EMPLOYMENT TRIBUNALS

Claimant: **Mrs L Amidon**

Respondent: **Tavistock and Portman NHS Trust**

Heard at: Central London Employment Tribunal
On: 13, 14, 15, 16, 17, 20, 21, 22, 23, 24 May 2024 and in chambers on 27, 28, 29 and 30 August 2024

Before: Employment Judge Keogh, Mr D Shaw, Ms D Keyms

Representation
Claimant: Ms E Walker (Csl)
Respondent: Mr T Cordery (Csl)

JUDGMENT

1. The claimant's complaints of detriments on grounds of making a protected disclosure under section 47B Employment Rights Act 1996 are unsuccessful and are dismissed;

2. The claimant's complaint of direct race discrimination under section 13 Equality Act 2010 is unsuccessful and is dismissed;

3. The claimant's complaint of harassment related to race under section 13 Equality Act 2010 is unsuccessful and is dismissed.

REASONS

Introduction

1. This case is about the way in which the claimant says she was treated after raising safeguarding concerns in the course of her work as a Child and Adolescent Psychotherapist for the respondent's Complex Assessment Team ('CAT'). The claimant brings complaints of detriment following protected disclosures, direct race discrimination and harassment related to race.

2. We received a bundle of documents (to which two supplemental bundles were added) and witness statements from the claimant, Dr Daniel McQueen and Ms Sonia Appleby (former Consultant Social Worker and Head of Child Safeguarding for the respondent) for the claimant, and Ms Clare Scott, Mr Hector Bayayi, Ms Helen Farrington, Ms Patricia Pemberton (Clinical Service Manager and line manager to the claimant) and Ms Sally Hodges (Chief Clinical Operating Officer) for the respondent. We heard oral evidence from all witnesses. All attended the Tribunal, except for Ms Farrington whom it was agreed would appear by video.

3. We received opening notes and closing submissions from both Counsel, and a written reply to submissions from both Counsel, there having been insufficient time during the hearing for an oral reply.

4. A cypher was used during the hearing in relation to families and patients under assessment by CAT. The initials used have been further shortened in this judgment where possible to reduce any possibility of identification.

5. We considered all the written and oral evidence and the documentary evidence in the bundle to which we were referred and the submissions made to us. If we do not mention a particular fact or dispute in this judgment, it does not mean we have not taken it into account, only that it is not material to our conclusions. All our findings of fact are made on the balance of probabilities. Our decision was unanimous.

Applications

6. A large number of applications were made just prior to and during the course of the hearing, which took a substantial proportion of the hearing time and reduced the time available for evidence, submissions and the Tribunal's deliberations, resulting in the ten-day hearing going part heard. The reasons for each decision made during the hearing were given to the parties orally. In brief summary:

7. Prior to the hearing an application was made for a witness summons to be made in respect of Ms Appleby. This had already been granted prior to the hearing, although the respondent had not become aware of this.

8. Prior to the hearing an application was made by the respondent to amend its response. The Grounds of Response initially stated, "It is accepted that the claimant has made some protected disclosures." The respondent wished to resile from that and challenge all the alleged protected disclosures. This application was granted. Although the concession had been made in the response and amended response, and the application made late, there was no prejudice to the claimant. The respondent had never identified which disclosures it conceded were admitted, so the claimant was already in a position where she was expected to evidence each of them. The claimant had been told the respondent's position well before the hearing in December 2023. There would be significant prejudice

to the respondent in forcing it to identify which disclosures it conceded were protected when its position was that, as a matter of law, none of them were.

9. The claimant applied to adduce late witness evidence from Ms J Shuttleworth, who was said to have accompanied the claimant to a meeting with Mr Bayayi in 2023. The Tribunal rejected that application as the evidence which might be provided was not sufficiently relevant to the issue the Tribunal had to determine (namely Mr Bayayi's conduct in a meeting in 2022, at which Ms Shuttleworth was not present). No good explanation had been provided as to why the evidence was not produced on time, and there was potential prejudice to the respondent and an impact on Tribunal resources in that the timetable would be impacted and further evidence in response might be required.

10. The claimant applied for various documents to be added to the bundle. The Tribunal permitted policy documents to be added (though they were not in the end material to the issues to be determined) but did not permit the introduction of documents relating to a redundancy exercise, which Counsel for the claimant conceded were not relevant to the issues to be determined, or documents relating to a racism seminar which was also not relevant to the issues.

11. On the third day of the hearing the Tribunal's attention was drawn to an application made by the organisation Tribunal Tweets prior to the hearing which had not been considered. At the same time the Tribunal considered whether a Rule 50 order was necessary to prevent the disclosure of the name of any patient or client of the Respondent, the Respondent's Complex Assessment Team, the Camden Children and Adult Mental Health Service or the Camden Local Authority and their families. The respondent sought a rule 50 order in relation to other identifiable individuals invading social workers. It was determined that there was a principle of open justice to be applied. There was a competing interest however in the protection of the sensitive personal information pertaining to patients and clients of the respondent and local authority and their families. The Tribunal did not agree social workers should fall under that blanket and did not understand cyphers to have been used in relation to them. Cyphers would continue to be used throughout the hearing however a Rule 50 order was put in place (published separately to this judgment) to prevent the inadvertent disclosure of such information to the public. It was ordered that if reporters wished to report they would need to attend the hearing in person, both to keep control of warnings to be given and to minimise disruption to the proceedings.

12. On the fourth day of the hearing the respondent had received the witness statement of Ms Appleby and raised concerns in relation to the level of detail in it, and whether that gave rise to a risk of identification. The Tribunal considered it was in the interests of justice that Ms Appleby's witness statement be adduced in full, as it was directly relevant to the content of the oral disclosures alleged to have been made. The Respondent was invited to make a further Rule 50 application if it remained concerned, but in the event did not do so.

13. On the fifth day of the hearing Mr Bayayi started to give evidence. It transpired during the course of cross examination that Mr Bayayi's statement, which referred to alleged protected disclosures by reference to their lettering in the claim form, had not in fact seen the claim form prior to the finalisation of his statement. He had met with Counsel (not Mr Cordery) who had then drafted the statement and sent it for his review. He only received documents on his return from holiday, well after witness statement exchange, and did not have any correspondence in front of him when discussing his witness statement. The Tribunal halted cross examination and ordered that Mr Bayayi be given a copy of the bundle to check whether his statement was correct with reference to the actual documents, bearing in mind that the claimant was likely to make submissions in relation to his credibility having confirmed that his statement was true. He was ordered to return to the Tribunal the following day of the hearing (which was on Monday) with any revisions to his statement in a typed document. The claimant would then be given time to consider whether additional cross examination was required or whether there was any other application they wished to make. The timetable was further adjusted to accommodate this, and Mr Bayayi remained under oath.

14. On the sixth day of the hearing Mr Bayayi produced a wholly revised witness statement with an additional 17 pages of evidence. A debate arose between the parties because the respondent's representatives had sent Mr Bayayi a copy of his witness statement saying 'attached editable copy of witness statement'.

