that the work could be supervised in the normal way and did not need to be referred out of the Council. That discussion and advice was recorded by Mr Raby in the BC log on 3 March 2014. The Tribunal accepted that the decision not to bring in an external inspector was taken at that stage and for the reasons explained. The Tribunal did not consider that to be untoward.

4.15 On 5 March 2014 Mr Smith, the EH Technical Officer, visited the property. He explained that Mr Tiplady had dug up the floor of the rear extension and exposed an old stone flag style drain. This was a drain with stone flags on top of it. The drain ran from under the kitchen of number five to the rear of Number Three. Mr Smith thought that possibly it had originally been a drain taking kitchen water and discharging it to a culvert, at a time when the properties did not have inside toilets. However, foul drainage from number five now ran through the stone drain and through a cast iron pipe under the main floor of Number Three. Mr Smith said that he spoke to Mr Tiplady. Pretty much the start of their conversation was Mr Tiplady complaining about the house being mis-sold and talking about suing YW.

4.16 Mr Smith told the Tribunal that he had some brief conversation with Mr Tiplady about sewer gases. He explained to the Tribunal that hydrogen sulphide and other gases can form in pooling sewage or where there is a blockage. That is what is meant by "sewer gases." It is not the same as the gases associated with free flowing sewage. Such sewage may smell but that is not harmful. Mr Smith's recollection of conditions at Number Three on 4 March 2014 is that the sewer was free-flowing with no evidence of pooling, blocking or sewer gases. There was a manhole cover over the drain and someone had put plastic sheeting under it to form a seal. Modern manhole covers would usually have a built in seal to serve the same purpose but it was not unusual to see plastic sheeting used in this way. Sewers are not airtight, so as you flush there will be an odour. Mr Smith said that there were soil stacks to each property. They vent gases upwards and that helps to keep the system aerated and safe. Mr Smith's view was that the cast iron pipe running under the floor of Number Three was adequate to do the job. The stone drain under the rear extension would probably be satisfactory as long as it was working properly. Nothing should stop in the drain long enough to be a problem. Sewage and foul water would flow freely through. It was only if there was a blockage and pooling that there might be a problem. He did not consider there to be a health hazard at Number Three. It was not leaking into the

property. The pipes were flowing. It was not ideal because Mr Tiplady had opened it up but YW were on top of the situation. He did not consider there to be a health hazard at the neighbouring properties either. It was not for the Tribunal in this case to determine whether there was a hazard to health or a statutory nuisance at Number Three on 4 March 2014, nor is the Tribunal equipped to make such a determination. The Tribunal accepted that Mr Smith's professional opinion at the time was that there was no such hazard or nuisance.

4.17 As Mr Smith was about to leave the property employees from YW arrived. He stayed and they did some dye testing while he was present. Mr Smith had some discussions with Mr Tiplady about possible solutions to the issue. It appears they discussed the possibility of rerouting the sewer entirely out of the back garden of Number Three to a nearby sewer. This would mean that no sewer ran under Number Three. Mr Smith recorded a brief outline of his visit in the EH log, which was consistent with the evidence he gave to the Tribunal.

4.18 On 6 March 2014 Mr Tiplady rang Mr Smith and told him that he had had major problems with "sewer gas" last night. He said that he had received advice from a civil engineer that the Council should "make YW fit a non return valve." Mr Smith's evidence, supported by his note in the EH log at the time, was that Mr Tiplady demanded in a very assertive manner that the Respondent make YW do this and enforce on them immediately. Mr Tiplady then hung up. Mr Smith's evidence was that he understood Mr Tiplady to be saying that a statutory abatement notice should be served. He pointed out that even if such a notice was served it had to allow a reasonable time for the work to be done. He did not consider that there was a statutory nuisance at the property. His view was that Mr Tiplady could quite easily have used the property if he had not used the rear extension until that part of the system was renewed. However, Mr Tiplady then dug up the entire ground floor exposing the cast iron sewer.

4.19 Mr Smith spoke to an operative from YW on 6 March 2014. His entry in the EH log records "YW CCTV shows trap to front of property." That was relevant to Mr Tiplady's concern about sewer gases. In addition to the concern about the stone drain under the rear extension, Mr Tiplady was concerned that the main sewer under the road at the front of the property was venting into the cast iron pipe under the main floor of Number Three and from there into his and his neighbours' properties. Mr Smith's understanding, from what YW told him, was that there was a trap between the main street sewer and Number Three so that gases from the main sewer were not venting into Number Three. Again, the Tribunal does not need to resolve that question. We accepted that this is what Mr Smith was told and that it was his belief at the time.

4.20 Mr Smith met YW on 7 March 2014. They discussed YW's proposals to address the issue at Number Three. After the meeting YW emailed Mr Smith attaching plans for their two alternative solutions to the issues at Number Three. They wrote "thanks again for coming in to discuss them with us and for signing them off with your approval." Mr Smith recorded receipt of the email in the EH log. He added a note, with reference to the last sentence, saying, "I agreed either scheme would be acceptable if it cured the issue – stated we can not dictate how sewerage undertaker does works as long as issue solved. Both proposals would in theory do this." However, it is apparent that when YW went back to Number

Three on 7 March 2014, after their meeting with Mr Smith, they told Mr Tiplady that Mr Smith had told them that both of their proposed solutions were fine with him. The Claimant and Mr Tiplady have consistently since then held the view that Mr Smith inappropriately and unlawfully approved the two YW proposals. They started referring to these two proposals as the "poison the children" proposals and continued to do so at the Tribunal hearing.

4.21 Mr Smith's evidence was that EH do not approve YW plans and that he did not do so. He said that he agreed that either plan would be acceptable provided it cured the issue and explained that EH cannot dictate how the work is done. He pointed out that neither the Claimant nor Mr Tiplady was at the meeting with YW. Mr Smith was consistent in his oral evidence in explaining that he did not and could not approve any solution. He was of the view that either solution would in theory solve the problem but he made clear to YW that either of those solutions or any other was fine *if* it resolved the problem. That was also consistent with his position in the documents when this matter was raised subsequently. The Tribunal accepted Mr Smith's evidence. The YW operatives may well have told Mr Tiplady that Mr Smith had approved their solutions – that is consistent with the wording of their email – but that does not mean that he did so. The Claimant and Mr Tiplady were evidently not prepared to countenance the possibility that YW were mistaken, and maintained their insistence that Mr Smith had approved the YW proposals.

4.22 On 10 March 2014 a consultant engaged by the Claimant and Mr Tiplady telephoned Mr Smith with comments on the YW proposals. Mr Smith's log records that he advised that both YW ideas were okay and that this was a public asset so Mr Tiplady was unable to do private work unless he applied to remove the sewer from the public assets.

4.23 On 11 March 2014 Mr Tiplady telephoned Mr Lodge, Mr Smith's manager. He said that he was not happy with Mr Smith. Mr Lodge agreed to speak to Mr Smith. Mr Tiplady called back before he had had a chance to do so and told him that Mr Smith had initially agreed with him but had then changed his mind and agreed with YW's proposals. Mr Tiplady told Mr Lodge that he had found this out from the Consumer Council for Water.

4.24 On the same day Mr Tiplady emailed Mr Major, Assistant Director Environmental and Regulatory Services. The subject heading of his email was, "EH is poisoning two children". Mr Tiplady said that he had an open sewer inside his house and that the whole sewer gases of Howarth would be vented into his back extension and the underfloor space of next door with their two children. He criticised EH and Mr Smith. He included the assertion that Mr Smith had agreed with the YW plan to continue to connect the sewer to the land drains under Number Three and next door. He added, "now I have just heard that even Andrew Lodge will not deal with this matter now." Mr Tiplady sent a further email to Mr Major attaching photos and describing the issues at the property. Again extensive criticisms of Mr Smith were set out.

4.25 Mr Major forwarded Mr Tiplady's emails to Mr Lodge first thing on 12 March 2014. Mr Lodge in turn asked for Mr Smith's comments. At 1:23 PM, before any response had been received, Mr Tiplady sent a further email to Mr Major and Mr

Lodge. He said that he had just had it confirmed by his consultant that the Council had" agreed to both the proposals." He set out what he described as engineering reasons why their "agreement" was legally unsafe and explained his proposed solution. He made the accusation that the Council was only looking at YW's "so-called cheap option". He demanded the Council's decision in writing immediately and alleged that it was an immediate risk to public health. He said that the Council had not contacted the neighbour to tell them that their house floor would be permanently connected to the sewer system and alleged that the Respondent was hiding its decision from them. He said that the actions of the Respondent' staff in agreeing a solution with him and then agreeing with YW without any notice to him was "cowardly." Mr Major emailed Mr Lodge about this email at 1:46 pm. He asked whether Mr Tiplady was correct that there was an alternative that YW could consider. He asked Mr Lodge to ring Mr Tiplady and if need be arrange a joint meeting with YW on site to "bottom this once and for all." He said that he had just come off the phone with Councillor Poulsen and asked Mr Lodge to let Councillor Poulsen know the outcome. The Tribunal noted that Mr Tiplady had emailed Councillor Poulsen at 9.41am on 12 March 2014. Councillor Poulsen had in turn forwarded the email to Mr Major. Mr Tiplady sent a further email to Councillor Poulsen at 2:56 pm saying that because the Council had agreed to the solution that would continue the "poisoning" he had no ability to stop them. He suggested that YW were going to obtain a warrant from a magistrate in the morning.

4.26 Meanwhile, at 4:03 pm on 12 March 2014 the Claimant telephoned Mr Lodge. The EH log simply records "discussed matters with [the Claimant]. Explained YW advised sewer disconnected by trap at front of property – [the Claimant] adamant that no CCTV took place." This conversation forms the basis of the first alleged protected disclosure and we return to it shortly. Before doing so we set out what happened on the rest of that day and the following day.

4.27 At 4:45 pm on 12 March 2014, in view of what Mr Major had said, Mr Smith emailed YW to try and arrange a joint visit to Number Three so that all three parties involved could come to an agreement on a way forward. Mr Smith also asked if it would be possible to confirm that YW had carried out CCTV to the sewer pipe passing under the floor of Number Three and that there was a trap between the property and the main public sewer in the road. The EH log records that Mr Smith made two unsuccessful attempts to telephone Mr Tiplady. At 4:55 pm he called YW and he recorded in the EH log that their operative confirmed that they had CCTV'd the sewer. He recorded that 6.5 m downstream the pipe dropped and held water but there was freeflow just as odour trap should. Mr Lodge rang Mr Tiplady at 5:20 pm. The EH log records that he explained to him that YW were stating that a trap disconnected the public sewer at the front of the property from the sewer beneath his property to prevent the entry of sewer gas to the system beneath his floor. Mr Tiplady said that the sewer had not been CCTV'd. Mr Lodge said that they were waiting for confirmation of this from YW. Mr Lodge advised Mr Tiplady that the Council did not formally approve works to the public sewerage network to be carried out by YW. Mr Tiplady was concerned that YW would apply for a warrant to enter to carry out the works and Mr Lodge advised that this was a matter for YW and the magistrates. Mr Lodge told Mr Tiplady that they were looking to set up a meeting between EH, YW and Mr

Tiplady on site to agree a way forward. He said that he would speak to him tomorrow.

4.28 At 5.26 pm on 12 March 2014, after Mr Lodge had spoken to Mr Tiplady, Mr Smith emailed Mr Lodge. He reported his conversation with YW and their confirmation that they had carried out CCTV and that there was a trap in place. Mr Smith said that he had agreed to go to YW offices the following afternoon to talk about options and to clear up what had or had not been said he asked whether Mr Lodge was free. He referred to the attempts to arrange a joint site meeting and said that a slight problem was that Mr Tiplady would not let the relevant YW operative onto his property. He thought that if it was a joint visit following a planned visit from YW directors, that might resolve it. Mr Lodge replied at 5:47 pm. He said that he was not available the next day and explained that he had just spoken to Mr Tiplady. He said that Mr Tiplady had agreed to a joint meeting on the property as soon as practicable. Mr Smith replied at 5:55 pm. He said that he was going to take a colleague with him as he felt it really needed to appear as if they had an EHO on the case as well.

4.29 A separate chain of email correspondence was also taking place on 12 March 2014. At 2:20 pm Mr Tiplady emailed Ms Hemingway in the City Solicitor's office. His email had the heading, "urgent ES poisoning children." He made clear that he was connected with the Respondent's employee, the Claimant. He said that they had kept private through some very difficult times with the Council because of the Claimant's work but that they could not keep silent due to the "decision of EH to continue to poison the children next door." He explained that he had taken up the concrete floor in the extension at the rear of Number Three and found an old stone sewer through which sewage from next door flowed. He alleged that the sewer gases of the main Haworth sewer were piped into the underfloor and around the footings of next door's house. He repeated the allegation that Mr Smith had discussed one solution with him and then agreed a different solution with YW.

4.30 The email was forwarded to Mr Driver, Senior Solicitor in the Development and Regulatory Law Team. Mr Driver replied to Ms Hemingway at 4:20 pm on 12 March 2014. He wrote:

> Since you received this email I have received a call from [the Claimant] who raised the same issues. She did not mention this email but she did say that her husband… (the author of the email) has been trying to sort out the situation for the last 13 days which probably explains the somewhat emotive heading (at least) of his email. [The Claimant] also said that they have not had a great deal of help from YW who, she said, have proposed some works which she and Neil do not consider will solve the problem of the children next door (mentioned in the email) being affected by foul sewer gases.
>
> [The Claimant] mentioned that she and Neil had discussed the situation with Edward Smith in environmental services who had expressed understanding of the point about gases. She said that Edward had then apparently agreed a different solution with YW who are now proposing to carry out that scheme. Rather surprisingly, [the Claimant] told me that YW have apparently accepted that the sewers – which pick up foul sewage from several nearby properties which is then channelled through these buried drains into which some surface water culverts also flow – are public sewers so their responsibility.

> Without knowing about this email I advised [the Claimant] to go back to Edward to find out what he has said to YW and why. If, as it may be, there has been a muddle between Edward and YW (which YW now seem to be relying on to pursue their less costly scheme), Edward will need to correct that as soon as possible with the aim of ensuring that YW carry out a different scheme to avoid the risk of "poisoning children".
> In my view of this email I suggest that we obtain Edward's comments before thinking about any response. Do you want me to do this.

4.31 Mr Driver was asked to obtain Mr Smith's comments and he emailed him at 5:19 pm. He indicated to him that the Claimant and her husband clearly had genuine concerns about the matter, mainly associated with the children next door to the property but also about the presence of these old public sewers under their own property. He asked what the position was. Mr Smith forwarded Mr Driver's email to Mr Lodge at 5:38 pm adding, "yet again my comment, about how drains and land drains would normally be located and why it still needs to go to sewer to prevent flooding et cetera, is being twisted and used out of context to justify something I have not said or agreed on."

4.32 Mr Driver sent a further email to Ms Hemingway at 7:21 pm on 12 March 2014. That is the email referred to in the preliminary matters above. It is said to be the first detriment to which the Claimant was subjected and we return to it below.

4.33 Mr Smith met YW on 13 March 2014 as planned. His note in the EH log records that YW's operational directors were visiting Number Three that afternoon. YW were on the point of serving a notice to gain access to repair their asset. Mr Smith recorded some brief details of the proposed repairs. He recorded that above the pipe was dry and that YW CCTV showed it full of cobwebs. He recorded that the occupants of number five had never raised concerns with YW about odours. The Claimant's evidence was that what Mr Smith recorded was inaccurate. She went further, saying in her witness statement that neither YW nor the Respondent had ever put a camera up the relevant drain and that Mr Smith was "logging fabricated stories based on no evidence to make excuses for the Respondent's failures and dangerous agreements." Later in her statement the Claimant accepted that there were cobwebs but said that these were at the top and the main sewage flow was from lower down. The Tribunal found Mr Smith to be a straightforward and credible witness. We accepted that in completing the log he was simply recording what YW had told him.