15. After lunch, having had an opportunity to consider the statement, the claimant made an application to strike out the whole of the respondent's response under rule 37 on the basis that the respondent's conduct of the proceedings had been unreasonable, Mr Bayayi having effectively produced a new statement after listening to the evidence of other witnesses. The respondent objected, asserting that the application was disproportionate and that at most the revisions to Mr Bayayi's statement went to his credibility, and that a fair trial remained possible. Mr Bayayi had not had the benefit of legal advice or support in attempting to comply with the Tribunal's order. The Tribunal agreed with the respondent that it would be a matter for the Tribunal to assess Mr Bayayi's credibility. If the claimant did not consider Mr Bayayi had approached the exercise in good faith questions could be put about that. Mr Bayayi would ordinarily have been permitted to listen to the evidence of other witnesses before being cross examined and may have given the same detail in cross examination. A fair trial remained possible. Prejudice to the claimant in needing to prepare additional cross examination could be reduced by amendments to the timetable. The Tribunal did not consider that the conduct of the respondent's representatives in sending an editable version of the witness statement had been unreasonable.

16. On the seventh day of the hearing the respondent applied to be able to contact Mr Bayayi (who remained under oath) to offer him support in light of

press coverage of the case. This was refused on the basis that the article concerned was squarely about the claim and Mr Bayayi's evidence and it would be difficult to separate that from purely pastoral discussions.

17. On the eighth day of the hearing cross examination of Mr Bayayi resumed. It transpired that over the weekend Mr Bayayi had reviewed both the bundle and email correspondence which had not yet been disclosed. Claimant's Counsel indicated she would make a second strike out application. Mr Bayayi indicated much of the correspondence sent to him was privileged. He was ordered to disclose to Counsel on both sides the emails he was referring to and they could be checked at that point for inadvertent disclosure of privileged information. Mr Bayayi duly produced some emails, however the claimant was not satisfied that there had been complete disclosure. The respondent volunteered to conduct a further search. The Tribunal ordered that the hearing should proceed in the meantime. The emails found were potentially relevant but appeared peripheral to the issues to be determined and it was in the interests of justice that the hearing be concluded as expeditiously as possible. The search took the remainder of the ninth day of the hearing and no further disclosure was found. Mr Bayayi's evidence was eventually concluded on the tenth day of the hearing.

The Issues

18. The issues were clarified at the outset of the hearing, with minor amendments during the hearing. The final list of issues for the Tribunal to consider in relation to liability was as follows (renumbered for convenience):

Abbreviations:

Particulars of Claim: PoC
Grounds of Resistance GoR
Amended Grounds of Resistance: AGOR

The Claimant's claim

1. *The Claimant makes the following claims:*

    1.1 *Protected disclosure detriment (s.47B ERA).*
    1.2 *Direct race discrimination.*
    1.3 *Harassment on the grounds of race.*

Protected disclosures

2. *Did the C make one or more qualifying disclosures as defined in section 43B ERA 1996?*

    2.1 What did the C say or write? When? To whom? C relies on the disclosures as itemized at paragraph 90(a) to (r) of her PoC:

PROTECTED DISCLOSURE 1 (PoC §90b): 19/7/21: Zoom call between C, DM and SA during which C reports child safeguarding concerns regarding 5 families (WS/C para 20-36 and [1359])

PROTECTED DISCLOSURE 2 (PoC §90c): 28/09/21: C and DM meet with SA and PP to raise: 1) historical safeguarding within R which it had failed to sufficiently address; 2) threats of retaliation by social workers if the CAT did not give the outcome the LA wanted; and 3) historical and current allegations against CAT by social workers / LA (see WS/C para 40-43 [1371])

PROTECTED DISCLOSURE 3 (PoC §90d): 8/11/21: C and DM meet with SA by Zoom and raise further safeguarding concerns, particularly in relation to the SSSB case (see WS/C para 46 and [1377])

PROTECTED DISCLOSURE 4 (PoC §90e): 14/12/21: Email from DM (signed off by DM and C) to SA, copied to PP in which further concerns are raised about the LA's social work team, unjust outcome in a case and avoidance of / loss of focus on best interest outcomes (see WS/C para 49 and [1380])

PROTECTED DISCLOSURE 5 (PoC §90f): 4/1/22: DM email to SA (signed off by DM and C) reporting concerns about the SSSB case (see WS/C para 53 and [1400])

PROTECTED DISCLOSURE 6 (PoC §90a & g): 11/1/22: Email from DM (signed off by DM and C) to PP reporting concerns about a lack of effective safeguarding response and structures at the LA and R (see WS/C para 54 and [1409])

PROTECTED DISCLOSURE 7 (PoC §90h): 7/3/22: Email from C reports concerns about the [E] *family and general poor unprofessional conduct of the social work which was leading to harms (WS/C para 58 and [1467])*

PROTECTED DISCLOSURE 8 (PoC §90i): 22/3/22: Email from DM (signed off by DM and C) to KMi, reporting concerns that the KE family had been "set up to fail" by social workers (WS/C para 60 and [1476])

PROTECTED DISCLOSURE 9 (PoC §90j): 25/4/22: Email from DM (signed off by DM and C) to CM and ROG at Camden, copied to PP and others, asking questions about Ofsted (WS/DM para 57 [1522])

PROTECTED DISCLOSURE 10 (PoC §90l): 17-19/5/22: C raised concerns by emails on 17-19/5/22 with CM relating to developments of the safeguarding concerns and related matters [988-989]

PROTECTED DISCLOSURE 11 (PoC §90m): 1/6/22: Email from DM (signed off by DM and C) informing CM and KMi of a "brief summary of concerns" (WS/C para 90 and [1585])

PROTECTED DISCLOSURE 12 (PoC §90n): 6/6/22: Email from DM (signed off by DM and C) raising concerns about the [I] *case with PP (WS/C para 92 and [1593])*

PROTECTED DISCLOSURE 13 (PoC §90o): 25/7/22: Email from DM (signed off by DM and C) informing SS, PP and CM that in the ED case the LA had not included the CAT report in the court bundle (WS/C para 100 and [1606])

PROTECTED DISCLOSURE 14 (PoC §90p): 27/7/22: Email from DM (signed off by DM and C) to JL, SH and KMo, setting out a summary of concerns (WS/C para 111 and [1637])

PROTECTED DISCLOSURE 15 (PoC §90q): 5/8/22: Email from C to SH setting out further and similar concerns as Disclosure 14 ([507])

PROTECTED DISCLOSURE 16: Email from DM to CM with "ongoing child protection concerns about three families" (WS/C para 113 and [1193])

2.2 In respect of each alleged disclosure:

- *2.2.1 Did C disclose information?*
- *2.2.2 Did C believe the disclosure of information was in the public interest?*
- *2.2.3 Was that belief reasonable?*
- *2.2.4 Did C believe it tended to show that:*
  - *2.2.4.1 A miscarriage of justice had occurred, was occurring or was likely to occur;*
  - *2.2.4.2 The health and safety of any individual had been, was being or was likely to be endangered;*
- *2.2.5 Was that belief reasonable?*

2.3 If the C made a qualifying disclosure, was it made:

- *2.3.1 To the C's employer?*
- *2.3.2 To an 'other responsible person' within the meaning of section 43C of the ERA 1996?*
- *2.3.3 To any 'prescribed person' in accordance with section 43F of the ERA 1996?*

2.4 If so, was it a protected disclosure?

Detriments

3. *Did R do the things as pleaded at paragraphs 97:*

3.1 ***DETRIMENT 1 (PoC §97a)**: 7/4/22: Pausing of referrals from LA to CAT / failing to lift the pause on referrals (**WS/C para 61- 64, 70** and **[1493])** (Pausing of Referral / Failing to Lift Pause detriment)*

3.2 ***DETRIMENT 11**: Placing CAT under a clandestine review (Clandestine Review detriment)*

3.3 *Obfuscate the route to raising safeguarding concerns within the R by:*

(a) *DETRIMENT 2 (PoC §97c.i): 11/4/22: Zoom meeting between KMi, PP, C and DM during which KMi advised C and DM to raise remaining safeguarding concerns "outside the Trust" if they had any (WS/C para 74 and [1501 - 1502]);*

(b) *DETRIMENT 3 (PoC §97c.ii): 12/4/22: PP advising C to report safeguarding concerns to RB (WS/C para 129 and [1504]);*

(c) *DETRIMENT 4 (PoC §97c.iii): 28/4/22: PP confirming that there would be a written report on the investigation into C's concerns, but never providing such a report (WS/C para 130 and [1517]);*

(d) *DETRIMENT 7 (PoC §97c.iv): 5/8/22: JL advising C that he couldn't take up an investigation into her concerns as they were "operational" [562];*

(e) *DETRIMENT 10A (PoC §97d.i): 12/9/22: Dr McKenna saying she would 'find out' where the investigation is at*

(together, the Obfuscation detriments)

3.4 *Refusing to investigate the C and CAT's safeguarding concerns or delaying investigation of concerns about various families by:*

(a) *DETRIMENT 8 (PoC §97d.i): 10/8/22: HF advising C that she couldn't investigate (WS/C para 143 and [1664]);*

(b) *DETRIMENT 12 (PoC §97d.ii): Failure or delay by RB, CM and KMi to produce a report into C's concerns*

(together, the Failure / delay to investigate concerns detriments)

3.5 *Subjecting the C to disciplinary investigation by:*

(a) *DETRIMENT 5 (PoC §97e.i, ii. & iv): June 2022: R restarting the investigation into C notwithstanding its closure in October 2021 and: a) taking an inordinate time to resolve the investigation (to ensure that the "process is the punishment"; and b) adopting a disproportionate approach to the investigation given the low level nature of the allegation*

(b) *DETRIMENT 6 (PoC §97e.ii & v & §99): 26/7/22: HB becoming hostile, aggressive and shouting at C in the investigation meeting and asking "what do you think racism is" on three occasions (WS/C para 103 and [1632])*

(c) *DETRIMENT 9 (PoC §97e.vi): 12/9/22: HB asking for further details about* [S] *which amounted to a fishing expedition designed to cause anxiety to C (WS/C para 160)*

(d) *DETRIMENT 10 (PoC §97e.vi): 21/12/22: HB failing to ensure the diarized meeting on this day went ahead, thereby extending the investigation into 2023 (WS/C para 161)*

(together, Disciplinary investigation detriments)

4. *By doing any of the above things, did R subject the C to detriment?*

Reason Why

5. *Did the Respondent subject the Claimant to any of the alleged detriments on the grounds of (ie materially influenced by) the Claimant's protected disclosures (having regard to the burden on the Respondent under s.48(2) ERA to show the ground on which any act or deliberate failure to act was done)? The C avers that it was the protected disclosures as a group which caused the detriments.*

5.1 *In relation to this, has the Respondent shown that the acts or deliberate failures to act were on any of the grounds set out in paragraph 12, 13 and 16 of the AgoR:*

(a) *Pausing of referrals / failing to lift the pause detriments: these detriments are for reasons outside of the R's control, the R is not in a position to demand referrals from Camden Local Authority;*

(b) *Clandestine review detriments: the R pleads this allegation is insufficiently particularised and cannot be sensibly responded to;*

(c) *Obfuscation detriments and Failure / delay to investigate concerns detriments: R pleads they do not amount to detriments in response to protected disclosures and are genuine attempts by the R to ensure that matters raised are managed in an appropriate way;*

(d) *Disciplinary investigation detriments: R pleads they are not detriments, not previously formally investigated, not low level, investigating concerns not intentionally protracted, pressure on resources, inability to compel attendance by third parties.*

5.2 *If any act or deliberate failure to act was on any of the grounds set out in paragraph 5 above, did it fall within scope of s.47B ERA?*

Vicarious liability

6. *The Respondent accepts that it is vicariously liable if the Claimant was subjected by any of the Respondent's employees to any of the alleged detriments by reason of protected disclosures.*

Limitation (whistleblowing detriments)

7. *Were the complaints presented outside the primary time limit:*

   7.1 *In relation to the above matters, were the claims in time by reason of being part of a continuing act or state of affairs or a series of similar acts of failures to act?*

   7.2 *If any of the above claims were otherwise out of time, was it reasonably practicable to bring the claims in time and if so were they presented within such further time as the Tribunal considers reasonable?*

Direct Discrimination (race)

8. *Was the C subject to race discrimination, in that she was treated less favourably by:*

   8.1 *being subjected to aggressive questioning by Dr Bayayi asking "what do you think racism is" three times.*

   8.2 *The C relies on a hypothetical black member of the CAT.*

   8.3 *The R denies that the alleged treatment was less favourable or that C has been subjected to race discrimination.*

Harassment (race)

9. *Was the C subject to race harassment by:*

   9.1 being subject to aggressive questioning by Dr Bayayi asking "what do you think racism is" three times

10. *If so, was that unwanted conduct?*

11. *Did it relate to race?*

12. *Did the conduct have the purpose of violating the C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the C?*

13. *If not, did it have that effect? The tribunal will take into account C's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.*

14. *The R denies the C has been subjected to race harassment.*

Limitation (discrimination / harassment)

15. *Were the complaints presented outside the primary time limit:*

    15.1 If the complaints were otherwise out of time, is it just and equitable for the tribunal to extend time.

19. The Tribunal notes that while the agreed List of Issues includes an issue in relation to s43F Employment Rights Act 1996 this is not in fact pleaded, and was not pursued in evidence or the claimant's submissions. The Tribunal has not therefore considered it. Further, in the claimant's closing submissions, reference was made for the first time to section 43H. This is not pleaded and not in the agreed List of Issues, therefore the Tribunal has not considered it.

The Facts

The Tribunal's approach

20. In considering our findings of fact it was necessary to record a number of concerns raised against the claimant and Dr McQueen, and a number of concerns raised by the claimant and Dr McQueen about social workers and other staff associated with Camden Local Authority. The Tribunal makes it clear that it has not been necessary to make findings about the veracity of such concerns either way. In particular, nothing in this judgment should be taken as an indication of wrongdoing by Dr McQueen (who gave evidence on the claimant's behalf, but about whom we are not asked to make any findings of fact), or by the staff of Camden Local Authority (who were not a party to the proceedings and did not present evidence).

Background

21. The respondent is an NHS Foundation Trust which provides a range of mental health services for children, young people, families and adults in London. The claimant was employed by the respondent from 13 July 2015 initial in the Multi Agency Liaison Team and from one year later as a Consultant Child and Adolescent Therapist and Team Manager of the respondent's Complex Assessment Team (*"CAT"*), when the service was split into CAT and the Whole Family Service.

22. CAT comprised of two clinicians, the claimant and Dr McQueen (a Consultant Psychiatrist who is a Consultant Child and Adolescent Psychiatrist, Consultant Adult Psychiatrist, and Medical Psychotherapist), undertaking assessments of children and their families as part of the larger Camden CAMHS service. Camden Local Authority, which is a separate body, instructed CAT as expert clinicians in specific cases, and the reports produced were regularly used in legal proceedings, where the claimant and Dr McQueen would appear as expert witnesses. This was the only work CAT undertook.