4.34 The YW directors did indeed visit Number Three on 13 March 2014. Mr Tiplady agreed a way forward with them. The Claimant contends that the agreement was only reached under duress but the Tribunal does not need to resolve that. We are concerned with alleged protected disclosures made to the Respondent and alleged detriments done by the Respondent on that ground. From the Respondent's perspective, both Mr Tiplady and YW confirmed to Mr Smith on 13 March 2014 that an agreement had been reached to replace the existing pipe with three separate pipes. Mr Smith's log entry records that Mr Tiplady was "happy with this" and that he advised him to contact environmental protection if there were further issues. Mr Smith's evidence to the Tribunal was that YW told him that against their network team's advice the directors had agreed to the three

pipe solution Mr Tiplady wanted. Mr Tiplady was doing the preparatory work himself.

4.35 Mr Driver and Mr Smith exchanged emails on 14 March 2014. Mr Smith told Mr Driver that Mr Tiplady appeared to have come to some arrangement with YW. Mr Lodge recorded in the EH log that he discussed matters with Mr Driver in legal services on 17 March 2014. He recorded that there was no need for further information as Mr Tiplady was now happy with YW's proposals. Mr Smith reviewed the case on 26 March 2014 and as there had been no further contact from Mr Tiplady he closed the file.

4.36 We turn then to deal with the first two alleged protected disclosures and the first alleged detriment. **Protected disclosure one** was said to be the Claimant's conversation with Mr Lodge on 12 March 2014. In her further particulars she said that she disclosed that the Respondent was failing in its legal obligation to investigate sewage nuisances and endangering the health of her family and that of her neighbours. She said that the failure was applicable to all residents and was in the public interest. Furthermore she said that she disclosed that the Respondent was attempting to conceal their failure to carry out their legal obligations by using false stories created by YW. Again, she said that disclosure of the Respondent's willingness to conceal a failure in its public protection functions was done in the public interest.

4.37 The starting point is to establish what exactly the Claimant said. Her evidence about this was vague. In her witness statement she set out arguments rather than explaining what she actually said. In cross-examination she found it difficult to address what she actually said to Mr Lodge rather than what she contended the underlying position was. However, she did say that she corrected Mr Lodge when he said that he understood CCTV had taken place and that she told him to stop believing YW. She said that she told him no CCTV had taken place with respect to this matter. When it was put to her that she was retrospectively explaining their conversation as a protected disclosure and that these matters had not been said at the time she said "we did discuss matters." In the light of that evidence and Mr Lodge's log made at the time the Tribunal found that the Claimant told Mr Lodge that no CCTV had taken place and that she told him to stop believing YW. No doubt there was some discussion of the situation more generally but in the absence of specific and clear evidence from the Claimant as to what she said the Tribunal is unable to find that her comments went beyond those relating to CCTV and YW.

4.38 The Tribunal accepted that the Claimant disclosed information to Mr Lodge, namely that no CCTV had been carried out and that he should stop believing YW. We accepted that she subjectively believed this to be in the public interest. We were persuaded that this was objectively reasonable, because it related to a concern about whether gases from the main sewer were coming into hers and her neighbour's property. For the same reason, the Tribunal accepted that the information disclosed tended in the Claimant's belief to show that her health and that of her neighbours had been or was being endangered. Further, the Tribunal accepted that this was objectively reasonable for the same reason. The Claimant was not an expert in this field. It follows that, on a rather narrower basis than that

set out in her particulars of claim, the Claimant did make a protected disclosure on 12 March 2014 to Mr Lodge.

4.39 **Protected disclosure two** was said to have taken place in the Claimant's conversation with Mr Driver on 12 March 2014. Again the Claimant's further particulars set out in some detail the nature of the disclosure she said she made. We do not repeat it here. We start again with what was actually said. In her witness statement, rather than setting out what she says she said to Mr Driver the Claimant dissected Mr Driver's email and set out arguments based on it. Based on Mr Driver's comment that she had "raised the same issues" as Mr Tiplady raised in his email to Ms Hemingway, the Claimant simply contended that she had raised with Mr Driver the same issues raised by that email. The Tribunal did not consider that Mr Driver's comment could sensibly be interpreted as meaning that the Claimant had said precisely the same things as were said in Mr Tiplady's fairly lengthy email. In cross-examination, the Claimant said that she "explained the whole situation" to Mr Driver. Again she repeatedly simply referred to Mr Driver's comment and said that this showed that she had said exactly the same as Mr Tiplady. She was asked to try and explain what she actually remembered saying to Mr Driver. She said, "I spoke about the poisoning the children and all the issues."

4.40 In view of the vagueness of the Claimant's evidence the Tribunal did not accept that she had made precisely the same points as were set out in Mr Tiplady's email. However, based on what Mr Driver said in his email to Ms Hemingway at 4:20 pm, the Tribunal accepts that the Claimant said that they had been trying to sort out the situation for 13 days; that they had not had a great deal of help from YW; that YW had proposed works that she and Mr Tiplady did not consider it would solve the problem of the children next door being affected by foul sewer gases; that Mr Smith had expressed understanding of the point about gases but then apparently agreed a different solution with YW; and that YW had accepted that the sewers were public sewers and with their responsibility.

4.41 Again on a rather narrower basis than set out in the further particulars, the Tribunal found that the Claimant did make a protected disclosure to Mr Driver. She disclosed information that tended in her belief to show that her health and that of her neighbours was being endangered. That belief was at the time and given the Claimant's level of expertise objectively reasonable. She subjectively believed that the disclosure was in the public interest. While it seemed to the Tribunal that the driving force behind this conversation, as with the vast majority of the communications from the Claimant and her husband on this matter, was their private concerns about their property, the Tribunal accepted that concerns about her neighbours did form some part of the disclosure at this stage. The Claimant's belief that the disclosure was in the public interest was subjectively genuine and at that time objectively reasonable.

4.42 **Detriment one** was said to be Mr Driver's email of 12 March 2014 to Ms Hemingway at 7:21 pm. The Claimant said that this subjected her to a detriment because it suppressed the protected disclosures and terminated the Respondent's involvement. The Tribunal did not accept that in sending this email to Ms Hemingway Mr Driver was subjecting the Claimant to a detriment. A reasonable worker would not take the view in all the circumstances that this was

to her detriment or disadvantage. A reasonable worker would not construe this email as the taking of steps to silence the Claimant, nor as instructing her to silence her husband. Indeed the email was not sent to the Claimant and she would have been unaware of it until it was disclosed to her at a later date. It was plainly on its face an email indicating that given the relevant parties were to meet imminently it might be sensible to ask Mr Tiplady for an update before spending time addressing his initial email. Furthermore the email cannot be viewed in isolation: it was one of a whole raft of emails sent within a short period of time and subsequent emails were frequently sent without waiting for a reply to earlier ones. That was the context for Mr Driver's suggestion. In addition, Mr Driver had told the Claimant when they spoke on 12 March 2014 that she should go back to Mr Smith to find out what he had said to YW and why. As Mr Driver wrote in his earlier email to Ms Hemingway, if there had been a muddle between Mr Smith and YW, Mr Smith would need to correct it.

4.43 In any event, even if this had amounted to a detriment, the Tribunal did not accept that this was in the course of the Claimant's employment. It arose out of and was in the Tribunal's view plainly confined to the private issues relating to the sewer and pipes at Number Three. It had nothing whatever to do with the Claimant's employment.

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4.44 YW implemented a temporary solution at Number Three on 19 March 2014 but issues relating to the sewer and other drainage issues remained and were ongoing over the following months. The determination of the claims before the Tribunal does not require us to make findings about those issues. Suffice to say that Mr Tiplady continued to contact a range of personnel at the Respondent with a range of concerns and issues relating to those ongoing problems.

4.45 The Tribunal noted that Mr Tiplady emailed Ms Hemingway and Mr Pearson on 1 June 2014. He complained about what YW had done and expressed the hope that the Council would "do its duty." He referred to the "continuing failure" of EH. Ms Hemingway's PA told Mr Tiplady that she would forward his email to Mr Major as EH issues fell within his remit and she did so. Mr Major in turn forwarded it to Mr Lodge on 2 June 2014. This led to Mr Smith reopening the EH log on that date. On 2 and 3 June 2014 he contacted YW to find out the situation from their perspective. He also tried to call Mr Tiplady but was cut off and obtained no answer when he called back.

4.46 On 3 June 2014 Mr Tiplady complained to Ms Hemingway and Mr Pearson about Mr Smith's call. Mr Lodge sent a response to Mr Tiplady on 4 June 2014. He set out what he understood had taken place in March and noted that Mr Tiplady had not made further contact with EH since then. He explained that on receipt of Mr Tiplady's email of 1 June 2014 EH had contacted YW to find out the current position. His understanding from YW was that they had repaired the initial sewer problem by installing three separate pipes, had repaired a private section of drain and had carried out a CCTV survey of the system, which revealed a possible fault on a further private section of drain. They were considering repairing the latter fault as a goodwill gesture. They said that they were unaware of any major sewage leak during the works carried out. Mr Lodge explained that the Council

did not formally approve or supervise works carried out to the public sewerage network by the sewerage undertaker. If there was a statutory nuisance as defined in the Environmental Protection Act an abatement notice would be served. Mr Smith had tried to contact Mr Tiplady. The call was abruptly terminated and Mr Smith had tried on two further occasions to contact Mr Tiplady without success. EH needed to access the property to establish if the conditions amounted to a statutory nuisance. Mr Lodge invited Mr Tiplady to contact him if he wanted them to proceed in that way.

4.47 Mr Tiplady replied on 5 June 2014. He accused Mr Lodge of having "no idea" what had actually happened and of writing a "dishonest" account. He said that if Mr Lodge would like to find someone that could assess the situation he would be glad to show them the pictures and the current situation. However, he instructed Mr Lodge not to ask the "same negligent officer" to call. He said that he would be around all day with YW. Mr Lodge replied confirming that the offer for the department to visit Number Three to assess for any statutory nuisance remained and that Mr Tiplady should contact Mr Lodge directly if he wanted this. On 6 June 2014 Mr Tiplady emailed to say that his offer still stood also but that it "must not be the incompetent person that did not do their duty last time." He indicated that YW were returning that day. Mr Lodge replied explaining that he would arrange for drainage systems to be tested in the vicinity of Number Three early next week. He said that the officers were competent in the assessment of drainage defects and statutory nuisance.

4.48 On 9 June 2014 Mr Smith telephoned Mr Tiplady to arrange a visit to carry out dye testing. Mr Smith recorded in the EH log that Mr Tiplady refused and hung up. Mr Tiplady sent a lengthy email to Mr Lodge copied to Ms Hemingway Mr Pearson and Mr Major on 9 June 2014. He asked Mr Lodge to stop his staff "harassing us." He set out extensive criticisms of YW and the Respondent. He said that what was actually required from the Council was recognition that the house was unfit for habitation. He said that independent drainage experts had declared it was unfit but that the Respondent's "negligent officer" could not see it. He described the current situation at the property. He indicated that a third party should be used by the Council to fulfil its duty.

4.49 Mr Smith contacted the Respondent's housing and BC departments because concerns had been raised about whether the property was fit for habitation and whether it was dangerous. Mr Lodge sent a further email to Mr Tiplady on 23 June 2014. He explained that he had requested Mr Smith to contact Mr Tiplady to arrange a mutually convenient time for him to carry out dye tests. That was not intended to harass him but to assist in the resolution of his complaint that drainage systems were leaking. He repeated his explanation that EH's function was to deal with statutory nuisances if they existed. He again asked Mr Tiplady to advise him if he wanted EH to investigate. He rejected the allegation that Mr Smith was incompetent and said that he would remain the investigating officer but would be accompanied by a colleague on any future visit to the property. Mr Lodge explained that given what Mr Tiplady had said about undermining of the property the principal BC surveyor had been asked to inspect. Mr Tiplady replied the same day, again copied to Ms Hemingway and Mr Pearson. He set out a number of arguments, assertions and questions and concluded, "the answers are simply that you confirm your officer is negligent by clearly stating the tasks he

should have performed. Insisting that he visits the house, or there is no help, is not covered in the law. That is your policy, that in your eyes, override the duties given to you in the Act of Parliament. What exactly did you think would be gained by writing this email? You only confirm that you've actually done nothing, and it is always someone else's issue. This is exactly the attitude of your failed officer."

4.50 Correspondence continued. Mr Pearson evidently spoke by telephone to Mr Tiplady on 11 July 2014. The Tribunal saw a note of that conversation. Mr Pearson made notes of some of Mr Tiplady's concerns and what he was seeking. Mr Pearson recorded that he had reassured Mr Tiplady that there were no implications for his wife as an employee of the Respondent. Mr Pearson indicated that he would arrange a meeting to discuss matters.

4.51 On the same day Councillor Poulsen sent an email to Mr Major attaching a photograph of a banner that had been attached to the front of Number Three. The banner was about the size of a window. It referred to the "subhuman behaviour of YW and Bradford Council." It accused the Council and YW of "poisoning residents."

4.52 This was the context in which a meeting was arranged by Mr Pearson to take place on 15 July 2014. Officers from affected departments within the Respondent were invited to attend including Mr Raby from BC and Mr Smith from EH. In addition a representative from YW attended, as did Mr Pearson himself. It appears from the three different sets of notes of the meeting that Mr Pearson began by referring to his recent telephone call with Mr Tiplady. He indicated (evidently on the basis of that conversation) that Mr Tiplady had fallen out with his insurers, the Consumer Council for Water and YW. He wanted the Respondent to secure action from YW. There was evidently a discussion of the history and background. It appears that there was some discussion of the banner that had been attached to the property. The agreed outcome of the meeting was for Mr Pearson to draft a letter to summarise the current position and circulate it prior to sending. He did so and a number of comments were made but the letter was not sent at that stage.

4.53 On 5 August 2014 Mr Tiplady sent an email to the Council's Chief Executive Officer ("CEO") Mr Reeves. He began, "It is now 5 months since the initial contact with EH. It is 4½ months from the initial contact with Susan Hemingway that was redirected to your office. It is 3 months since I first sent the outline of the other serious failures of the Council. This included the failures that mean we have been denied the ability to vote since 2010. It seems Mr Pearson said that they are all "nice ladies" in the voting department and seem to doubt my account of the repetitive failures to comply with the law. Also note Mr Pearson has not ever requested the details, or the evidence of their illegal actions." Mr Tiplady went on to indicate that it was three weeks since Mr Pearson had said there would be a meeting to discuss the issues. He referred to the current state of Number Three, indicating that there was mud and sewage in the property. He also asked whether the issue should be referred to the Local Government Ombudsman ("LGO") and asked the Council to conclude its handling of the complaint.

4.54 Mr Pearson forwarded the email to Mr Lodge and they discussed it on 11 August 2014. Mr Lodge asked YW to investigate the allegation that sewage was flowing from the public sewer through the ground floor of the property.

4.55 Mr Tiplady sent a further email on 12 August 2014 to Mr Major, Mr Lodge, Mr Pearson and others. He said that since the Council had stopped responding and had not replied to any of his complaints he was sending a short description of the situation at Number Three. He described problems with liquid clay under the footings of property and water flows. He said that the house was moving. He said that the Council was being negligent. There was a nuisance and the Council was refusing to investigate. Mr Lodge sent an email to Mr Pearson, Mr Smith and others later on 12 August 2014 indicating that he had discussed Mr Tiplady's most recent email with Mr Pearson. Mr Pearson was going to write to Mr Tiplady. He was going to find out whether EH officers would be allowed access to the property. He suggested that an assessment by BC of the stability of the property might also be required and forwarded it to BC. It was agreed that a BC engineer would assess the property. Mr Lodge recorded in the EH log that he had discussed matters with Mr Pearson. He recorded that Mr Pearson's letter should go today and that he had agreed to confirm with Mr Tiplady that access for officers would be granted. He added, "Dermot has discussed with Complaints Team and been advised that this is not a formal complaint but a request for guidance!"