Events from April 2021 to 16 July 2021

23. In around April 2021 an incident occurred when the claimant was dealing with a case involving Family F while working from home and discussed this with her daughter. Her daughter thought she knew the person being discussed and showed the claimant a Facebook page. The claimant informed the social worker in the case that she had done this. During the same conversation there was a dispute between the claimant and the social worker in relation to the local authority's position on what the court should be ordering.

24. On 16 June 2021 an issue was raised by email to the local authority about CAT by the same family's solicitor:

"Thankfully [a doctor] *was able to meet with mother yesterday. A further appointment on Zoom has been arranged for 22nd June.*

You may recall that we were originally told that the appointments for the parenting assessment would be in person but in fact all took place remotely. My client instructs me that she found the meetings with CAT very difficult, partly because the meetings were all remote.

I am instructed that my client found the CAT professionals very abrasive and difficult. My client is concerned that she was treated unprofessionally and that she felt her treatment by CAT amounted to racism.

My client is also concerned that the CAT professionals provided personal information about her to her sister in law…

My client felt that she was treated completely differently by [the doctor] *compared to what she has experienced with the professionals at CAT."*

25. This was forwarded by the local authority's principal lawyer, Ms Alexander, to Ms Pemberton on 25 June 2021:

"Please find below a recent email from the solicitor for mother in the F case. It appears that mother perceives the approach by the CAT as being racist, and she came to this conclusion after being assessed by another expert who is likely to come to a similar negative conclusion as the CAT.

In discussing her complaint with the social worker the mother said that she felt that she was immediately judged as a young single black mother, with children of different fathers,

There is a hearing on this case in one week, and it is likely that mother's representative will raise with the judge to justify another report is commissioned.

I have instructed my lawyer to write back to the solicitor to state that this complaint will sent to yourself and there will be an investigation. Query does the Tavistock have a complaint procedure that you could send to me so that we can send to the solicitors?"

26. Ms Pemberton forwarded the email to the complaints team.

27. On 16 July 2021 Ms Alexander wrote a further email to Ms Pemberton, copying in Ms Rashida Baig, Director of Children's Prevention, Family Help and Safeguarding for the local authority in relation to Family F:

" We have now real problems on the CAT assessment of for Ms F which requires your immediate intervention.

Previously in this case, mother's solicitor made an informal complaint re the CAT assessment as mother felt that CAT had made up their mind on her before the assessment started on the basis that she had five children with different fathers, they were unprofessional in their manner to her and they were racist. Her solicitor is due to make a formal complaint regarding the CAT team. Currently mother is in court applying for an independent assessment.

Today two things have come to light which exacerbates the situation and supports mother's assertions these are:

1.From the Senior Practitioner: We have also had concerns raised by school, who stated that the staff interviewed felt uncomfortable about this. They too have strong concerns about Mum's parenting capacity and the children's wellbeing, but they felt that CAT had made up their mind from the beginning. Unfortunately, Lynne has shared with the social worker and also school that her daughter used to go to school with Ms F, and that from this she has accessed Ms F 's facebook page via her daughters friend who is linked to Ms F on facebook. She made comments about the way Ms F dresses and so on in her
facebook pics. Unfortunately this has made the social worker and school staff feel uncomfortable and concerned, particularly as Ms F is raising concerns about how the assessment was conducted

2. the Guardian's Legal rep stated in her summary before the court this morning: The Guardian believes that the reading of the CAT assessment in particular will be very difficult for [family member]*, given not only its contents but the extremely critical tone of the assessment. She is aware that* [family member] *has had an extremely difficult and traumatic early life (which is set out in the assessments) – whilst, of course, the focus must be on making decisions which are in the children's interests, she would have hoped for a less condemnatory style of report. Those representing* [family member] *have said prior to receipt of the assessment that my client found the CAT professionals very abrasive and difficult. My client is concerned that she was treated unprofessionally and that she felt her treatment by CAT amounted to racism..*

Please could you instigate this matter, because on Lynne's admission she had breached mother's confidentiality and acting unprofessionally in respect of mother's Facebook. This does not require a formal complaint...

Rashida,

We have a duty of candour to inform the court and the parties that we have concerns regarding this assessment and we need to withdraw it and agree to another assessment being undertaken."

Alleged Protected Disclosure 1 – 19 July 2021

28. On 19 July 2021, after a training session had been held by Ms Appleby the previous day, a zoom call took place between the claimant, Dr McQueen and Ms Appleby in which the claimant says she raised concerns about five different families (though it appears to have been six). We accept the claimant's account of what was said during this meeting, namely that she and Dr McQueen raised concerns about each family, describing the family situations and potential dangers to family members, particularly the children, and also their concerns in relation to the interventions by the local authority's social workers and the Whole Family Service. In summary:

    (i) In relation to Family OB, as discussed in the claimant's witness statement, the claimant asserted that the social worker was partisan and had overidentified with the mother's views and wishes and had ignored the children's voices. We further find that as discussed in cross examination, the claimant expressed concern about, a child having had avoidable, permanent brain damage as a result of poor care by the mother, as told to her by a paediatrician. This detail is supported by Ms Appleby, whose evidence on the point was not challenged.

    (ii) In relation to Family B, as stated in the claimant's witness statement concerns were raised that they were concerned that the social worker had over disclosed to the mother about herself, telling her that she also had grown up in care and felt that the conduct of the social worker fell below minimal professional standards in withholding important evidence necessary for the Court to make a balanced decision. We also find that the claimant mentioned further detail in relation to Family B's situation, including giving an example of one of the children encouraging their siblings to jump out of a window. This detail is not mentioned in the witness statement but was referred to in cross examination and is supported by unchallenged evidence given by Ms Appleby.

    (iii) In relation to Family KH, the claimant and Dr McQueen described the family circumstances of a very violent father and a mother with personality disorder. Concerns were raised that paperwork which documented emotional abuse had not been escalated for over a year and that social workers had failed to understand the level of abuse and urgency.

    (iv) In relation to Family F, the claimant asserted that the social worker had not obtained or given CAT important background information when requested and was uncooperative and in her view it was

obvious the mother's case was dreadful, but that the social worker had minimised concerns and said they wanted to help the mother.

(v) In relation to Family KE, the claimant and Dr McQueen explained that social workers appeared to have completely taken against the mother for invalid reasons, and the relationship between mother and social work team had broken down. In cross examination the claimant added that she had discussed the family situation, including the detail that the mother had a back condition and had difficulty getting the children up the stairs to her third floor flat, but that the local authority were considering taking the children into care. There was also a dispute between the mother and the local authority in relation to provision for the children, and the Judge in the case asked CAT to provide an addendum report. There had been a meeting with a former medical director still working for the Whole Family Service where CAT had been told they were wrong. Although these details are not mentioned in Ms Appelby's statement we find that this context is likely to have been given by the claimant, consistent with the type of detail given in relation to other families.

(vi) In relation to Family S, the claimant and Dr McQueen discussed removal of children to two different foster placements due to neglect of the home environment in circumstances where the mother had issues exacerbated by isolation during lockdown. Various circumstances were having profound consequences on the children, and in CAT's view the neglect of the home could have been avoided with appropriate CAMHS help. They explained to Ms Appleby that it was clear Camden Social Care wanted the children removed from the mother, and they also expressed their views that it was wrong that another child had previously been taken to live with the father without a court order.

Events from 22 July 2021 to 21 September 2021

29. On 22 July 2021 the claimant had a meeting with Ms Pemberton to discuss the concerns raised in relation to Family F. This is summarised in an email to her manager, Dr Liz Searle and Dr Rachel James, Clinical Service Director for the respondent, on the same day:

"I have just met with Lynne. We had arranged the meeting because she has been saying how unhappy and stressed she has been, not only due to the type of work they do in CAT but also some life issues. I felt I had to tell her something about the newest complaint ie that there is more information from the school and social worker but that we do not have the details yet. I did mention that it stemmed around Lynne breaching information with them. I thought she needed to know as this would impact on the decision, she wanted to make about her own future given her current feelings of unhappiness.

She wasn't sure whether she wanted to go off as sick or to resign, but eventually has come down to the decision to resign.

I need to contact HR as I want to check that it is resignation and not retirement as she said she retired in 2011. If she resigns this will mean she will complete the current assessment and end her employment in October. She has already spoken to Dan about her intentions.

I think she should not go to the meeting on the 2nd Aug regarding the case where the complaint is being made and Dan should be able to manage this. If needed I can attend with him."

30. The claimant's recollection in cross examination was that she had resigned in August 2021, however she was not sure about the dates and we find that the contemporaneous email shows that she resigned on 22 July 2021 in relation to the concerns raised and her mental state as a result of this. At this point she was receiving treatment from her GP. However, Ms Pemberton persuaded the claimant not to resign and despite having written a resignation letter she agreed she would not resign at that point and the resignation was withdrawn.

31. On 23 July 2021 an email was sent to Ms Alexander by the Head Teacher of the school in the Family F case, raising concerns in relation to the discussion between the claimant and her daughter and that the assessors had information from sources which were not through the professional network. She and other staff spoken to felt that some of the things shared about the children of Family F were taken out of context and assumptions made. This email was forwarded to Ms Pemberton on 28 September 2021.

32. On 25 July 2021 Ms Pemberton emailed Dr Searle in relation to CAT:

"I have had many discussions with Lynne. She is confused and uncertain what to do about her future. She feels stressed and the toll of the work due to difficult interactions with social workers, the impact of COVID both at work and personally, some ongoing issues between her and Dan, but also the impact of constantly completing complex assessments.

I have copied you into emails to Camden and Lynne and Dan with what I see are the immediate actions.

We will then need to think about the ongoing systemic difficulties for a team such as CAT."

33. The remainder of the email discussed the pattern of work done by CAT and a possible reorganisation of the team in the future to add more clinicians.

34. On 23 July 2021 Ms Pemberton had a discussion with Ms Appleby in relation to safeguarding and CAT. She emailed Ms Appleby on 25 July 2021:

"It was an interesting conversation on Friday afternoon regarding safeguarding and The CAT team. As you rightly pointed out there are many

systemic issues which effect the team, their work which complicates situations. The CAT team as expert witnesses are privy to only what is contained in the court bundle and
regularly complain that there are omissions. As you know court work is stressful, overwhelming, and frustrating. Also working so closely with the LA who commission them/The Tavistock is complex and difficult.

I think it would be much more helpful to have a proper discussion about this with time to think. All their cases are in court with many of children already removed. They will in their reports alert the court to concerns but what they often won't have knowledge of, are details of what may have happened or reasons for decisions made.

It would be helpful to think about safeguarding and the role of an expert witness and what they do about concerns they have about how a case was managed prior to proceedings beginning ie CAT's previous treatment recommendations not being followed through, social workers appearing not to have taken onboard the concerns raised by a medic in the past, a negatively assessed carer making a comment about a social worker disclosing inappropriate information about themself, concerns about an assessment carried out by a CAMHS clinician based on reports from the LA but not having any direct information from said clinician.

There will in every single case be omissions and things which were not seen or dealt with in a way that CAT may think is inappropriate. The issue of whether all of these are reported as safeguarding concerns would be helpful to discuss as it is complex. There will be others ie the Children's Guardian and solicitors who will be having a close eye on the cases as well and poor practice I hope will be reported to the court. Perhaps that is where I am confused about responsibilities but also there is the issue of their relationship with the LA and how this can affect communication.

It would be helpful to discuss this more."

35. Ms Appleby replied:

"I will not add a great deal more but just to note the following much of which concurs with you.

I discussed matters with Lynne and Dan on Monday, 19th July. This was further to Dan inferring during a safeguarding training session that there were safeguarding concerns.

We, (Dan, Lynne and I) discussed the modelling of the CAT service and it seems that Dan and Lynne are in an impossible position: effectively assessing and reporting the work of professional colleagues within and external to the Trust compounded by their conclusions being made public within a court arena. The strains of managing these dynamics are evidently testing compounded by there being no time for them to recover from the challenge of being expert/professional witnesses, which includes the seemingly constant effect of being cross-examined in nearly all contested care proceedings.

If the above systemic difficulties were not enough, they are only a resource of two people doing back-to-back court work. You will note, there is a concern about duty of care.

As identified in our discussions, my role relates to safeguarding children and during my discussions with Dan and Lynne, they mentioned several cases of concern. You suggested I should discuss with Emma, which I will do. I also requested that you consider any cases, that meets the threshold for incident reporting. This follows on with Dan and Lynne's request that they wanted any discussions to be anchored towards learning and improving, which I completely agree.

It would be a great pity if conversations spiralled around why Dan and Lynne spoke with me rather than trying to understand their safeguarding concerns and seeking to ameliorate practice, if that is what is required.

Of course, I am happy to discuss progressing safeguarding matters and thank you so much for your email."

36. On 20 August 2021 the social worker in Family F's case wrote an email to Ms Alexander detailing her concerns in relation to the claimant's approach to the CAT assessment as regards the discussion with her daughter and viewing the Facebook page, and how the Deputy Head of the school of the individual concerned had relayed that staff members felt uncomfortable about the situation, and had requested a copy of the CAT report to ensure that it accurately depicted what the school had said. This was forwarded to Ms Pemberton on 28 September 2021.

Alleged Protected Disclosure 2 – 28 September 2021

37. On 28 September 2021 the claimant and Dr McQueen met with Ms Appelby and Ms Pemberton. We accept the claimant's evidence that the claimant and Dr McQueen complained about a number of matters including:

    (i) Social workers threatening consequences if the CAT did not provide outcome reports as the Local Authority wanted, discussing in particular the case of Family F and the social worker saying that the mother would get the CAT report thrown out of court;

    (ii) Social workers in a different case trying to discredit CAT because they were providing professional neutral reports and the social workers didn't like what they were saying. They discussed a report where the social workers had got the formulation of the case wrong blaming the parents, the Judge had agreed with CAT's recommendations and insisted the local authority explain how they had got their formulations so wrong and advised the parents to sue the local authority. The Associate Director of Camden CAHMS had chastised CAT in relation to the way the report was written;

    (iii) Some social workers were becoming increasingly reluctant to liaise with CAT, giving them information they needed for their reports and

were withholding material. The example given was the social worker in the Family F case;

(iv) A historical complaint made by Ms Alexander against Dr McQueen in 2018 and current allegations made by the local authority towards CAT, which they felt would have a knock on effect of impeding their work and endangering the safety of families.