4.56 Mr Lodge emailed Mr Tiplady on 12 August 2014 making clear that EH were prepared to visit to assess whether a statutory nuisance existed and asking for confirmation that Mr Smith and an accompanying officer would be given access. Mr Tiplady replied the same day asserting that Mr Smith had been proven to be negligent already and questioning why he would be "expected to entertain his further incompetence." Mr Tiplady wrote that he expected a qualified engineer backed by a professional body. He went on to set out again his criticisms of Mr Smith. He concluded that Mr Smith would never be allowed in the house.

4.57 As discussed with Mr Lodge, Mr Pearson emailed Mr Tiplady on 12 August 2014. He expressed his understanding that Mr Tiplady had refused to allow officers from EH access to his property. He explained that officers from BC would also be contacting him to make arrangements to visit. He said that if Mr Tiplady would not allow the Council's officers access to his property it would not be possible for them to take any action to deal with his concerns and invited Mr Tiplady to allow the necessary inspections to take place. He said that there was no question of the Council failing in its statutory duty in circumstances where Mr Tiplady would not allow the officers access. He said that he would respond to Mr Tiplady separately on his query about voter registration.

4.58 The references to voter registration relate to a separate issue between the Claimant and Mr Tiplady and the Respondent. The Tribunal did not hear evidence about that issue and we do not need to resolve it. However, part of the Claimant's complaint is that when Mr Pearson replied to Mr Tiplady on 12 August 2014 he copied his reply to Mr Lodge as well as Mr Reeves and in doing so he forwarded Mr Tiplady's email of 5 August 2014 to Mr Lodge. That meant that what Mr Tiplady had written about voter registration was revealed to Mr Lodge.

4.59 Mr Tiplady emailed Mr Pearson shortly afterwards, copied to a number of others, pointing out that he had told Mr Lodge about the voter registration issue and asking if he knew what he was doing. Mr Pearson replied on 15 August 2014 explaining that he had not deleted the reference to Mr Tiplady's query about voter

registration when forwarding his (Mr Pearson's) email of 12 August 2014 to Mr Lodge. He said that he did not delete it because the only information it revealed was that Mr Tiplady was over 18 and lived in the Bradford district and Mr Lodge was already aware of those facts. He apologised for causing Mr Tiplady any distress. It appears Mr Pearson did not appreciate that Mr Tiplady's concern also related to the fact that his email to Mr Pearson, which contained a little more information about the voter registration issue, had also been forwarded to Mr Lodge.

4.60 Meanwhile, correspondence had continued. In an email to Mr Pearson, Mr Lodge and others on 12 August 2014 Mr Tiplady said that it did not matter if the Respondent did or did not visit now. The issue was going to be judged elsewhere. He said that in any event he had not refused to allow the Council's officers to access the site. The other officer whoever that was could attend.

4.61 Mr Pearson wrote to Mr Tiplady on 15 August 2014. He set out the current situation as he understood it to be. He expressed his understanding that Mr Tiplady's current position was that he would not allow officers from EH to access the property and said that in those circumstances they were unable to assist further. He said that if Mr Tiplady was not satisfied with his response he could ask for it to be considered at stage 2 of the Council's corporate complaints procedure.

4.62 Following Mr Lodge's contact, YW arranged to visit Number Three on 15 August 2014. Mr Lodge intended to go with them but Mr Tiplady did not agree to that. YW attended. Mr Tiplady emailed Mr Major, Ms Hemingway and Mr Lodge on 18 August 2014 to say that YW had discovered a leak from number one flowing into his house. He still thought there was sewage arriving as well. He said that YW had carried out ammonia tests for sewage, which were negative, but explained why he was not persuaded by the results. Correspondence continued. By 18 August 2014 Mr Tiplady appeared to indicate that Mr Lodge could visit Number Three and on 19 August 2014 Mr Major suggested to Mr Lodge that he attend with an appropriate officer to undertake dye testing and set in place a very specific piece of work rather than getting into further discussions about what had happened. By 20 August 2014 Mr Lodge had had an update from YW, and Mr Major emailed Mr Tiplady proposing that Mr Lodge visit to address the leaking drain at number one. Mr Major agreed that Mr Smith would not be involved. Mr Tiplady agreed to that. Again, there was further correspondence from Mr Tiplady to a range of officers.

4.63 Mr Tiplady had also sent an email to Mr Hill in BC on 12 August 2014. In fact Mr Hill was on annual leave and did not receive it until 26 August 2014. Mr Tiplady said in his email that Justin (Justin Booth, a principal BC surveyor whom Mr Tiplady had contacted) would talk to him tomorrow about the dangerous state of their house. He added, "This has been set in motion by Mr Pearson in retaliation for us not allowing Edward Smith into our house." He set out complaints about Mr Smith and others and described the current situation in the property. He said that Mr Pearson was using BC to "threaten us." On his return from leave Mr Hill forwarded the email to Mr Pearson, Mr Raby, Mr Booth and Mr Eaton and asked whether there had been further correspondence during his absence. He

proposed arranging a progress meeting of the various Council departments and YW.

4.64 By the end of August no visit from EH had yet taken place to assess the concern about a leaking drain at number one. Mr Lodge emailed Mr Tiplady on 29 August 2014 to say that he had been trying to find out from YW the results of their recent investigations into the public sewerage system in the vicinity of the property. He explained that once he had received confirmation from YW that the public sewerage system was sound he would contact Mr Tiplady with a view to visiting his property to assess whether private drains in the vicinity required repair. Mr Tiplady replied on 1 September 2014. He said that YW had never finished the work and set out a list of things he said should have been done. He suggested that the ammonia tests carried out by YW had been "faked" or that they did not know what they were doing. He said that he had retested and found that two of the water sources did have ammonia. By 3 September 2014 Mr Major emailed Mr Lodge querying what they were still waiting for from YW. He said that he was getting concerned about the lack of cooperation from YW and that it was making the Council look bad. Mr Lodge requested an urgent update from YW. On 5 September 2014 YW emailed Mr Lodge. They explained the ammonia and dye tests they had carried out and reported their conclusion that there were no issues with the relevant public sewer.

4.65 Mr Lodge telephoned Mr Tiplady on 8 September 2014 (i.e. the following Monday). He told him that YW had confirmed that their assets were okay and that they now needed to resolve the issue of the leaking drain at number one. He agreed to visit Number Three on 9 September 2014 with an EH colleague.

4.66 Mr Lodge and a colleague, Mr Thompson, visited on 9 September 2014 as arranged. That visit was covertly recorded by Mr Tiplady. The Tribunal saw parts of the recording and saw the transcript. They reflected a visit in which Mr Tiplady showed the two officers round the property, explained the situation to them and pointed out a number of matters. They were unable to dye test the gully at number one because Mr Tiplady had carried out concreting work which was still wet. They agreed that Mr Thompson would return to do so the next day. Most of the talking was done by Mr Tiplady but the transcript does record Mr Lodge indicating that he would contact YW about certain matters, for example testing for sewage. Mr Lodge's note of the visit records that there was no smell of sewage and very little water seen in the excavations. During the visit Mr Tiplady provided contact details for the letting agents at number one. The entries in the EH log show that following the visit Mr Lodge followed up with the owners of number one and YW regarding concerns about a leaking private drain at number one, and issues with the lateral drain at the rear of the properties. On 24 September 2014 YW indicated that they were considering a proposal to address all of Mr Tiplady's concerns including rectification of the issue at number one. Mr Lodge chased that up on 3 October 2014, asking whether YW were proposing to include this work in its scheme, because otherwise EH was required to secure the repair of the private drainage by serving a notice on the owner.

4.67 In cross-examination it was suggested to Mr Lodge that he was instructed by Mr Major not to investigate any statutory nuisance (other than emanating from number one) on 9 September 2014. Mr Lodge disagreed. He said that he was

going to assess what investigation needed to take place. He and Mr Thompson visited with open minds. He explained that he asked Mr Thompson to liaise with YW to ensure their assets were sound. EH only dealt with private drains which is why they were concerned with any leak from number one. Mr Lodge did not accept that the mere presence of visible sewage flows meant that there must be a statutory nuisance. When he visited he did not consider that there was a statutory nuisance. He pointed out that they had been unable to carry out testing because of the wet concrete and that this was done the next day. It was put to Mr Lodge that he had failed to investigate whether there was a statutory nuisance on 9 September 2014 because of the protected disclosure made to him in March 2014. He disagreed. The Tribunal accepted that evidence. There was nothing to suggest that what the Claimant had said in March played any part. This had been a continually evolving situation and the Tribunal accepted that Mr Lodge was visiting on 9 September 2014 to assess the situation as it then stood and decide what if any further steps EH needed to take. His actions after the meeting were consistent with that.

4.68 On 29 September 2014 Mr Tiplady emailed Mr Hill in BC asking him to attend Number Three urgently to inspect it with regard to YW's "destruction of the ground floor and the safety of the building." He also asked that they address how a floor could be put into the house. Mr Hill arranged to visit on 2 October 2014. Mr Tiplady sent an email on 30 September 2014 saying, "if Justin wants to witness the destruction caused to our home he is also welcome."

4.69 Mr Hill discussed the position with Mr Lodge. Mr Hill contacted YW who said they would like to invite BC to their offices to discuss a proposal at Number Three. Mr Hill agreed to attend a meeting at YW on 2 October 2014 with their area networks manager. He spoke to Mr Raby. Mr Raby wanted to attend the meeting with YW. In addition, Mr Booth was the principal BC surveyor for the south. Mr Raby was the principal BC surveyor for the north, the area into which Number Three fell. As a result he and Mr Hill decided that it should be he who attended the visit to Number Three on 2 October 2014.

4.70 Mr Raby and Mr Hill went to a meeting at YW offices on 2 October 2014. They discussed YW's proposal to stabilise the existing foundations and encase the new sewer pipes at Number Three with concrete. Mr Tiplady had not agreed to that proposal. Mr Raby's evidence to the Tribunal was that YW's proposed solution sounded very reasonable. He and Mr Hill advised YW that if that work were to be carried out it would require a Building Regulations application. Mr Hill and Mr Raby told YW that they were due to meet with Mr Tiplady at Number Three later in the day. YW requested an update on the visit to see if their proposals were acceptable from a Building Regulations point of view. Mr Raby agreed to try to broker a meeting with all concerned on neutral ground to see if the matter could be resolved. It was put to Mr Raby in cross-examination that he was willing to carry on with a proposal that had been declined by the owners of Number Three. He said that YW wanted to explore ways to correct issues at the property and that he thought that was reasonable. It was put to him that he came to look on behalf of YW to see how the damage could be covered up. He disagreed. He explained that he was aware of a developing situation, which he described as complex and fraught with frustration. He said that everybody was trying to find a solution and that he saw an opportunity to try to get the three parties together to come to a solution. He believed that was perfectly reasonable.

The Tribunal found Mr Raby an impressive witness. We accepted his evidence that coming to this with fairly fresh eyes he saw an opportunity to try and get everyone together to find a mutually acceptable solution and that he intended to explore that when he visited Number Three that afternoon.

4.71 There were evidently internal discussions about the proposed visit to Number Three on 2 October 2014. Mr Jackson became aware and he asked Mr Eaton to attend the visit as well. Mr Eaton was responsible for BC and drainage. Mr Eaton explained in his evidence that he believed Mr Jackson foresaw that there might be an issue and thought it prudent for him to attend to see that things ran smoothly. Mr Eaton did not let Mr Tiplady know in advance that he would be attending.

4.72 The visit took place on 2 October 2014. The Claimant was not present in the house and was not able to give first-hand evidence of what took place. This was the only meeting of which video footage and a transcript were not provided. The Claimant alleges that Mr Eaton was hiding at the back when they arrived and that he entered without permission, hiding behind junior officers. She said that they were there with the purpose of provoking her husband and were abusing the employment relationship. The Claimant also alleges that the BC officers "accused" Mr Tiplady of not making a Building Regulations application in respect of the floor. She said that they accused Mr Tiplady of building a wall without permission and other BC violations. Furthermore she alleged that they were at her house abusing their position for the financial advantage of YW and that they had conspired to work to her disadvantage. She criticised them for taking photographs of matters at the property unrelated to the BC issues. In support of her contention she drew attention to the code entered in the BC log for the visit. The code for the meeting at YW was "advice" whereas the code for the visit to Number Three was "Comm." She assumed that this meant commercial and suggested that this demonstrated that they were working for YW.

4.73 Mr Raby and Mr Eaton gave a different account of the visit, which was reflected in the BC log. Mr Raby's evidence was that Mr Tiplady did not object to the fact that he and Mr Eaton were present. They had a lengthy discussion, which he described as quite friendly. They took a number of photographs. They discussed options for replacing the floor. He advised that the simplest solution would be to replace the whole floor with a solid floor. That was also what YW had proposed to Mr Tiplady but that is not why Mr Raby suggested it. He considered it to be the best solution. Mr Tiplady showed them the work that had been done. He was of the view that the ongoing works would not undermine existing walls and that no Building Regulations consent was required. He was advised to engage a structural engineer and provide details of the proposals in order to clarify that. Mr Raby tried to broker a meeting between the Council, YW and Mr and Mrs Tiplady but Mr Tiplady rejected the idea. Mr Raby said there were no arguments and they did not make any criticisms of Mr Tiplady. They tried to help with advice on his property and the work he was proposing. They shook hands when they arrived and left. Mr Eaton's evidence was that he did not sneak into the house. Mr Tiplady did not raise any questions or concerns about his presence. Mr Eaton's account was consistent with Mr Raby's. Details of the visit were recorded in the BC log. That indicated that Mr Tiplady had shown the officers around the ground floor rooms. There was a description of how the cast iron sewer pipe had been

replaced. The log recorded the view that it appeared the foundations for the existing sleeper walls and front and rear chimney breasts had been undermined. The log records that officers discussed with Mr Tiplady various options of how to replace the floor. There was no agreed way forward so Mr Tiplady was requested to provide further details.

4.74 Mr Tiplady emailed Mr Hill and Mr Eaton in the evening on 2 October 2014. He thanked them for the meeting. He pointed out that he had put in an application for a block and beam floor but that someone had deleted the part about YW's failures and had deleted the main part of the description. He also set out his explanation of why he did not need to consult YW about certain aspects of the work. Mr Hill replied the following day. He apologised that the installation of a new block and beam floor had been missed from the description of the works proposed in the Building Regulations application and said that that would be amended. He confirmed the request that Mr Tiplady forward his structural engineer's details of how he proposed to underpin any load-bearing walls or chimney breasts that could be undermined during the installation of the new floor and its supporting walls. He asked to be provided with details of the proposed floor structure and that BC be kept informed of any further works. Mr Tiplady replied to say that they would not be submitting full plans. They would be replacing half the floor and he understood that this did not require Building Regulations consent.

4.75 An officer from Ofwat emailed Mr Tiplady on 3 October 2014. She said that the latest update YW had provided indicated that YW were awaiting the outcome of a visit to Number Three by the local BC department before making any decisions on the next course of action. This led Mr Tiplady to email Mr Hill on 3 October 2014. He said that he had never made any application upon which the Council was allowed to consult YW. He raised concerns about breach of the Data Protection Act ("DPA") and asked what information the Council had passed to YW. Mr Tiplady sent an email raising similar concerns to Mr Raby and Ms Newman on 4 October 2014 and the Claimant sent one to Mr Jackson (from Mr Tiplady's private email address) on 5 October 2014 (see further below). Mr Tiplady accused the Council of spying for YW.

4.76 The entries in the BC log for 3 October 2014 indicate that YW phoned for an update and were advised that a solution was not reached with Mr Tiplady.

4.77 In cross-examination Mr Raby was asked about the visit on 2 October 2014. He explained that photographs were taken because Mr Tiplady was showing them the state of the property. They were just photographs of the general situation. Mr Raby said the Claimant's assumption about the code "Comm" was incorrect. It simply meant commenced. Mr Raby agreed that he had come to the property uninvited but he said that it was not a spy for YW or for any financial benefit. They had been asked about a proposal by YW and he considered it was reasonable to go back to them on that. He said that no accusations had been made. He said that Mr Hill apologised because they had missed something out when inputting Mr Tiplady's description of work from his original Building Regulations application. That did not mean any accusations had been made. They had simply explored matters and asked for information. Mr Raby accepted that nobody told Mr Tiplady of the meeting with YW that morning. It was not clear

on what basis the Claimant suggested that Mr Raby was aware of her protected disclosures in March to Mr Lodge and Mr Driver. Mr Raby denied any suggestion that he was motivated by any protected disclosure. He said that he was not put under any pressure by anyone nor was he trying to cover up the issues that had been disclosed to Mr Lodge. The Tribunal accepted Mr Raby's evidence.