38. Ms Appleby summarised this meeting in an email of the same day, noting the actions to be taken:

"1. Patricia will discuss the above matters with the LA AD and Dr Liz Searle;
2. Patricia will bench-mark the current service against the SSL or CAMHS Agreement;
3. Sonia will further look at the reported cases provided by Dan and Lynne and will escalate to the DN for possible discussion with the Partnership."

Events from 28 September 2021 to 29 October 2021

39. As discussed above, on the same date as the meeting with Ms Applebly and Ms Pemberton, two emails in relation to the Family F case were forwarded to Ms Pemberton by Ms Alexander.

40. On 29 September Ms Pemberton forwarded Ms Appelby's email of 28 September 2021 to her manager, Dr Searle, in preparation for a meeting the following week.

41. On 29 September and 30 September 2021 Ms Pemberton had meetings with the claimant and Dr McQueen respectively to discuss the concerns raised in relation to the Family F case. The claimant gave a fuller account in relation to what had happened with her daughter.

42. On 15 October 2021 a meeting was held between Ms Pemberton, Dr Searle, Ms Alexander and Ms Baig for the local authority to discuss CAT and the issues which had been raised about their independence. Ms Pemberton and Dr Searle reiterated that the CAT team were independent of the local authority and may have differing opinions to the social worker team. The response was that if they did, they would be treated as hostile witnesses. There were discussions on how the CAT team worked and reasons why there may be delays with assessments. A number of action points were discussed. This included that if CAT were unhappy with any information or discovered issues of concern then this should be reported factually to the legal team who would raise it with the parties. The local authority would look at budgets to see if there was funding to expand the CAT team.

43. On 18 October 2021 a meeting was held between Ms Pemberton, the claimant (and possibly Dr McQueen) and a Senior Practitioner for the local authority. This is summarised in an email from the Senior Practitioner on 20 October 2021, in which he complained about the claimant's manner and approach during the meeting and stated that he was worried that children were getting caught up in an intra-service argument between CAMHS, the

Whole Family Service and CAT. He described that in his view, there was no room for debate with either the claimant or Dr McQueen; it was essentially their way, or the local authority and CAMHS colleagues were in the wrong. He stated that in one case in particular they had got too close and involved and were certain they were right and no other course of action could be considered. He was worried this was making them ignore real risks and concerns and were pushing for a plan which would expose the children to further harm.

44. On 29 October 2021 Ms Pemberton wrote a letter to Ms Baig apologising for the incident regarding the Family F case and the discussion which took place between the claimant and her daughter. In the letter she also discusses the CAT explanation behind the concerns raised by the school.

Alleged Protected Disclosure 3 – 8 November 2021

45. On 8 November 2021 the claimant and Dr McQueen met again with Ms Appleby and discussed their concerns about the reduction in quality of decisions made by social workers. They felt there had been a reduction in contact as a result of the pandemic and meetings moving to Zoom, and were concerned that many experienced social workers had left and newly qualified social workers had arrived who were not being adequately supervised, and felt because of this children and families were coming to harm. They discussed that they were under pressure from Ms Pemberton to agree with the conclusions of the social workers and not make their own independent analysis, whereas their role was to be independent.

46. Ms Appleby emailed the claimant and Dr McQueen after the meeting, summarising the action points as follows:

"We agreed the following actions related to safeguarding concerns:

(a) to advise Patricia;
(b) Sonia will recommend the [S] *case as an internal 'learning review';*
(c) Lynne and Dan to speak jointly with Patricia regarding their on-going concerns about the [S] *case;*
(d) Lynne and Dan to meet regularly with Patricia."

Events from 6 December 2021 to 14 December 2021

47. On 6 December 2021 the claimant and Dr McQueen had a discussion with Ms Pemberton asking for a meeting with Ms Baig. This is discussed in an email the next day from Dr McQueen to Ms Appelby, signing off as 'Dan & Lynne', seeking to move things forward:

"i realise that you are probably incredibly busy at the moment with more urgent matters. However you suggested some action points and we want to keep the need for discussion of our concerns and our perception that there is no interest, acknowledgement, or structure to learning from our assessments when we come across poor practice and harm to children. We spoke to Patricia yesterday about this and suggested that we should meet

with Rashida. However I think that it is important to get the Tavistock side involved, and Caroline and Rob both asked to be involved. You had suggested a meeting with Caroline McKenna, Liz Searle, and Rachel James. Specifically to address learning from the [S] *family but with the understanding that this is one example of a wider pattern. Are you still of the opinion that this meeting should take place? Shall I leave this in your hands? Or should I contact Caroline directly as she asked to be involved?*

How do we best move this forward so that learning can take place?"

48. On 8 December 2021 concerns were raised about the CAT team by the Children's Guardian in the case of Family S:

"As you would have read in my report I did not agree with the views of CAT. I am also concerned that CAT has a limited understanding of their role as experts in care proceedings for children and there is specific court guidance that applies to all experts and Camden Legal Department should ensure that the service has this. I have decided that if I am again presented with the option of using CAT within care proceedings I will not accept them as experts until there is evidence that they are able to provide an unbiased and measured assessment. Please pass on my views to your commissioning manager as there is a need to address with CAT how best to provide a service for Camden and ensure they meet their duties as experts for the court."

49. We find that Ms Pemberton discussed this with the claimant and Dr McQueen at the time, who disagreed with the Children's Guardian's views and pointed to others being at fault.

Alleged Protected Disclosure 4 – 14 December 2021

50. On 14 December 2021 Dr McQueen emailed Ms Appleby, copying in the claimant and Ms Pemberton and signing the email 'Dan & Lynne'. The Tribunal was satisfied, having heard the evidence of Dr McQueen and the claimant, that where emails copied in the claimant and were signed 'Dan & Lynne', they had been discussed with the claimant and were sent equally on her behalf. The email was following up from Dr McQueen's email to Ms Appleby of 7 December 2021:

"Lynne and I are wondering if we should now take this up with Caroline and Liz.
We are very concerned to hear that the mother involved has agreed to care orders.

Furthermore that the CAT is said to be seen as communicating poorly with the LA or lacking impartiality. The Guardian has complained to the LA about our report said that we do not understand the role of expert witnesses, and said that she will not agree to us being instructed until we have proved to her that we are impartial, rather similar to the social worker telling us what mother's psychotherapeutic needs are. Both acting out of role. It is bizarre. We were not called to give evidence.

We are concerned that
1 this outcome is unjust
2 there not a structure for learning from our reports
3 there appears to be an active avoidance of exploring our evidence and views when we do not agree with the LA,
4 an avoidance of hearing critical views about when SW and or clinical practice suffered, or was deficient, maybe as a result of Covid, but possibly for other reasons too
5 polarisation and a closing of ranks and ad hominem argument as opposed to an exploration of why we hold different views
6 a loss of focus on the children's best interests based on an assessment of all the evidence.

Patricia has said that there should be an Appreciative Enquiry by the LA lead by someone from outside, and that she will request a meeting with Rashida.

However given our independent status we also wonder if the Tavistock needs to be involved too.

Can you let us know if you think it best if we now take this forward with Caroline, Liz, Rob etc."

Events from 14 December 2021 to 4 January 2022

51. Ms Pemberton replied to the email the same day, copying in Dr Searle and suggesting a meeting between them:

"I contacted Liz yesterday following our meeting as not only does the Trust have to respond to the complaint but I felt she needed to be updated on your feelings regarding the case and your wish for some form of investigation.

I have thought about an AI and feel it is too informal as it appears to be more of a discussion about diffs and instead it would be helpful to think about having someone who is more independent to look at things. Liz has also agreed to meet with us so that she can hear first hand your concerns and we can then plan what to do next.

I know that you are unhappy about the ending of the recent care proceeding re the [S] *case but as you are aware you would not be called to court as the mother (who had legal advice which I know you feel was not good enough) agreed with all but one of the LA's recommendations. I also know that the LA would also agree with you regarding some of you points ie the polarisation of views and how it is hard to hear what each other are saying. This clearly does need to be resolved."*

52. Ms Appleby also replied the same day stating that the situation had become so toxic the matter needed to be referred to Ms Hodges, the Chief Clinical Operating Officer. The local authority had invited the respondent to a workshop in the New Year.

53. On 17 December 2021 Ms Appleby emailed Ms Hodges setting out the history of both CAT's concerns and the local authority's complaints and the difficulties that had been created between them.

54. In December 2021 Ms Appleby left the respondent and Ms Karen Miller became the interim safeguarding lead.

55. We accept the claimant's evidence in cross examination that around this time Ms Pemberton and Ms Miller were telling CAT that any child protection / safeguarding concerns needed to be raised with the local authority because they had the legal responsibility for the children.

Alleged Protected Disclosure 5 – 4 January 2022

56. On 4 January 2022 Dr McQueen emailed Ms Appleby, signed off 'Dan & Lynne'. Although the claimant was not copied in we accept Dr McQueen's evidence that she was aware of and agreed with the content of the email. The email stated:

"Thank you for your email. We have had no reply. Lynne regularly speaks to Patricia. Patricia has said that she now thinks that an 'appreciative enquiry' will not happen but that there will be an 'independent review' although she does not know when, or who will do this, or why the GAL complained in the way she did.
Our concern grows that there is a shared institutional inertia, collective denial and an active wish to bury this whole episode, and that no one wants to promote safeguarding in this matter with the exception of you. The GALs complaint we think can be considered as scapegoating. We are in no doubt that all of the children have been and will be further harmed by removal. Mother is planning to leave London and return to Devon. She is cutting her ties. We think that there is a serious risk to mother's mental health and that this could include suicide. Which would of course further harm the children.

We have drafted the response below, but thought that it would be a good idea to contact you first.
…
Kind regards
Dan & Lynne

Thank you Sonia for your summary.
To reiterate we remain very concerned about the outcome for [S] *for the mother and children, and that significant harm has been caused and will be caused as a result of this outcome, and about the process that led to this outcome. We very concerned that this is being ignored."*

57. 'GAL' is referring to the Children's Guardian.

58. This email was not actioned straight away as Ms Appleby had left, however it was forwarded to Ms Pemberton on 11 January 2022.

Events of 5 January 2022

59. On 5 January 2022 the local authority forwarded to Ms Pemberton a court order in the Family F case where the Judge had ordered that CAT produce the notes of any discussions with individuals, save legal advisors, taken for the purpose of producing the CAT assessment report in that case and requiring the local authority to serve the order on CAT.

Alleged Protected Disclosure 6 – 11 January 2022

60. On 11 January 2022 Dr McQueen emailed Ms Pemberton, copying in the claimant and signing off 'Dan & Lynne':

"Can we speak today about the content of Sonia's email of 17.12.2021 [below] i.e.:
Our safeguarding concerns re the management of [S]*, and the harm caused to the children and mother, and our perception of the lack of effective safeguarding response and structures at the LA and Tavi that this appears to highlight. As you can see we drafted an email to Sonia but have subsequently discovered that she has retired, and it is not clear how her role will be covered. We are thinking of speaking to the "speaking up guardian" next as we remain very concerned about the institutional response, which appears to be to ignore it and hope that it will go away. What do you advise? The GAL's complaint, we understand that she is not making this complaint on behalf of CAFCAS, however this complaint arises from her CAFCAS work. Sonia described it as "clandestine and undermining". Our view is that this is a very significant acting out, that has bypassed CAFCAS's structures for complaints, especially in light of the fact that she has complained to the commissioners. CAFCAS need to be informed that she has complained in this way, using her CAFCAS role. Furthermore it is linked to the overall acting out and blame shifting/scapegoating that has taken place in* [S].
Also we would like to speak about the lack of resolution to the [F] *complaint. Overall there is a theme of difficulties being avoided in the hope that they will go away. This clearly happened with Ros's salacious and scurrilous retracted non-complaint against Dan. We are absolutely clear that this is not acceptable and would like to think with you about how to address these important issues.*
Sonia has written eloquently about these matters in her email of 17.12.2021 but there has been no response from anyone!"

Events from 13 January 2022 to 27 February 2022

61. On 13 January 2022 Ms Pemberton wrote to Ms Hodges referring to Ms Appelby's email of 17 December 2021:

"Sonia wrote the email below just before Christmas but has now left the Trust and I wanted to follow it up as there is now no Trust Safeguarding lead and I had a conversation with Lynne and Dan where they have continued to express safeguarding concerns.

Their main concerns are regarding missed opportunities to support a family which they believe have led to her children being removed, poor practice by individuals in the Trust which is known about but not explicitly stated, a concern that the result of the care proceedings may significantly impact on the mother's

mental health and lead to a serious incident plus their concerns about the nature of the Children's Guardian's complaint.

There is a plan for Liz and I to meet with Dan and Lynne but there is some concern that with Sonia's post being unfilled that things will drift. Also once Liz and I have met with the team we will need a clear plan of action as Lynne and Dan are presenting many issues which we will need to resolve."

62. On 18 January 2022 Ms Alexander emailed Ms Pemberton informing of a Court Order made in the Family F case, the recital of which stated:

"AND UPON the Court reiterating that the Local Authority must keep the parties and the Court informed as to the ongoing investigation arising from the CAT report and requesting an update by the March case management hearing"

63. Ms Alexander stated:

"The court wants an update from LA about the CAT investigation. The court wants an update in good time so that further court directions could be sought on the outcome.

The judge stated in open court: '… I want to know what is going on with the CAT report, not just this case but others'….

I suggest that you discuss this case with your manager and the Tavistock solicitors."

64. Ms Pemberton responded the same day:

"I am unsure what the judge means by this. I sent you a letter in October to which I have had no response. What is it that the judge is wanting? Have they seen the letter and what was their response to this and what more are they asking for? I am copying in my manager Dr Liz Searle but it would be helpful to have more information as to what exactly is wanted."

65. On 19 January 2022 Dr Searle emailed Dr Caroline McKenna, then the Associate Medical Director for the respondent, and copying in Ms Pemberton and Dr James, stating the court was requesting an investigation and a response from the Trust was needed, and discussing consulting with the respondent's lawyers.

66. Ms Pemberton responded on the same day setting out her summary of three complaints received (the concerns raised in relation to Family F which had led to her letter of 29 October 2021; the Children's Guardian complaint which was being dealt with via a formal complaints process; and the court in relation to Family F wanting CAT's records), noting that this was on top of other issues regarding the team the local authority wanted to address.

67. Dr James forwarded the chain to Mr James Cavanagh, HR Business Partner for the respondent, on 20 January 2022. She indicated that it may be necessary to instigate formal disciplinary proceedings.