4.78 Mr Eaton explained in cross-examination that he had not taken any photographs. He denied accusing Mr Tiplady of any Building Regulations violations. He was not a qualified building surveyor so Mr Raby and Mr Hill dealt with technical issues. He was there because Mr Jackson had asked him to attend. He wanted to see if there was a way forward to resolving some of the issues. It seemed reasonable to him that he was there. He denied that he went to Number Three because of the protected disclosures the Claimant made to Mr Lodge and Mr Driver in March. He said that he did not know about those conversations. The Tribunal accepted that evidence. There was nothing to indicate that Mr Eaton was aware of those conversations. As indicated above, they have to be seen in the context of the very substantial volume of correspondence from Mr Tiplady, much of it intemperate, over the intervening months.

4.79 The Tribunal preferred the account of the meeting generally given by Mr Raby and Mr Eaton, supported by the contemporaneous BC log, to the Claimant's second-hand account. This was an example of the Claimant viewing events retrospectively, having discovered subsequently that there had been a meeting with YW that morning of which Mr Tiplady was unaware. That seemed to the Tribunal to have led to a retrospective perspective of what took place on 2 October 2014.

4.80 We turn to deal with the specific detriments of which the Claimant complains during this period. **Detriment three** relates to Mr Lodge's entry in the EH log on 12 August 2014. The Claimant says this shows that Mr Pearson suppressed any investigation of the protected disclosures by redefining a complaint as a request for guidance. This left her and Mr Tiplady at the mercy of YW. Further, Mr Pearson was avoiding the involvement of the LGO. The Tribunal did not consider that the Claimant was subjected to a detriment in this way. A reasonable worker would not conclude that the entry made by Mr Lodge in the EH log showed that Mr Pearson was attempting to suppress investigation of Mr and Mrs Tiplady's complaints. We have dealt with this above. As a matter of plain reading, the entry records the advice given to Mr Pearson by the complaints team. Further, it must be seen in the context of what followed. It was only three days later that Mr Pearson wrote to Mr Tiplady explicitly inviting him to indicate whether he wanted matters to be dealt with at stage 2 of the Council's complaint procedure. Far from attempting to suppress any investigation, Mr Pearson was plainly trying to ensure that any complaint was properly identified and processed. Even if this was a detriment, the Tribunal considered that it did not fall in the field of employment. It was part and parcel of the private issues relating to Number Three. The Claimant's involvement was as householder and her coincidental status as an employee was irrelevant.

4.81 **Detriment four** concerns Mr Pearson's email to Mr Lodge on 12 August 2014 forwarding Mr Tiplady's email referring to the anonymous voter situation. The Claimant's contention is that in doing so Mr Pearson was subjecting her to a

detriment by intimidating her to suppress disclosures and by exploiting staff vulnerabilities by sharing personal data. The Tribunal found that Mr Pearson did not subject the Claimant to a detriment in that way. Her suggestion that this was done to intimidate and exploit her seemed to the Tribunal to be totally implausible. Nor, in any event, was anything done to the Claimant. It was Mr Tiplady's email that referred to the issue and it was that email that Mr Pearson forwarded. Furthermore, even if there were a detriment, again it was not in the employment field. Mr Tiplady was raising an unconnected matter in one of his numerous emails addressing the issues at Number Three. Mr Pearson explained that he would respond separately on that issue. That was nothing to do with the Claimant's employment.

4.82 The next detriment chronologically is **detriment six**, which relates to Mr Lodge's attendance at Number Three on 9 September 2014. The Claimant's contention is that Mr Lodge subjected her to a detriment by refusing to investigate and take action on continuing nuisances. The Tribunal did not consider that Mr Lodge's actions on 9 September 2014 amounted to a detriment. A reasonable worker would not conclude that he or she was put at a disadvantage or detriment. Mr Lodge was simply attending to find out what the current issues were and to identify what if any action was required. We have accepted his evidence that he was not instructed not to investigate and that he went with an open mind. Even if there was a detriment, the Tribunal again considered that this was not in the employment field. Mr Lodge was visiting the property in his capacity as an EH manager dealing with issues relating to the property owned by the Claimant and Mr Tiplady. The Claimant's coincidental employment by the Respondent was irrelevant. Further, and in any event, for the reasons set out above the Tribunal accepted Mr Lodge's evidence that his actions on 9 September 2014 were not affected by the Claimant's disclosure to him seven months earlier.

4.83 **Detriment five** relates to the visit to Number Three on 2 October 2014. The Claimant alleges that Mr Eaton and Mr Raby subjected her to a detriment by unlawfully entering her property while working in secret for the financial advantage of YW. She says that they misused their position to attempt to persuade her to accept YW's dangerous proposal, that they were spying for YW and that they accused the Claimant of unlawful acts to intimidate her. She said that this was a breach of her right to privacy. The Tribunal has accepted Mr Eaton's and Mr Raby's account of the visit on 2 October 2014. The officers arrived and were shown in by Mr Tiplady. He knew who they were and he did not object to their presence. They were not working in secret for the financial advantage of YW. As Mr Raby described, he saw an opportunity to try and bring all parties together to reach a mutually agreeable solution and he attempted to do so. Mr Tiplady was unwilling to attend a joint meeting. They were aware of YW's concreting proposal and intended to tell YW what their BC view of that proposal was. Mr Raby did express the view to Mr Tiplady that putting in a solid floor was the best solution, but that was because it was his professional view. They did not accuse the Claimant of anything. Nor did they accuse Mr Tiplady of Building Regulations violations. This was simply a discussion about the various issues and works at the property and what steps were or might be required. The Tribunal could well understand in the context of the events since March 2014 why it was thought sensible for a senior manager to be present. The Tribunal did not consider that a reasonable worker would conclude that what in fact happened put

him or her at a disadvantage or detriment. Even if there was a detriment the Tribunal again found that it was not in the field of employment. This visit related exclusively to the issues Mr and Mrs Tiplady were raising with the Council in their capacity as householders and had nothing to do with the Claimant's employment. Even if the Claimant had been subjected to a detriment in the employment field, for the reasons set out above the Tribunal accepted the evidence of both Mr Eaton and Mr Raby that any protected disclosure made by the Claimant on 12 March 2014 had nothing whatsoever to do with their actions on 2 October 2014.

October to November 2014: Disclosures 3, 4, 5, and 6 and Detriments 7 and 8

4.84 We have referred above to the email the Claimant sent to Mr Jackson on 5 October 2014. In that email, the Claimant told Mr Jackson that they had discovered from Ofwat that YW were aware of the visit from BC on 2 October 2014. She said that there was no statutory situation that allowed the Respondent to discuss their house with YW because no full plans application had been made to the Respondent. She said that this was completely unacceptable and that it was illegal for their personal data to be shared with YW. She summarised the position with YW and said that over seven months EH had refused to take action against YW for any of the nuisances they had caused. She alleged that BC were being manipulated into carrying out actions for YW. She also asked why Mr Eaton had been at the meeting and alleged that this was an invasion of their privacy. She provided a contact number which was Mr Tiplady's mobile number.

4.85 The Claimant's case is that this was **protected disclosure three**. The Tribunal found that this was not a protected disclosure. We accepted that the Claimant disclosed information and that she disclosed it to her employer. We further accepted that in the Claimant's belief the information disclosed tended to show a breach of legal obligations, including by the Respondent under the DPA and in relation to the Claimant's right to privacy. She also believed that the information tended to show that these matters were being concealed. The Tribunal accepted that the Claimant's belief that the Council was in breach of the DPA was reasonable. However, the Tribunal found that the Claimant did not reasonably believe that her disclosure was in the public interest. Even if she subjectively held that belief, the Tribunal found that such a belief was not objectively reasonable. The Tribunal read the email carefully. We found that its sole focus was the Claimant and Mr Tiplady's private disputes relating to their property at Number Three. The email was concerned with the state of their property, their legal dispute with YW, and their concerns about the actions and involvement of EH and BC in those matters. There was no public interest element and it was not objectively reasonable to believe that there was. None of the other relevant factors, for example the nature of the wrongdoing and the identity of the Respondent, pointed to any different conclusion. For that reason this was not a protected disclosure.

4.86 Nonetheless, in our considerations that follow, we have in any event considered whether any of the subsequent alleged detriments were influenced by this or any other alleged protected disclosure, even where we have found that the alleged disclosures did not amount to protected disclosures as properly defined.

4.87 Mr Tiplady sent an email to Mr Jackson on 6 October 2014 saying that he had identified another leak. Mr Tiplady sent a range of emails to other officers within the Council. He also made a subject access request and steps were taken to address that request. Mr Jackson's evidence was that he understood that Mr Tiplady was contacting a number of officers and was made aware that the matter was being dealt with by Mr Pearson, Mr Eaton and other officers as appropriate. The Respondent's information governance office was coordinating the response to the subject access request.

4.88 On 10 November 2014 Mr Jackson responded to the Claimant's email of 5 October 2014. He said that he understood the Claimant's main concern was that there may have been discussions about her house with YW. He said that he had clarified this with the BC team and understood that consultations with YW were specifically referred to in the letter issued to acknowledge the building notice application dated 20 March 2014. On any application that affected a public sewer BC had a duty to consult YW. Mr Jackson confirmed that the Council was dealing with the Claimant's subject access request and that records of any communication with YW would be part of the information provided. Mr Jackson referred to the Claimant's concern about Mr Eaton's attendance at Number Three and said that as manager of development services he was responsible for both BC and drainage functions and was therefore attending to take an overview of the issues discussed. Mr Jackson said that he would like the Claimant to have received the subject access request information before he responded to the dissatisfaction she had expressed about the Building Regulations application. He said that he was happy to answer the points raised but he felt it might be useful for her to have all the necessary information via the subject access request first. Once she had received that information and if she wished to raise a complaint or had any concerns about the Building Regulations application he asked her to let him know and indicated that he would be happy to answer.

4.89 It was suggested to Mr Jackson in cross-examination that in sending the email he was attempting to justify the invasion of the Claimant's home with fabricated reasons and was attempting to justify the unlawful sharing of data. He disagreed. It was put to him that in doing so he was influenced by the protected disclosures the Claimant had made. He said that he was not. When asked about the disclosures, he appeared unaware of the conversations the Claimant had had with Mr Lodge and Mr Driver on 12 March 2014. He said that this was before his time. The Tribunal found that he was unaware of them. He was obviously aware of the email sent to him on 5 October 2014 – that is the document to which he was responding – but the Tribunal has found that this was not a protected disclosure. It seemed to the Tribunal that Mr Jackson's email of 10 November 2014 did not necessarily set out the full picture as regards discussions with YW. As indicated, there were discussions with YW about the ongoing situation and there was an agreement that Mr Raby would try to broker a meeting between all interested parties to find a resolution to those issues. Further, BC were made aware of YW's concreting proposal and were contemplating giving their view to YW about the BC side of that. Mr Jackson's reliance on the building notice application and the acknowledgement letter in March 2014 answered a slightly different point. Nonetheless, the Tribunal accepted Mr Jackson's evidence that he was not motivated by any protected disclosure or alleged protected disclosure. He was plainly unaware of the first two. We accepted that his email

was an attempt to answer the concerns raised by the Claimant in her email of 5 October 2014. The Tribunal did not consider that there was any "fabrication" by Mr Jackson. More likely, he thought that the letter of 20 March 2014 provided a simple answer to the point.

4.90 The Claimant replied the same day, 10 November 2014. She suggested that Mr Jackson was being misled and said that there was no requirement for BC to contact YW. She quoted the Building Regulations in support of the contention that consultation with a sewerage undertaker only occurred when a full plans application had been deposited with the local authority. The Claimant pointed out that given the confusion on 2 October 2014 about whether the Building Regulations application covered the floors it was a nonsense to suggest now that that was why they had contacted YW. She also asked why YW had not been required to submit an application for their work at Number Three. She said that there was no legal mechanism for the Council to feedback information to YW and said that the Council's letter of 20 March 2014 did not refer to discussions or feedback by the Council to YW about visits. She asked for the legal justification for the acts of the BC officers.

4.91 The Tribunal noted that Mr Tiplady raised a concern about the Respondent's handling of its personal data with the Information Commissioner's Office ("ICO"). The view taken by the ICO was that the sharing of personal data in the form of information about Number Three with YW in relation to sewerage issues did fall within one of the permissible categories in schedule 2 to the DPA: paragraph 6 allowed the disclosure of personal data where that was necessary for the legitimate interests pursued by the organisation or by the third party to whom the data were disclosed. The view taken by the ICO was that the disclosure to YW of information relating to Number Three, including the visit on 2 October 2014, was within the legitimate interests of all parties involved to try and bring a resolution to the sewerage issues. However, the ICO pointed out that for the processing of personal data to be considered fair, the organisation should also ensure that individuals were provided with fair processing information. They concluded that the Respondent had not complied with that principle because their fair processing information did not make it clear that information might be shared with outside agencies even where a statutory obligation did not exist.

4.92 Returning to Mr Jackson's email of 10 November 2014, this formed the basis of alleged **detriment seven** and **detriment eight**. Those were that Mr Jackson subjected the Claimant to a detriment by attempting to justify the invasion of her home on 2 October 2014 using fabricated reasons so as to avoid a proper investigation and implying future acts of intimidation; and that he subjected her to a detriment by attempting to justify the unlawful sharing of personal data, again avoiding a proper investigation and implying future acts of intimidation.

4.93 The Tribunal had no hesitation in finding that Mr Jackson did not subject to the Claimant to such detriments. There was no possible basis for the contention that Mr Jackson was implying future acts of intimidation or was seeking to avoid a proper investigation. He was well aware that full information was to be provided to the Claimant under her subject access request. His email made entirely clear that if the Claimant had any complaints or concerns once she had received that information she should let him know and he would be happy to answer it. He was

simply suggesting that the Claimant be provided with full information before they progress this. Even if there had been a detriment, again the Tribunal found that it was plainly not in the field of employment. Mr Jackson was responding to the Claimant's concerns about matters relating to the property of which she was joint owner, concerns that she raised in that capacity. Further and in any event, the Tribunal was quite satisfied that Mr Jackson did not write the email on 10 November 2014 in the terms he did because the Claimant had made any protected disclosure. As set out above, he was not aware of the conversations in March 2014. Those were the only protected disclosures preceding this email. The Claimant's email of 5 October 2014 was not a protected disclosure. Even if it had been, the Tribunal was still satisfied that Mr Jackson was not treating the Claimant in any particular way because she had made disclosures of any kind in her email. He was simply attempting to answer the points raised.

4.94 The Claimant's case is that her email to Mr Jackson in response on 10 November 2014 contained **protected disclosures four, five and six**. She said that she had disclosed information tending to show that the Respondent had attempted to conceal data protection breaches by misleading Mr Jackson; that the Respondent had failed in its legal obligation to make YW supply Building Regulations applications for their works; and that the Respondent had attempted to conceal such breaches. The Tribunal considered that the Claimant's email did disclose information to her employer that she believed tended to show that there was a breach of the DPA or an attempt to conceal such a breach and that her belief was reasonable. Mr Jackson's answer was a partial one and, as the ICO subsequently indicated, the letter of 20 March 2014 did not cover the communications between BC and YW on 2 October 2014. However, the Tribunal did not accept that the Claimant reasonably believed the disclosure was made in the public interest. The sole focus of the email was again on the personal issues affecting the Claimant and Mr Tiplady and their property. It was not reasonable for the Claimant to believe that the disclosure was made in the public interest. None of the factors identified in *Nurmohamed* pointed to any different conclusion.

May to July 2015: Detriments 9 and 10

4.95 Mr Tiplady continue to correspond with the Council on a range of matters. In February he and Mrs Tiplady made a complaint to the LGO.

4.96 The Tribunal noted that in May 2015 the Claimant had an individual appraisal and development review with Mr Eyles. It was a very impressive appraisal. He gave her the highest possible score for all three elements. Mr Eyles's evidence was that in June 2015 he was made aware of the complaint to the LGO. He had been named in the complaint letter and was being given the opportunity to comment. He said in his response and in his evidence to the Tribunal that he had not been made aware by any one of the matters raised in the complaints. That was apparent in the evidence before the Tribunal. It was clear that the Respondent had been very careful not to involve Mr Eyles and that he continued managing the Claimant in ignorance of her complaints and issues relating to Number Three. Indeed, he was not aware that this was the Claimant's address.

4.97 Other officers were asked to comment on the complaint to the LGO and the responses of Mr Eaton, Mr Raby and Mr Lodge formed the subject of part of this

complaint. Mr Eaton provided his comments to the officer at the Respondent handling the complaint by email dated 1 July 2015. He dealt with his attendance at Number Three on 2 October 2014. He said that he attended at the request of his line manager to have an overview of the issues in the case. He said that the first hour of the meeting was spent by Mr Tiplady explaining the situation with YW, the sewage pipes and the subsequent work he had done to his house. Then Mr Raby and Mr Tiplady discussed the reinstatement of the floor, the subject of the Building Regulations application. Mr Tiplady was of the opinion that he did not need to make an application for those works. Mr Eaton said that he (Mr Eaton) did not ask for any wall to be made part of the application. Mr Raby offered to arrange a joint meeting between Mr and Mrs Tiplady, YW and the Council but the offer was not taken up. Mr Eaton observed Mr Raby listening to Mr Tiplady patiently and offering advice in a calm and measured way. There were no accusations made at the meeting by Mr Raby or anyone else. Mr Eaton added that he noted that the Claimant had not given her employer her real address. He understood that the Respondent's records showed a different address to the one the subject of the complaint. He said that this had not enabled her manager to address any conflicts of interest with regard to her workload. He said that it was not clear if Number Three was her usual place of residence and asked for clarification. He said that the decision not to ask a neighbouring BC service to deal with the application by Mr and Mrs Tiplady was made by him in discussion with Mr Raby. It was based on the fact that this was a relatively small development and was not speculative.

4.98 It was put to Mr Eaton in cross-examination that what he wrote was misleading in a number of respects. First, it was suggested that a wall could not be made part of the existing application. Mr Eaton disagreed. It was also suggested that Mr Eaton had attempted to malign the Claimant by referring to the uncertainty about her address. Mr Eaton disagreed. It was suggested to Mr Eaton that he had attempted to mislead the LGO because the Claimant had made protected disclosures. He disagreed. It was suggested to Mr Eaton that he was aware of the conversations between the Claimant and Mr Driver and Mr Lodge on 12 March 2014. He said that he was not. It was put to him that he was aware of the Claimant's emails to Mr Jackson on 5 October 2014 and 10 November 2014. He said that he was not aware of the former. He did not recognise the latter and did not think he was aware of it. The Tribunal found that he was not aware of the conversations on 12 March 2014. There was no evidence to suggest that he was. Further, we accepted his evidence that he was not aware of the Claimant's emails to Mr Jackson. Mr Eaton's evidence to the Tribunal was that he did mention the question of the Claimant's address in his comments for the LGO because he was concerned that she did not appear to have given her employer her real address. That was unusual and unexplained and he wanted clarification. It appeared that the Claimant had not informed the Respondent that she lived at Number Three, although it was a condition of her contract that she inform her manager of a change of address. The Tribunal accepted Mr Eaton's evidence about this. Mr Eaton did not accept that he had misled the LGO about the situation or the various statutory roles. The Tribunal again accepted his evidence.

4.99 Mr Lodge provided a lengthy response to the matters raised in the complaint to the LGO. Mr Lodge's evidence to the Tribunal was that this was a truthful and

balanced account of his role and that of the EH team. In cross-examination the Claimant identified a number of respects in which she said that Mr Lodge's response was misleading. They related to the statutory responsibilities of EH, the question whether there was a statutory nuisance at the premises and so on. Mr Lodge remained of the view that his account was not misleading. It did not seem to the Tribunal from the points raised by the Claimant that the response could be said to be misleading in those respects. The Claimant also drew attention to a comment made by Mr Lodge that Mr Tiplady appeared to be "in dispute with each organisation, department and individual who has tried to assist him. He has been difficult, obstructive, accusatory and persistent in his dealings with the Council. In the circumstances, I do not feel that the department is able to remedy any perceived injustice to the satisfaction of Mr Tiplady in this matter at this time." In evidence to the Tribunal Mr Lodge said that he had made those comments because the facts bore them out. It was not a problem, he was pointing out his opinion. He was asked about the Claimant's alleged protected disclosures. Plainly he was aware of the conversation with him that took place on 12 March 2014. He did not recall seeing either of the emails to Mr Jackson in October and November 2014. He was clear in asserting that he had not been motivated in his response for the LGO by any disclosure made by the Claimant. He was simply replying to the questions asked by the LGO. Nobody had instructed him what to write. The Tribunal accepted Mr Lodge's evidence. We found that his response was indeed an attempt to set out an account of the matters that were the subject of the complaint. His comments about Mr Tiplady were in response to the specific question from the LGO whether the Council was willing to remedy any injustice at an early stage so that the investigation could be brought to a close. Mr Lodge was explaining why he did not believe that would be possible. Furthermore, he was not influenced by any protected disclosure or alleged protected disclosure. It seemed to the Tribunal wholly implausible to suggest that he was influenced by the disclosure made to him on 12 March 2014 by the Claimant given the volume of correspondence and level of involvement in the 16 months since then. Even if the other matters had been protected disclosures, we accepted that he was unaware of them and was not influenced by anybody else who might have been aware of them.

4.100 Mr Raby set out a rather brief account of his involvement for the LGO in an email dated 16 July 2015. He began by explaining the decision early in March not to bring an external BC officer in to deal with the application. He said that the Claimant and Mr Tiplady could have used a private approved inspector from the outset. It was put to him in cross-examination that this was untrue. He disagreed. Mr Raby went on to deal with what took place at the meeting on 15 July 2014 and with the meeting at YW and the visit to Number Three on 2 October 2014. In referring to the meeting at YW on 2 October 2014 Mr Raby said that the meeting was to discuss the ongoing issues and in particular Building Regulations implications of a proposal YW had to replace the sewer again and reinstate the floor. It was put to him in cross-examination that there was no proposal to replace the sewer at that stage. He said that from his recollection there was still a discussion about the benefits of having one pipe rather than three and about damage to the pipes that had been replaced. Mr Raby's account to the LGO said that after the meeting on 2 October 2014 disagreements and complaints from Mr Tiplady began. The focus of the issue seem to be the fact that they had consulted YW. His thoughts on that matter were that BC consult YW whenever they come

across works that could impact on a public sewer. Mr Tiplady had been informed of that on 20 March 2014. Mr Tiplady had posted a banner on his property criticising the Respondent and YW which was covered in the press, so the ongoing issues had been made public knowledge. Further, Mr Tiplady had requested the Respondent's involvement to support his dispute with YW. It would be unrealistic for the Respondent to investigate or input into such a dispute without having discussions with both parties. The logical solution was a meeting with all parties present. They tried to arrange this for the benefit of all but the offer was declined. Mr Raby said his overall opinion was that all parties had set out with the intention of helping Mr Tiplady to bring this matter to a conclusion. This appeared to have backfired in most cases and resulted in further conflict. In his opinion a mutually agreeable solution would never be provided until all parties sat down together to discuss a positive way forward.

4.101 It was put to Mr Raby in cross-examination that his response was misleading because Mr Raby made reference to the banner. Mr Raby said that this was simply information he was giving in response to the LGO's questions. It was suggested that it was misleading for Mr Raby to suggest that he had tried to arrange a meeting of all concerned parties because the job of BC was to enforce. He disagreed. He said that their job was to administer Building Regulations. It was put to Mr Raby that he had misled the LGO because of the disclosure made to Mr Lodge on 12 March 2014. He disagreed. He said that his response to the LGO was honest. It was not in response to any pressure from anybody. The Tribunal had no hesitation in accepting Mr Raby's evidence. It was clear to the Tribunal that all he was concerned with was trying to find a solution to what appeared an intractable situation, for the benefit of all concerned. Again the suggestion that he was in any way influenced by what the Claimant said to Mr Lodge 16 months earlier was wholly implausible and unsupported by any evidence.

4.102 The Claimant's case in respect of **detriment nine** is that Mr Eaton subjected her to a detriment by maligning her to the LGO with an unrelated employment issue so as to have an adverse influence on the investigation. The Tribunal did not consider that Mr Eaton was maligning the Claimant or that he was seeking to have an adverse influence on the investigation. It is right that the Claimant had not informed her employer that she owned and or lived at Number Three. That was the property the subject of the LGO complaint and Mr Eaton made clear in his (internal) response that he was seeking clarity on that matter. The Tribunal did not consider that this amounted to subjecting the Claimant to a detriment. If it had done, the Tribunal would have found that this was in the employment field, because it related to the Claimant's obligations under her contract of employment to notify her employer of any change of address and it seemed to the Tribunal that that created a sufficient connection. However, even if Mr Eaton had subjected the Claimant to a detriment in this way, for the reasons set out above the Tribunal was quite satisfied that this had nothing to do with any protected disclosure or alleged protected disclosure.

4.103 So far as **detriment ten** was concerned the Claimant said that Mr Eaton, Mr Raby and Mr Lodge misled the LGO as to the situation and as to their statutory roles so as to have an adverse influence on the investigation. She set out in detail in writing her arguments about that. The Tribunal considered them carefully

and listened carefully to the evidence of the three individuals. As indicated, the Tribunal did not accept that any of the three responses for the LGO were misleading as to the relevant statutory powers. Accordingly, the Tribunal did not accept the factual premise that formed the basis of detriment 10. A reasonable worker would not conclude that the responses to the LGO were to his or her disadvantage or detriment. In any event, these parts of the responses related entirely to the private matters concerning Number Three. They did not relate to the Claimant's employment and were not in the employment field. Furthermore, for the reasons set out above the Tribunal found as a matter of fact that none of the three individuals was in any way influenced by any protected disclosure or alleged protected disclosure whether directly or indirectly.

4.104 We conclude this part of the judgement by briefly referring to the outcome of the complaint to the LGO. Fundamentally, the LGO found no fault in the way the Respondent dealt with complaint about the sewage leak at Number Three. The LGO did find fault in the way the Respondent had dealt with the complaints made by the Claimant and Mr Tiplady. The shortcoming was essentially that a complaint first made on 13 June 2014 was dealt with as a service request rather than as a complaint. That was incorrect. Furthermore, the Council's response at stage 2 of its complaints procedure was unduly delayed. Although this was a complex case the delay was found by the LGO to be excessive. The Council had apologised for the shortcomings in its handling of the complaint and the LGO considered that was sufficient redress.

May 2016: Detriment 16

4.105 The next of the alleged detriments on which the Claimant relies chronologically (detriment sixteen) took place almost a year later in May 2016. The Tribunal noted that EJ Brain had dealt with points relating to limitation periods and there was no limitation point live before the Tribunal.

4.106 This concerned a request by the Claimant to attend training in May 2016. On 5 May 2016 she emailed Mr Eyles asking if she could attend a development management law conference run by the RTPI on 19 May 2016 at a cost of £99 (plus travel expenses). She sent a further email on 9 May 2016 asking Mr Eyles whether she had clearance to attend yet and a third email on 16 May 2016 chasing for a decision. She said that the event was on Thursday and asked if she could attend on behalf of the team and feedback at the next team meeting. The Tribunal did not see any response from Mr Eyles. Mr Eyles did not remember any discussions about this training and did not remember whether he had replied to the Claimant or not. He explained that any requests for RTPI courses would be referred to Mr Eaton. The Respondent used to have a season ticket for staff to go on these courses but that had been cancelled for financial reasons in view of the serious budget cuts suffered by the Council in recent times. Mr Eyles explained that there are many other sources of CPD training including free lunchtime and evening courses and workshops, which he encouraged. In cross-examination Mr Eyles said that he had no record of replying to the Claimant and accepted that he probably did not. He did remember a discussion with Mr Eaton about the finance but he could not recall if he went back to the Claimant.

4.107 As regards **detriment sixteen**, the Tribunal accepted that being refused a request to attend training amounted to a detriment in the employment field. The question therefore is whether the Claimant was subjected to that detriment on the ground that she had made protected disclosures. It was not put to Mr Eyles that he was in any way influenced by any protected disclosure or alleged protected disclosure said to have been made by the Claimant. The Claimant's case appeared to be that it was Mr Eaton who lay behind the refusal of this training request. Mr Eaton's evidence was that he did remember discussing the Claimant's request with Mr Eyles at the time she made it and that they decided that the Claimant would not attend the training. He too referred to the budget cuts experienced by the Respondent and said that expenditure on external training courses had been severely reduced. He said that the Claimant was not treated differently from any other employee in respect of her access to training. In cross-examination he was asked about two planning officers who had been enrolled on postgraduate courses that were RTPI accredited in 2016. He accepted that the cost to the Respondent of those enrolments might well be in the region of £3000 per annum. He explained that this was not covered by the training budget, which was £3000 per year for the whole of the planning staff. The reason the two postgraduate courses could be afforded was because a member of staff had been seconded to Kirklees and the saving on his salary was used. The postgraduate courses were not essential for the jobs the two individuals were currently doing but they had been with the Respondent for around 10 years and for them to progress in their careers they needed to do a degree level course in the planning field. It was now 18 months since the most recent of the Claimant's alleged protected disclosures and even longer since the disclosures the Tribunal has found amounted to protected disclosures. The Tribunal has already accepted Mr Eaton's evidence that he was not influenced by any protected disclosure or alleged protected disclosure made by the Claimant in his earlier dealings with her. The Tribunal had no hesitation in finding that Mr Eaton was not influenced by the making of any disclosure or alleged disclosure in deciding in May 2016 that the Claimant should not attend the RTPI course.

May to November 2016: Disclosures 7 and 8 and Detriments 11 to 15

4.108 That brings us to events from May 2016 onwards, which culminated in the Claimant's resignation. The starting point in May 2016 was that the Respondent received complaints (from a local councillor and a parish councillor) about an outbuilding that was being constructed at Number Three. The Council's complaint log was dated 1 May 2016 and the Claimant had produced evidence that she said showed that this could not be right because the outbuilding was not then being constructed. She relied on a receipt showing the purchase of steel wire mesh, which she said was for the shed slab, on 5 May 2016. However, as the Claimant herself explained in cross-examination, there were works that preceded the actual construction of the outbuilding. Enabling works had been carried out, namely the building of a retaining structure to hold the outbuilding in place once it was built. The Tribunal saw photographs with a row of pallets erected as a temporary boundary structure and the Claimant explained that immediately behind the pallets were the retaining works and then behind them the outbuilding in question. She accepted that on 1 May 2016 the retaining structure was at least partly built. The Tribunal had no hesitation in finding that the Respondent had genuinely received complaints by 1 May 2016 about the apparent construction of

an outbuilding at Number Three. As already indicated, the Claimant referred consistently to the outbuilding as a shed. However, it is a substantial stone built structure and the Tribunal could well understand that during its construction there may have been room for doubt as to what was being built. The Respondent's Senior Enforcement Officer, Mr de Tute, allocated the complaint to Enforcement Officer Mr Speedy. Mr Horsfall became aware that there was a complaint about the property, which he knew belonged to a member of staff. He therefore mentioned to the Enforcement Officers that they must be sure to deal with it strictly in accordance with normal procedures. He also mentioned it to Mr Eaton. He did not remember what Mr Eaton's reply was. He did not mention it to Mr Eyles at that stage.

4.109 Mr Speedy visited the site on 9 June 2016. He wrote a site inspection report recording that works were underway to construct an outbuilding to the rear boundary of the property using stone. He took some photographs. Mr Tiplady was on site and Mr Speedy told him who he was and that a complaint had been received and was to be investigated. Mr Tiplady told Mr Speedy that the works were "permitted development" but he refused to allow Mr Speedy onto the property to take measurements. Mr Speedy told Mr Tiplady that he might have to return to take measurements and Mr Tiplady said that he should make them from the adjacent highway. Mr Tiplady said that he was unwilling to allow access because he was in dispute with the Department over a previous visit involving Mr Eaton. Mr Horsfall explained that they generally find that almost everyone is happy for enforcement officers to enter their property to investigate alleged breaches of planning control. It is very rare to meet with a complete refusal and usually everything is very amicable. In almost all cases, enforcement officers, who carry a warrant card, are able to inspect there and then. If for some reason it is not appropriate they arrange a convenient time to return.

4.110 On 10 June 2016 Mr Tiplady emailed Mr Jackson about Mr Speedy's visit. He started, "Today you failed again." He alleged that people on the parish council were attacking him and the Claimant because of her job. He said that the planning enforcement officer had no idea what he was doing, because when Mr Tiplady asserted that the development fell within permitted development rights the enforcement officer said that that was not necessarily so. He suggested that the officer would "make up stories like the rest." He said that the officer had been recorded. He said that he was not asking for special treatment because of the Claimant but that the Respondent should not "intimidate any perfectly law-abiding members of the public based solely on informants' words." He accused the Respondent of favouring disturbing the public on the "malicious intent of a known malicious person" and of "rewarding the corrupt." He accused Mr Eaton and "his team of untrained bullies" of trying to enter the house. He asked what information could possibly be needed on a structure visible from the public road that was only a shed. He accused the Respondent of failing to adhere to its procedures, arrogance and wilful intimidation.

4.111 Mr Speedy wrote to "the owner/occupier" at Number Three on 16 June 2016. It was a standard letter. It said that the Respondent had received enquiries about works being carried out to construct an outbuilding on land to the rear of Number Three. An officer had previously attended the site and observed an outbuilding in the process of construction but was unable to enter the land to take

measurements. An inspection was required to ascertain that no unauthorised development works were being carried out at the property. Mr Speedy asked the occupiers to contact him within 10 days to arrange a mutually convenient time for a site inspection.

4.112 Mr Tiplady telephoned and spoke to Mr Speedy on 22 June 2016. Mr Speedy explained that access was required to measure and assess the outbuilding to establish whether it needed planning permission. Mr Tiplady said that under no circumstances would he allow access to the property. He said that it was possible to assess the outbuilding from the public highway. At the end of the conversation Mr Tiplady hung up. Mr Tiplady sent an email to Mr Jackson, copied to the Chief Executive. He repeated the assertion that all the necessary information could be ascertained from the public highway. He said that the law required the Council to have reasonable grounds and that the Council had provided no reasonable grounds for needing to inspect the site. The Claimant sent an email to Mr Jackson on 28 June 2016. She referred to a history of dispute with the parish council and expressed concern that the parish council had complained about the outbuilding to the Council and that an enforcement officer had come out in short order. She suggested that the parish council was getting "preferential treatment." She said that no background preparation appeared to have taken place and that the officer did not appear to know the facts. She said that the property had full permitted development rights so it was not acceptable for the office to say "it depends" when advised of this. She said that from standing in the lane it was quite clear where the shed was in relation to the rear land and what the height of the shed was in relation to the lane. She said that the enforcement actions were "arrogant and bullying." Mr Jackson replied saying that he would look into the matters raised and let the Claimant have a response as soon as he could next week.

4.113 It is not the Tribunal's job to resolve the question whether the outbuilding fell within "permitted development" or not. The Claimant's position was and is that under the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO") the outbuilding was permitted development because it fell within a class of development for which permission was granted in the GPDO. Class E of the GPDO grants permission for buildings within the curtilage of dwellinghouses required for a purpose incidental to the enjoyment of the dwellinghouse as such. However, there are exceptions to that grant of permission, for example relating to the ground area and height of the building. Furthermore, the GPDO contains provisions explaining how the height of the building is to be construed. The Council's position was that it needed to take measurements from within the boundary of Number Three to address those matters and that the measurements could not simply be taken from the highway. Furthermore, there was a question as to the intended use of the building under construction. Given the retaining structure and temporary pallet fence shown in the photographs as present when Mr Speedy attended the site, the Tribunal could understand that there was room for dispute about whether all the necessary information could simply be obtained from the public highway. Mr Horsfall's evidence to the Tribunal was that the officers needed to inspect the site because they did not agree with the contention that effective measurements could be made from the road without entering the garden. Mr Horsfall's evidence to the Tribunal was clear and convincing. He was of the understanding that the

Respondent needed to establish whether there had been a breach of planning control. The Council had received a complaint and it was necessary for the Council to resolve it.

4.114 Because there had not been a positive response to the letter of 16 June 2016 and it was clear that officers were not going to be allowed access to the site, Mr Horsfall discussed the matter with Mr Jackson. His evidence to the Tribunal was that at that point there were two options: either not to pursue the matter further or to apply for a warrant to enter the property. Mr Horsfall did not consider that the former would be appropriate because it could be challenged to the LGO. As to the second, it was very rare for the Respondent to have to take such a step and it was a sensitive issue because the property owner was employed by the Respondent. Mr Jackson suggested that they try to have a word with the Claimant to resolve the matter. A meeting was therefore arranged for 14 July 2016 in City Hall to discuss the position.

4.115 In cross-examination it was suggested to Mr Horsfall that there were a number of options that had not been explored. It was suggested that enforcement officers could have asked for plans and dimensions. He disagreed. He said that it was for the Respondent to establish whether there had been a breach of planning control. It was also suggested to him that a planning contravention notice should have been served. He disagreed because such a notice also relied on the person giving the information (albeit it was on oath). It was also suggested that the Respondent could have appointed an independent expert or could have waited for the structure to be completed. Mr Horsfall disagreed. It was also suggested that the Respondent could revisit the property and take a decision as to whether enforcement action was expedient. Mr Horsfall disagreed. He was quite clear that no decision on expediency could be taken before the Council had decided whether there was in fact a breach of planning control.

4.116 The meeting suggested by Mr Jackson took place on 14 July 2016. He attended, along with Mr Horsfall and the Claimant. Mr Jackson and Mr Horsfall both took notes, which the Tribunal saw. The notes record that it was explained to the Claimant that the Respondent took the view that reasonable requests for access had been refused so that the next step would be for the Council to obtain a warrant from the magistrates so as to gain entry to the site. The Claimant was told that the purpose of the meeting was to give her the chance to consider allowing officers to access the site and hopefully resolve the matter in a straightforward way. The Claimant asked whether enforcement officers had reasonable grounds for entering the site and Mr Horsfall said that in accordance with normal enforcement procedures a full assessment of the building was required, including its location height and garden coverage. In addition, enforcement officers needed to know what its use was and to consider its relationship with the Conservation Area and whether there were any matters that need referring to BC. The Claimant said that the highest ground level of the building was adjacent to the public highway at the rear and therefore all that needed to be assessed could be done without entering the garden of her property. Mr Horsfall expressed his disagreement. Mr Jackson suggested that a much easier way forward for all concerned would be for an enforcement officer to be allowed on the site for a short time to ascertain whether planning permission was required. That would take only about five minutes and if the outbuilding was

found to be permitted development the case could be closed. The Claimant did not agree. Mr Jackson told the Claimant that the Respondent was being consistent in its approach. The Claimant raised concerns about the parish council having made a malicious complaint and suggested that the Respondent should just ignore it. Mr Jackson said that the council could not ignore a complaint. He asked the Claimant to think about her position and if she changed her mind to allow access to let him know. Apart from saying that she did not say that the parish council should be ignored, rather, that they did not know what they were doing, the Claimant did not dispute the substantive content of the meeting notes. She did, however, characterise what took place as bullying and intimidation. Mr Horsfall's evidence was that the meeting was not "bullying". If anything he said that the Claimant was the aggressive person in the meeting. He acknowledged that she looked a bit upset but he said that she was quite robust in the way she spoke. It seemed to the Tribunal that there was a robust discussion on all sides along the lines set out in the contemporaneous meeting notes. Ultimately, the Respondent was giving the Claimant an opportunity that would not have been afforded to an ordinary member of the public, to reconsider her position and allow a brief inspection visit. In the event she did not do so.

4.117 That evening Mr Tiplady emailed Mr Jackson and the Council's Chief Executive, Ms England. He accused managers of bullying and intimidation and alleged corruption by the Respondent. The Tribunal saw an intemperate email Mr Tiplady sent that evening to the parish council. It accused them of malicious communications and harassment. It made accusations about the chair of the parish council and concluded "we do not want stupid people in our neighbourhood that do not understand law and order." Ms Kershaw, the chair of the parish council, forwarded the email to Mr Jackson, anticipating that Mr Tiplady was intending to make these matters public.

4.118 The Claimant sent a rather more measured email to Mr Jackson on 19 July 2016. She referred to the conversation on 14 July 2016 and to her request made to Mr Horsfall to give the reasonable grounds for needing access to the property. She made reference to the Secretary of State's Code of Practice on Powers of Entry and to the Town and Country Planning Act. She repeated the assertion that she had not been provided with the reasonable grounds for needing access to the property. She concluded by saying that because of her own personal experience in this enforcement situation she had become concerned that residents in general throughout the district might be subject to actions that caused concern.

4.119 It was this email the Claimant said amounted to **protected disclosure seven**. The Tribunal was satisfied that this did amount to a protected disclosure. The Claimant disclosed information that in her reasonable belief tended to show that the Respondent was failing to comply with its legal obligations in relation to enforcement and rights of entry. While the Council took a different view as to whether it had provided the Claimant with reasonable grounds for needing access to the property, the Tribunal was persuaded that the Claimant's belief that it had not provided such reasonable grounds was both genuine and objectively reasonable. Development control was within her field of professional expertise, and there may well have been room for professional differences of opinion. In those circumstances, the Tribunal accepted that the Claimant's belief was objectively reasonable. Furthermore, in view of the concern expressed in the last

paragraph of her email about residents more generally throughout the district, the Tribunal also accepted that the disclosure was in the Claimant's reasonable belief made in the public interest. Accordingly it was a protected disclosure.

4.120 Mr Horsfall took internal legal advice and a draft letter to the Claimant and Mr Tiplady was circulated for comments. The letter was sent on 26 July 2016. The letter explained that the Respondent remained of the view that an inspection of the land was necessary as it was impossible to assess the development and its use or potential use other than by way of inspection. The letter made reference to the legislative provisions enabling the Council to apply for a warrant to allow entry on land. The Claimant and Mr Tiplady were asked to confirm within five working days that they would allow access to inspect the development within the curtilage of the property, failing which the Council would seek a warrant from a magistrate.

4.121 Mr Tiplady sent an email on 28 July 2016 to Mr Jackson, Ms England and members of the legal department. The email set out in some detail why the Claimant and Mr Tiplady said that no site inspection was required. The email made clear that access would not be allowed and said that the Council must take the actions that it felt necessary. It instructed the Respondent to disclose the email to the magistrate. Mr Tiplady wrote a separate letter to Ms England on 29 July 2016. It was in similar but not identical terms to the email. It too concluded with an instruction that it should be disclosed to the magistrates. Mr Horsfall gave evidence that he was unaware of the second letter to Ms England at the time and the Tribunal accepted that evidence.

4.122 The Respondent decided in view of the continued refusal to allow access to the property to make an application for a warrant. Mr de Tute prepared it with assistance from the legal department. The application indicated that the Council was investigating a possible breach of planning control, namely unauthorised development by virtue of the construction of a detached building to the garden area of the property. The Council had received complaints and the building had been viewed from public land and the Council wanted to ascertain whether the development required planning permission. The application explained that there was a requirement to assess the construction work carried out, including taking measurements, photographic records, internal assessment of the structure and proposed use of the building. The application summarised the Council's attempts to obtain access to the site and asserted that the Council had reasonable grounds for entering. In the section of the application form dealing with the Respondent's duty of disclosure the application made reference to Mr Tiplady's email of 28 July 2016, a copy of which was attached. His separate, similar letter to Ms England was not attached. This is because the enforcement officers were not aware of it. The application was signed by Mr Cowlam, a strategic director, on 24 August 2016.

4.123 It was the Claimant's case that by signing the application on 24 August 2016 Mr Cowlam subjected her to **detriment eleven** and that he did so on the ground that she had made alleged protected disclosures three to seven. Of those, as we have found, only disclosures one, two and seven in fact amounted to protected disclosures. It was the Claimant's case that the "shed incident" was "retribution for disclosures one to six" and that the escalation of the shed incident was "retribution" for disclosure seven.

4.124 The Tribunal found that the making of an application for a search warrant amounted to a detriment. Although it primarily related to a private dispute about Number Three, the Tribunal found that, arguably at least, this was to some extent a detriment in the employment field. That was because at the meeting on 14 July 2016 the Respondent had dealt with the Claimant in her capacity as an employee not just as a householder. It was only because she was a senior planning officer that she was given the opportunity to reconsider whether to allow officers to access her property. The application for the search warrant followed fairly swiftly after that meeting and the Tribunal could therefore see how it might be characterised as taking place in the employment field to some extent.

4.125 However, the Tribunal was quite satisfied that in approving the application for the search warrant Mr Cowlam was not in any way influenced by the making of any protected disclosure or alleged protected disclosure. There was before the Tribunal no evidence whatsoever that Mr Cowlam was aware of disclosures one, two or seven. Although Mr Cowlam did not give evidence, Mr Horsfall explained the Respondent's reasons for seeking a warrant. His evidence was that a search warrant was necessary because it was the only way the Respondent could gain access given that the Claimant and her husband had refused to allow it. Access was needed so that they could take measurements of the building. The fact that they subsequently decided that enforcement action was not expedient (see below) was not material because no decision on expediency could be taken before the Council had established whether there was in fact a breach of planning control. Mr Horsfall's belief was that a warrant was necessary because it was not sufficient to take measurements from adjacent public land. Mr Horsfall did not accept that the warrant was misleading in any way. He confirmed that reference was made in the application to a police officer attending when the warrant was executed because on occasions that was necessary and if it was not declared in the application the Respondent would not be able to call on the police to assist them. The application made reference to complaints in the plural because there had been two complaints, one from the parish council and one from Councillor Poulsen. The application referred to the need for an internal inspection because one of the relevant questions was the use of the structure. Mr Horsfall did not accept that the application misled the magistrates because it failed to state the Claimant's qualifications and experience as a senior planning officer. Mr Horsfall accepted that Mr Tiplady's letter to Ms England was not attached to the application. That was because he was not aware of it. The Tribunal accepted Mr Horsfall's evidence of the reasons for applying for a search warrant. It is evident that the Claimant fundamentally disagrees with Mr Horsfall's view. However, the Tribunal was satisfied that this was Mr Horsfall's professional opinion. Mr Cowlam simply signed the document. The reasons for making the application were as described by Mr Horsfall. Furthermore, disclosures one and two had been made some 2 ½ years earlier. There was no basis for the suggestion that in seeking a search warrant the Respondent (and particularly Mr Cowlam) were visiting retribution on the Claimant for making those disclosures. Equally, the possibility of needing to apply for a search warrant was raised before disclosure seven took place; it was mentioned at the meeting on 14 July 2016. That too is indicative that the Claimant's email to Mr Jackson on 19 July 2016 was not what led to the making of an application for a search warrant. Fundamentally, the Tribunal was quite satisfied that the Respondent took the

unusual step of applying for a search warrant because this was an unusual situation. The householders were simply refusing to allow access to the property. That had been their position from the outset, when Mr Tiplady said to Mr Speedy that access would not be allowed because of the dispute about Mr Eaton's previous visit. Although the Claimant disagreed, Mr Horsfall's professional view was that access was necessary to establish whether the building was permitted development.

4.126 The application to the magistrates was made ex parte on 26 August 2016 and the warrant was obtained. It was executed by Mr Horsfall and Mr de Tute on 14 September 2016. They were recorded by CCTV cameras. They rang the front doorbell but when there was no answer they went to the back and carried out their inspection in the garden. The took measurements and photographs. In fact Mr Tiplady was in the house watching the officers and reporting by telephone to the Claimant what was happening. When the officers returned to the office they realised they had forgotten to serve the warrant at the end of their search so they arranged for a colleague to post it in person later in the day and that was done. In evidence Mr Horsfall was asked about the Code of Practice on Powers of Entry. That Code advises that where it is appropriate and practicable to do so, reasonable notice should be provided to the occupier of the intention before exercising a power of entry. Mr Horsfall said that he was familiar with the Code. The Claimant and Mr Tiplady were not given advance notice because Mr Horsfall did not feel that was necessary. Mr Tiplady had made perfectly clear that the Respondent should do what it needed to do. The Claimant complained about the number and range of the photographs taken. Mr Horsfall's evidence was that it was normal to take photographs so that they could refer back to them when they returned to the office.

4.127 It was put to Mr Horsfall that his actions on 14 September 2016 were influenced by disclosures or alleged disclosures one to seven. Mr Horsfall's evidence was that he was not aware of disclosures one and two. He did not know anything about the emails that formed the basis of disclosures three to six. He did not recall the email that formed the basis of disclosure seven. His attention was drawn to Mr Jackson's evidence that he sent it to him. He accepted that Mr Jackson may have done so but he did not recall receiving it. He emphatically denied the reason for applying for a search warrant, the manner of its execution or indeed what took place afterwards was in any way affected by those disclosures. The Tribunal accepted Mr Horsfall's evidence. We were entirely satisfied that his actions were governed solely by his professional opinion of what should be done.

4.128 That brings us to **detriment twelve**. The Claimant's case is that she was subjected to detriment because the officers executed an unlawful search warrant, failed to comply with the Code of Practice on Powers of Entry, failed to leave a warrant copy and took multiple photographs of other areas of the Claimant's property. She said that the officers were close associates and subordinates of Mr Eaton. She said that this was detrimental because of interference with her right to respect for private and family life and to peaceful enjoyment of property under the European Convention on Human Rights. She also referred to reputational damage to her professionally.

4.129 The Tribunal did not accept that the Claimant was subjected to detriment in those terms. It seemed to us that the search warrant was lawfully obtained but there were shortcomings in its execution, in particular the failure to leave a copy of the warrant at the time. In addition, the Tribunal was not convinced that proper consideration had been given to what the Code of Practice said about giving advanced notice. The fact that Mr Tiplady had said that the Council should do what it needed to was not a complete answer to the question whether advance notice of the execution of the warrant ought to be given. The Tribunal did not consider the photographs taken in any detail. We were not in a position to assess whether they were appropriate, but we noted that it would be usual to take photographs to refer back to, and that the context of the development might be a relevant matter. In any event, the Tribunal was satisfied that in executing the search warrant, in particular in circumstances where advance notice was not given and there was the oversight relating to posting the warrant, the Respondent was subjecting the Claimant to a detriment. A reasonable worker could take the view that this was to their disadvantage. The Tribunal had considerable doubts whether this was a detriment in the employment field. However, on the same basis as detriment eleven, the Tribunal was prepared to accept that there was some overlap with the Claimant's employment and that to some extent this might be regarded as a detriment in the employment field.

4.130 That brings us to the question whether this was done on the ground that the Claimant had made protected disclosures. As already indicated, the Tribunal accepted Mr Horsfall's evidence and found as a matter of fact that none of the protected disclosures or alleged protected disclosures played any part in what was done on 14 September 2016.

4.131 Mr Horsfall's evidence was that the inspection showed that the outbuilding was higher than the permitted development limits. Other officers were asked to consider the scenario and the photographs, but were not told that the property belonged to a member of staff, and all were of the same view that the building required planning permission. Mr de Tute wrote to the Claimant and Mrs Tiplady on 19 September 2016. He expressed the Council's view that planning permission was required for the outbuilding and asked them to take action by 11 October 2016 either to show that planning permission had been obtained or was not required; or to submit a retrospective planning application; or to demolish the outbuilding. This was a standard letter.

4.132 Mr Horsfall's evidence was that he was beginning to feel rather frustrated by the number, tone and content of the emails being received from Mr Tiplady. He emailed Mr Jackson about this on 20 September 2016, copied to Mr Eaton and the legal department. There had also recently been an article in Planning Resource magazine about the Council's enforcement team and Mr Tiplady had added a lengthy online comment about the team which was subsequently removed because it violated the terms and conditions of the publication. Mr Horsfall wrote to Mr Jackson that the more he thought about it the more he realised the Council needed to take immediate action to stop responding to either of these individuals because their letters, emails and online comments were slanderous and had been for two years. He said that they should be treated as vexatious. He also suggested that as a responsible employer the Council should take action against the Claimant. She must be bringing the Council into

disrepute. He asked how his team and the planning staff could work alongside a senior planning officer who acted in this manner. The Tribunal could understand Mr Horsfall's frustration at the number, tone and content of emails being received from Mr Tiplady. The Tribunal was not shown any evidence of any action being taken against the Claimant, as suggested in his email.

4.133 Mr de Tute and Mr Tiplady spoke by telephone on 22 September 2016. They had a detailed discussion about the measurements that had been taken and about what the situation was on the site. There was a discussion about whether the ground level where the outbuilding was being constructed had always been at its current level or whether it had been excavated. They discussed the position from which the relevant ground level should be ascertained. Mr Tiplady followed up with an email the same day attaching some photographs. He set out some explanation of his view as to where the ground level measurement should have been taken from. He asserted that the height measurements were all within the permitted levels. He sent a further email the following day, 23 September 2016, taking issue with Mr de Tute's suggestion that the question whether the ground had been dug out had any relevance.

4.134 Mr Horsfall had sought internal legal advice on possible next steps and this was provided on 23 September 2016. It was apparent from the email header that advice was being sought about the possibility of issuing a "not expedient" report. The advice was that the question whether it was expedient to take enforcement action was a delegated matter delegated within the Council's scheme of delegation. A question was raised about the principles and spirit of the members' code, which required decision-making to be transparent. Given that the person in question was a member of planning staff it was suggested that Mr Horsfall might consider that this was an occasion that it would not be appropriate for officer delegation. However, whatever decision was taken, Mr Horsfall was advised that there must be suitable documentation to justify it.

4.135 On 26 September 2016 Mr de Tute emailed Mr Tiplady, copying Mr Jackson, Mr Horsfall and others, to confirm that despite the information provided by Mr Tiplady the Respondent remained of the opinion that planning permission was required for the outbuilding. He said that it remained open to Mr Tiplady to submit either a certificate of lawfulness or planning application and said that if one of those steps was not taken by 11 October 2016 a decision would be made whether it was expedient to pursue the matter further. Further correspondence ensued. Mr Tiplady insisted that Mr de Tute must supply the reason he believed the building was not covered by the GPDO. Mr de Tute replied to say that it had been explained to Mr Tiplady that it was considered that the height of the structure exceeded the 2.5m limit for permitted development, due to the original land levels at the property. The Respondent disagreed with Mr Tiplady's position that the ground level should be taken from the road. The Claimant raised the matter in an email to Mr Jackson on 26 September 2016 and he responded with the same explanation on 28 September 2016. The Claimant and Mr Tiplady instructed a planning consultant, Mr Thompson. Mr Horsfall emailed Mr Thompson on 29 September 2016 to confirm the Council's view that the outbuilding exceeded the maximum height laid down in the GPDO and was not therefore permitted development. Mr Thompson replied the same day enclosing a brief sketch plan with spot heights. He asked a number of questions. Mr

Horsfall replied the following morning, 30 September 2016. He expressed the view that the structure was more than 2.5m high measured from ground level; that the inside of the wall to the rear of the structure had an internal spot height of 2.95m; and that the entire structure when measured from the original ground levels of the property curtilage exceeded the permitted 2.5m. Mr Horsfall and Mr Thompson evidently spoke by telephone later that morning. Mr Thompson acknowledged that there were differences in interpretation and measurement and that these "greyed" the issue, depending on one's stance. He said that his clients wanted to finish the structure and he asked Mr Horsfall to confirm whether it was expedient for the Respondent to take enforcement action in the case. Mr Horsfall replied shortly afterwards confirming that the Council did not consider it would be expedient to pursue enforcement action. Mr de Tute completed an internal report. He explained in outline why the outbuilding was considered to have been constructed on the original ground level of the lower garden and why the Council considered that any height measurement should be taken from the garden curtilage ground level. Based on those measurements the Respondent considered that the structure required planning permission and was unauthorised. Mr de Tute went on to say that the outbuilding was set below the level of the surrounding area and did not appear unduly prominent. It had so far been sympathetically constructed using high quality materials and did not have a significant impact on visual amenity. The creation of a separate planting area had enhanced the appearance of the area. There was no impact on residential amenity through the construction of the outbuilding based on what had been seen, due to its location and scale. Accordingly, although unauthorised it was not considered expedient to pursue the matter further. Mr Jackson as assistant director signed off the decision that it was not expedient to pursue and that the file should be closed on 3 October 2016.

4.136 The Claimant's case was that Mr de Tute's letter of 19 September 2016 was **detriment thirteen**. She said that this was detrimental because it forced disclosure of her address and planning enforcement situation, under threat of more action; it was an abuse of power and unlawful. She repeated the assertion that Mr de Tute was a close associate and subordinate of Mr Eaton. Mr Horsfall gave evidence about this. It was put to him that when Mr de Tute's letter was written the Respondent knew that it was not expedient to take enforcement action. He disagreed. He said that the decision was not known at that time. He did not accept the Claimant's suggestion that the "not expedient" decision was only taken because Mr Thompson had become involved, which prevented the Respondent from maintaining its "fiction" that the outbuilding was unauthorised. That was plainly right, given that Mr Horsfall was evidently seeking advice about whether a "not expedient" decision could be taken under delegated powers before Mr Thompson first became involved. Mr Horsfall was clear in his evidence that it was not for Mr Tiplady to establish whether in the Council's view there was a breach of planning control. The Council had to reach its own view. If it formed the view that there was a breach of planning control it could then go on to consider whether enforcement action was expedient. That was the process it followed.

4.137 The Tribunal did not consider that Mr de Tute's letter of 19 September 2016 amounted to a detriment as alleged by the Claimant. It did not force disclosure of her address and planning enforcement situation, nor was it unlawful or an abuse

of power. It was a letter outlining the next steps to householders whose development had been assessed as unauthorised. Furthermore, it was not a detriment in employment in any event. It was further removed from the meeting on 14 July 2016, when the Claimant was given the opportunity to allow officers to inspect the site rather than the Respondent seeking a search warrant. The link with the Claimant's employment arguably created by that meeting seemed to the Tribunal no longer really to be in play. This was simply a letter to householders about the next steps in a potential enforcement matter relating to their property. Further, and in any event, the Tribunal was again entirely satisfied on the evidence that none of the protected disclosures or alleged protected disclosures played any part in the decision to write that letter. We have already dealt with Mr Horsfall's evidence about these matters, which we accepted.

4.138 At around the same time the Respondent was running an expressions of interest exercise. On 21 September 2016 Mr Jackson sent an email to colleagues inviting expressions of interest in a number of vacant posts. One of those posts was area planning manager in development services. The email was sent to the Claimant and it was open to her to express an interest in the post. She did not do so. There was no dispute among the Respondent's witnesses that she was qualified for the role and would have been a serious and viable candidate, even though this was a significant promotion.

4.139 It was the Claimant's case that Mr Eaton and senior management subjected her to **detriment fifteen** because they prevented her from applying for this role by failing to act to address the employment relationship. The Tribunal did not accept that she had been subjected to such a detriment. She was informed of the role, and she chose not to apply for it.

4.140 At around this time some employment specific concerns were beginning to emerge. Mr Tiplady telephoned the Respondent on 26 September 2016 to say that the Claimant was not well and had been subject to bullying. Mr Tiplady said that someone needed to care and see if she was okay. This was referred promptly to Mr Eaton by an HR business partner. It was arranged that Mr Eyles would meet the Claimant on 27 September 2016 and he came in from home to do so. The Claimant made clear that she did not want Mr Eyles to be involved in any of the matters Mr Tiplady had referred to. Mr Eyles explained that he needed to consider her welfare and that if she was unwell at work he needed to consider that. She explained that she had made a complaint about officers in the enforcement section and other senior managers but did not tell Mr Eyles the detailed nature of the complaint. She stressed that it was not related to work matter and that was why she did not want Mr Eyles to be involved. She said that she had no problems with the workload.

4.141 Mr Eyles explained to the Tribunal that he had had one or two issues with the Claimant taking time off at short notice at around this time. On 29 September 2016 he emailed Mr Eaton putting on record his concerns about the Claimant continuing to work on complex and contentious applications at that time. He said that she had been struggling to keep up with work matters to her normal standards and gave a number of examples. Mr Eyles said that it was becoming difficult for him to manage the situation because of the limited knowledge he had of the non-work matters that were taking place. He recommended a discussion with Mr Eaton and Mr Jackson and they spoke.

4.142 On 17 October 2016 Mr Eaton sent an email to HR. He said that the situation with the Claimant and her husband was worsening. He referred to complaints to the LGO making serious allegations about him that had not been upheld. He said that Mr Tiplady had told Mr Speedy that he had lied to him and that he intended to sue the Council in June 2016. He said that Mr Tiplady had complained of bullying in July 2016 and had specifically accused Mr Eaton of intimidation and working in the interests of YW. He said that in July 2016 Mr Tiplady had accused him of entering his house to work secretly for YW and had referred to this as deception and harassment. In August 2016 Mr Tiplady had accused him of perjury. Mr Eaton said that Mr Tiplady referred to him as "corrupt, bullying, intimidating, lying, deceiving, malicious and secretive." He said that it seemed clear to him that the correspondence was on behalf of Mr and Mrs Tiplady. They had reported him to the police and to his professional body the RTPI as well as the LGO and the ICO. He said that he would normally not give a second thought to such descriptions but that the Claimant worked in a service that he headed up. He was wondering about requesting mediation between him and the Claimant, with a view to repairing any strained working relationship that existed and he requested advice. In the event that email was superseded by the Claimant's resignation, but the Tribunal was struck by the fact that the only action Mr Eaton was suggesting was designed to improve the relationship between him and the Claimant. That was not, in the Tribunal's view, consistent with the picture of Mr Eaton that the Claimant sought to present.

4.143 The Claimant's position appeared to be that all of the issues concerning the sewer-related events in 2014/2015, the subsequent complaints to the LGO and ICO, and the events concerning the outbuilding, destroyed the employment relationship between her and the Respondent. The Tribunal did not accept that premise. It was clear that Mr Eyles, the Claimant's manager, was virtually unaware of what was going on. He continued to manage the Claimant and she continued to work effectively in her role until about September 2016 when these employment specific concerns began to emerge. When they did emerge, Mr Eyles promptly met the Claimant and she reassured him that there was no issue with her work or workload. Undoubtedly the Claimant had an extremely negative perception of many of the Council's officers who had been involved with the events over the past three years. But that arose out of private disputes related to Number Three, not her employment situation and, in any event, it does not follow from the fact that she had a negative perception that it was the Respondent's fault.

4.144 Accordingly, the Tribunal did not consider that **detriment fifteen** was made out on any view. Even if it had been, the Tribunal was quite satisfied that Mr Eaton was not influenced by any protected disclosure or alleged protected disclosure. It was put to him that he was aware of the two emails to Mr Jackson in October and November 2014. He said that he was not aware of them. It was also put to him that he knew about the conversations on 12 March 2014 and again he said that he did not. The Tribunal accepted his evidence. His email to HR suggesting mediation also seemed to the Tribunal wholly inconsistent with the suggestion that he was seeking to visit retribution on the Claimant.

4.145 That brings us to events concerning grievances raised by the Claimant. On 16 September 2016 she emailed Ms Dunkley with an attached grievance. It was a brief grievance in which she requested independent mediation. She referred to the previous complaint to the LGO and asserted that the Council had continued to ignore the complaint since then. She therefore said that the internal grievance process was not appropriate. She referred to intimidation and bullying and to the possibility of constructive dismissal proceedings. However, she did not make any specific allegations nor did she name any particular individuals. Ms Dunkley knew nothing about the Claimant before she received the grievance. She asked an employee relations manager to dig out the file to find out what had gone on. Ms Dunkley tried to call the Claimant a couple of times unsuccessfully and subsequently emailed her on 19 September 2016. She said that ordinarily a grievance should be sent to the line manager or, if it was about the line manager, to the assistant director or director. She asked who the grievance was about so that she could direct it accordingly. The Claimant replied on 20 September 2016. She made it clear that Mr Eyles was no part of the grievance. She said that it related to management failings at all levels to listen to complaints made over the last couple of years or to hold officers and managers to account. She referred to misuse of power, dishonesty and sharing of private data. She said that the grievance spanned building control and enforcement services and included Mr Eaton, EH and the city solicitor's office. She said that because no one from the top of the structure down had been listening over a considerable time it was considered absolutely necessary that external mediation was undertaken. Ms Dunkley evidently did not reply and the Claimant sent a chasing email on 3 October 2016. At that stage Ms Dunkley replied to say that she did respond to ask who the grievance was about so that she could direct it to a suitable line manager. She asked the Claimant to name the people to whom it related and identify the work-related issues involved.

4.146 On 7 October 2016 the Claimant sent a six page grievance document to Ms Dunkley. The grievance set out detailed complaints relating to some of the incidents the subject of the findings of fact above. Mr Eaton and Mr Jackson were repeatedly named. This was said to be **protected disclosure eight.** The Claimant said that she disclosed information tending to show that Mr Eaton had abused his position for the financial gain of YW and against his subordinate. He had used the planning enforcement team to hurt his subordinate with threats and the execution of an unlawful search warrant. He had allowed previous health and safety situations to continue impacting on the public and allowed intimidation and threats to be sent to conceal his failures. Mr Jackson had similarly allowed those situations to continue. He had used his employment relationship with the Claimant to threaten her career, intending to silence her and conceal the incidents. He had damaged her reputation and failed to comply with the DPA. It is not necessary for the Tribunal to deal minutely with each of those points. The Tribunal accepted that in the course of the grievance the Claimant disclosed information that tended to show in her reasonable belief the breach of legal obligations, for example breaches of the DPA. Furthermore, the grievance concluded with the Claimant expressing the concern that others were at risk of similar behaviour. Again the Tribunal was prepared to accept that the Claimant genuinely and reasonably believed that her disclosure was in the public interest. Accordingly, the Tribunal proceeded on the basis that the 7 October 2016 grievance was a protected disclosure.

4.147 Ms Dunkley forwarded the email to Mr Barker (Employee Relations Manager) and Ms Moverley (Head of Human Resources) for their views before holding a discussion the following week. She expressed the provisional view that the matter should be referred to Mr Cowlam. A discussion was held the following week. The general view was that the issue appeared to relate to an external matter but it was agreed that they needed to check if there were any connected work-related issues. They would follow the usual process and forward to the appropriate director, Mr Cowlam. Ms Dunkley emailed the Claimant, copied to Mr Cowlam, on 10 October 2016. She said that this appeared to be related to a personal dispute but that she would refer it to Mr Cowlam to consider in line with current processes. Mr Cowlam asked for the original grievance to be provided so that he could take the matter forward. Once he had seen the grievance Mr Cowlam emailed Ms Dunkley on 10 October 2016 to say that they were going to need another assistant director or even strategic director to hear this because Mr Jackson was implicated and he (Mr Cowlam) had signed off the warrant. Ms Dunkley replied saying "ok," adding that the first thing was to establish whether or not this was employment-related. Mr Cowlam agreed. Ms Dunkley's evidence was that she had a discussion with Mr Cowlam to advise that even though she thought the matter was an external one he should review to double check that that was the case. She said that Mr Cowlam decided to appoint an appropriate investigating officer.

4.148 On 14 October 2016 the Claimant emailed Ms Dunkley, copied to Mr Cowlam, to say that she was at a loss to understand why Ms Dunkley considered the matters being raised were personal. She said that she had no personal dispute and that the matters raised were serious Council behavioural matters that were all work-related. Meanwhile, the Claimant and Mr Tiplady had made a separate complaint through the Chief Executive's office.

4.149 On 17 October 2016 Ms Dunkley emailed Mr Cowlam to say that she would ask Mr Barker to advise, but that she still thought the first step was for Mr Cowlam to decide if this was a work-related grievance or not. Her own view was that the Claimant could not use internal employment processes to remedy or explore a personal dispute or a complaint in relation to her non-employment issues with the Council. She might however be claiming that the external dispute was impacting on how she was being treated internally. Mr Cowlam emailed the Claimant on 17 October 2016 to say that he was prepared to progress her grievance," if you wish to pursue the matter." He asked for confirmation that she was prepared to run her grievance through his office and did not plan to run a parallel process with human resources. He asked her to complete the appropriate employee grievance form, which he attached. Ms Dunkley's evidence was that Mr Cowlam arranged for an appropriate assistant director to investigate the Claimant's grievance.

4.150 Meanwhile, the Claimant and Mr Tiplady had made one of a number of subject access requests, to which officers had responded. As a result the Claimant had discovered that it was Mr Cowlam who signed the application for a search warrant. On 18 October 2016 the Claimant emailed Mr Cowlam, copied to Ms Dunkley. She indicated that she had discovered that he had authorised the search warrant and said that this was a "horrendous conflict of interest," which was compounded by pretending to handle the grievance when Mr Cowlam was

instrumental in taking the search warrant. Mr Cowlam replied the same day. He wrote, "The grievance process is that your complaint will be investigated by an independent officer and heard by an appropriate Assistant Director. Other than ensuring that your grievance is investigated and heard I would not be an active participant unless required as a witness. However, if you do not wish to submit your grievance through me then I suggest you seek advice on the most appropriate alternative route."

4.151 The Claimant emailed Mr Eyles on 21 October 2016 attaching a letter of resignation. She wrote that she was tendering her resignation because it had become untenable for her to remain within the Respondent because of the behaviours she had experienced. She anticipated leaving on 20 November 2016. She did so and she started a new job on 21 November 2016. Overall, her new salary package was broadly the same as her package at the Respondent. She had in fact been applying for new jobs for some months and resigned when she accepted the offer of this role.

4.152 Following her resignation, on 6 November 2016 the Claimant emailed Ms Dunkley to ask about progress with her grievance. She asserted that there was no requirement for action from her following Mr Cowlam's ending of his involvement. She requested confirmation that the grievance would be progressed under section 9 and repeated her request for ACAS to mediate. The Claimant sent a further email on 16 November 2016 chasing a response to her letter of 7 November 2016. Ms Dunkley replied the same day. She said that she had replied last week to say that Mr Cowlam was reviewing the issues raised and considering the appropriate next steps. In her evidence to the Tribunal Ms Dunkley said she believed she had replied to the Claimant the previous week but she could not now find a copy of her response. Mr Barker prepared a brief for the grievance investigator. Ms O'Neill was asked to investigate. She did so and she provided a report dated 16 February 2017. The Tribunal was not taken to that in any detail.

4.153 The last detriment chronologically was **detriment fourteen**. The Claimant contended that Mr Cowlam and Ms Dunkley failed to answer her grievance. They did not hold a meeting or provide any output or report. The Tribunal found Ms Dunkley a persuasive witness. It seemed to the Tribunal that she was taking real care to ensure that although the Claimant's grievance appeared to her to relate to non-work matters, proper consideration was given to whether there were any work-related aspects to it.

4.154 There were shortcomings in the handling of the grievance. It did seem to the Tribunal that there were a number of apparent delays for which no explanation was given to the Claimant. In particular, between the Claimant's email of 20 September 2016 and her chasing email of 3 October 2016 and between 6 and 16 November 2016. Of course, this was not a straightforward situation. There were at the same time subject access requests, complaints to the chief executive, and ongoing correspondence with Mr Tiplady. That may well have accounted for some or all of the delay, but that was not said to the Claimant at the time. She was, however, told in clear terms by Mr Cowlam on 17 October 2016 that he was prepared to progress her grievance and on 18 October 2016 that the complaint would be investigated by an independent officer and heard by an appropriate

assistant director. The Tribunal considered that it was unfortunate that Mr Cowlam continued to have any involvement after he had identified the conflict of interest at the outset. It is clear from the findings of fact set out above that the conflict was promptly identified and that Mr Cowlam immediately understood and intended that independent officers should be involved. However, the Claimant did not know that and it seemed to the Tribunal that it would have been better if Mr Cowlam had immediately stepped away rather than continuing to correspond with the Claimant. Having said that, as soon as the Claimant found out about the conflict and raised it with Mr Cowlam, he provided her with a swift assurance that he would not be involved.

4.155 The Tribunal considered that the Claimant's evidence about these matters betrayed a lack of reasonableness on her part. Firstly, she said that she could not understand why it was being suggested that the matters the subject of her grievance related to a personal dispute. She said, "I don't have a personal dispute at all." She could not accept that in her emails Ms Dunkley was trying to clarify whether there was any work-related aspect to the grievance. Furthermore, she described Mr Cowlam's email of 17 October 2016 as threatening her. She said that it was the statement, "I am prepared to progress your grievance if you wish to pursue the matter." That amounted to a threat. She was not prepared to accept that this was a complex grievance and remained of the view that it should have been dealt with within the five days allowed in the grievance process. As far as Mr Cowlam's email of 18 October 2016 was concerned the Claimant did not accept that this provided an assurance that her complaint would be investigated by an independent officer. She said that it was her conclusion that Mr Cowlam would be handling the grievance. It was put to her that she could not have concluded reading the whole email that Mr Cowlam would be dealing with her grievance but she maintained that that was what she understood.

4.156 As far as detriment fourteen was concerned, therefore, the Tribunal did not accept that there was a failure to deal with the grievance at all. There were plainly delays in doing so, which were outside the timeframe provided for in the Respondent's procedure. However, in all of the circumstances, and given the scope of the complaints and the surrounding circumstances, it seemed to the Tribunal that those timescales were unrealistic. The real difficulty so far as delay was concerned was the failure to communicate clearly with the Claimant about what was happening. The Tribunal accepted that delays in handling a grievance without an explanation for those delays being provided amounted to a detriment in employment. That was the only part of the handling of the grievance that the Tribunal considered amounted to a detriment. So far as Mr Cowlam's involvement was concerned, it was clear internally that he was not going to handle the grievance. The Claimant did not know that, and when she found out about the conflict of interest she raised it and was provided with an assurance two hours later that Mr Cowlam would not be involved. Her assertion that he was going to be handling the grievance was not a reasonable one in view of the email he wrote. No reasonable worker would take the view that this was to their disadvantage or detriment.

4.157 However, the Tribunal was entirely satisfied that the delays in processing the grievance had nothing to do with any protected disclosure or alleged protected

disclosure. It was put to Ms Dunkley that she had subjected the Claimant to a detriment by failing to answer her grievance and she said, "Categorically not. I did all I could to find out what the complaint was and to resolve it." It was also put to her that the grievance was handled as it was, in particular that its progress was delayed, because the Claimant had made protected disclosures. Ms Dunkley did not accept that. There was no evidence that Ms Dunkley was aware of protected disclosures or alleged protected disclosures one to seven. She explained in her evidence that the Claimant's name was new to her when she received her grievance on 16 September 2016. The only protected disclosure of which she was aware was plainly the grievance itself, protected disclosure eight. However, the Tribunal has accepted her evidence that she did all she could to identify whether there were employment-related issues and to see that they were resolved. We were quite satisfied that there was no attempt to conceal the subject matter of the grievances, done because the Claimant had raised those grievances in what also amounted to a protected disclosure.

Unfair dismissal

4.158 That brings us to the unfair dismissal complaints. The first issue in both the ordinary and automatically unfair dismissal complaints is whether the Claimant was constructively dismissed, and the first question is whether the Respondent was in fundamental breach of the implied term of mutual trust and confidence. The matters relied on by the Claimant were:

- The approval of an unlawful search warrant application on 24 August 2016;
- the execution of the search warrant on 14 September 2016;
- the letter from Mr de Tute on 19 September 2016;
- the letter on 5 October 2016 informing her that a decision had been taken that it was not expedient to pursue enforcement action;
- frustration of the grievance procedure between 16 September 2016 and 18 October 2016 by failure to ensure an investigation in a reasonable timescale; and
- deliberate non-compliance with the section 9.1 of the grievance procedure requiring the allocation of an independent strategic director and deliberate concealment of the strategic director's involvement in the search warrant.

4.159 To a very substantial extent the Tribunal has dealt with those matters above. The Tribunal found that the Respondent was not in breach of the implied term of mutual trust and confidence. It did not behave in such a way as to damage or seriously destroy the relationship between employer and employee, nor did it, by its conduct, evince an intention no longer to be bound by the contract of employment. In short:

4.159.1 It applied for a search warrant because it believed that was necessary to ascertain whether there was a breach of building control in respect of the outbuilding. That was reasonable and was not unlawful. The warrant was granted by the magistrates.

4.159.2 It was appropriate to execute the warrant. There were two shortcomings – the failure to post a copy of the warrant while at the property, and the failure to grapple properly with what the Code of

Practice said about giving notice. Those were shortcomings in the carrying out of their functions relating to Number Three by council officers, not shortcomings in the employment relationship. Further, the failure to post the warrant was an obvious oversight. The officers had it, and were well aware that they had been filmed executing it. It was delivered that day. There is no obligation to give notice. There may have been a failure to grapple with the detail of the Code of Practice, but the Claimant knew that a warrant was to be obtained and anticipated its execution. The officers did not need to access the house, only the rear garden. That failure must be viewed in that context. This was not behaviour calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between employer and employee.

4.159.3 Mr de Tute's letter was reasonable and appropriate. The Respondent had genuinely formed the view that the outbuilding was in breach of planning control and the next step was to send this standard letter to the householders requiring them to demonstrate that planning permission was not required, apply for it or remove the structure. This had nothing to do with the Claimant's employment. In any event, it was not behaviour calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between employer and employee. It was simply the Council carrying out its functions in respect of planning enforcement.

4.159.4 The letter of 5 October 2016 was also reasonable and appropriate. Having been able to reach a view as to whether the outbuilding was in breach of building control, the Respondent was in a position to decide that enforcement action was not expedient. That was in the Claimant's interest and was requested by her planning consultant, Mr Thompson. This had nothing to do with the Claimant's employment. In any event, it was not behaviour calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between employer and employee. It was simply the Council carrying out its functions in respect of planning enforcement.

4.159.5 The grievance procedure was not frustrated, nor was there deliberate non-compliance with section 9.1 or deliberate concealment of Mr Cowlam's involvement in the search warrant. There was some delay prior to 21 October 2016. That may well have been necessary because of the difficulty in establishing whether there was a work-related aspect to the grievance, and because of the complex background and other, ongoing complaints and issues. The grievance was not frustrated – indeed it has subsequently been investigated. However, the reasons for the delay were not clearly communicated to the Claimant. Although Mr Cowlam did not intend to play any substantive role in dealing with the grievance, the Claimant did not know that and was rightly concerned when she discovered that Mr Cowlam was involved in the events about which she was complaining. However, Mr Cowlam gave a clear assurance that he would not be substantively involved within two hours of that concern being raised. While the Tribunal could see that these were matters that might undermine trust and confidence to some extent, they plainly did not by

themselves reach the high threshold required for a fundamental breach of the implied term of mutual trust and confidence.

4.160 It follows that there was no fundamental breach of contract and the Claimant's constructive dismissal complaint therefore cannot succeed.

Employment Judge Davies

Date: ***30 November 2017***