68. On the same day Dr McKenna replied to Ms Hodges:

"Unfortunately I think this letter to Camden (don't know date , I will find out) has not helped. It is too informal following what was a very serious breach and the detail about what L was allegedly trying to do makes a bad situation worse. Clearly this letter has gone to Camden legal. I don't know who Ros is but I think Rashida maybe Rashida Baig – Director of Camden CSC."

69. Also on the same day Dr Searle emailed Ms Pemberton:

"Can I check what CAT are currently working on? While these complaints are being investigated, we will need to make a decision about whether the service can/should continue to operate pending the outcome of the investigation. I just wanted to check what the impact would be if the service had to be suspended in the interim. Do you have this information?

Please do not discuss this with them at this stage."

70. There were further emails that day and the next day in relation to the work that was currently being done by CAT and to see whether the Medical Director at that time had any thoughts as to whether the work of the team should be suspended.

71. The Medical Director responded that the key issue to determine was whether there were any current patient safety issues in relation to the clinicians involved (i.e. the claimant and Dr McQueen) which necessitated them being withdrawn from duties, and if not and the plan was to have a suspension of the service then the clinicians would need to be reallocated so there was no inadvertent suspension; that there needed to be a preliminary investigation based on concerns about the service rather than individuals (save for the confidentiality breach), and that it would be the service suspended not the individuals.

72. We accept the evidence of Ms Pemberton that CAT's work was not in fact suspended at that time and they continued to receive referrals from the local authority.

73. On 24 January 2022 the claimant and Dr McQueen had a meeting with the social work team in relation to Family KE. This is discussed further below under the email of 7 March 2022.

74. We note that disputes continued around this time between CAT and the local authority, for example the claimant recalls a meeting on 24 January 2022 the purpose of which was to get CAT to change its views and recommendations, which they declined to do.

75. In late January 2022 Mr Bayayi was asked whether he was able to undertake an investigation and agreed in principle although had not details given to him at that time.

76. On 14 February 2022 a meeting was held between the claimant, Dr McQueen, Ms Pemberton, Ms Miller, Dr McKenna and Dr Searle, the purpose of which was to give CAT the opportunity to share their concerns regarding safeguarding practices within the local authority and to discuss how to take this forward. The three areas of concern were set out in the minutes as follows:

    "Dan described 3 areas of concern:
    1.Safeguarding and Professional Standards both in Camden Social Services and the Tavistock
    2. CATs independence and coming under pressure to alter reports
    3. Complaints made about them and feeling that these are scurrilous, and they are not supported."

77. In the event only the first item was discussed in detail.

78. The following day Ms Miller emailed the CCG stating:

    "Allegations have been made by the Court Assessment Team (a psychiatrist and a psychotherapist) at the Tavistock that social care in Camden are not adhering to their recommendations…namely children being removed into foster care unnecessarily and conversely some are not removed when this team feel neglect is evidenced.
    I've had a discussion with Patricia Pemberton who is also involved. We are just trying to unpick these serious allegations against Camden social care before we escalate further if necessary.
    Ultimately we are in a situation where there is a professional breakdown of relationships leading to significant conflict and counter allegations between services.
    Happy to discuss next week. I'll do further investigation in the meantime."

79. The claimant asserts that there must have been an investigation carried out around this time by Ms Pemberton and a letter sent to the local authority by her on 27 February 2022, as this is mentioned in paragraph 5.2 of the later investigation report of Mr Bayayi, which states:

    "On receipt of the concerns, Dr Searle (Clinical Director) commissioned Ms Pemberton (service manager) to complete a fact-finding investigation. Ms Pemberton met with Dr Amidon and Dr McQueen on 11 January 2022. Following the fact-finding investigation, Ms Pemberton wrote to the LA on 27 February 2022, with the outcome. The LA requested a full investigation into their concerns, following a request by Judge Roberts of the Central Family Courts."

80. Ms Pemberton's evidence was that this was an error. When Mr Bayayi was asked in cross examination what the letter was that he was referring to here, he stated it was the letter in which Ms Pemberton stated she had completed the fact finding and apologised on behalf of the respondent and the claimant.

81. We find that there was no additional investigation at this time and no letter dated 27 February 2022. No material relating to an additional investigation

has been disclosed despite numerous disclosure exercises being conducted in this case. There are other date errors in Mr Bayayi's report, for example in the previous paragraph he refers to a complaint having been made on 16 January 2021 when this was in fact 16 July 2021. We also accept Ms Pemberton's recollection that she heard nothing further between the letter she sent on 29 October 2021 and the request by the local authority to conduct an investigation. On balance we find Mr Bayayi simply got the date wrong and was here referring to the apology letter of 29 October 2021. This is further supported by the remainder of the paragraph discussing the subsequent request by the local authority for an investigation, which we have found took place in January 2022.

Alleged Protected disclosure 7 – 7 March 2022

82. On 7 March 2022 the claimant sent an email at 16:04pm. The copy provided does not show who the email was sent to. The claimant thought it might have been sent to Ms Pemberton but was not sure. This was not put to Ms Pemberton. In the circumstances we are unable to make a positive finding as to who this was sent to.

83. The email appears to contain notes of a meeting on 24 January 2022 held between the claimant, Dr McQueen and the social work team in relation to Family KE, and describes discussions in relation to the family and CAT's views in its report and in the meeting as to what the family required. CAT considered their recommendations were dismissed as inappropriate or impractical, and notes that CAT had not heard from the social work team since. It notes that the claimant spoke to Ms Pemberton on 4 March 2022 to say that CAT was concerned that the help they thought was needed was not being offered, and that the case exemplified the difficulties they raised in the meeting on 14 February 2022.

84. The claimant is referred to in the third person in these notes so it is not clear who has written them.

Events on 9 March 2022

85. On 9 March 2022 Ms Miller had a meeting with the CCG. She emailed Ms Baig the following day seeking a mediation meeting between CAT and the local authority in the interests of continued positive professional relationships.

Alleged Protected Disclosure 8 – 22 March 2022

86. On 22 March 2022 Dr McQueen emailed Ms Miller, copying in the claimant and signing off 'Dan & Lynne':

"To follow up in our last email we heard this week that [KE] has been taken into care, we previously emailed you because we think that the family had been set up to fail and now it appears that this has happened. in our view this was avoidable if the LA had taken seriously our assessment. Again

harm has been done which could have been avoided not unlike the [S] family, and the [OB] children were removed for over six months and suffered harm as a result. [B] close to this."

Events from 22 March 2022 to 12 April 2022

87. From 22 March 2022 to 23 March 2022 various emails were sent between Dr McQueen and Ms Pemberton in relation to the proposed expansion of CAT and what clinicians they might need. This was escalated to Dr Searle, Ms Hodges and Dr James. In an email on 23 March 2022 Dr Searle stated:

"- The local authority are unhappy with the current service being provided, to the point of not wanting to use the team. This is obviously causing some reputational damage, and I hope can be worked out through the investigation.
- The team are supposed to provide independent expert witness reports. The courts and the local authority would then of course make a decision based on all the evidence presented to them, including their reports. However, the team seems to have become too involved in the cases and if their recommendations are not completely followed, they are repeatedly raising these as complaints and safeguarding concerns against the local authority (which Karen and Caroline are trying to support with at present).
- As Patricia says, the very small team is not really functioning. We are thinking that one possible solution could be to increase the size of the team and the offer, which might need to be negotiated with the local authority. Such staff would need to be very experienced and robust, and even with that, given the level of hostility and disrespect shown to other disciplines, it is hard to see how this could work.
- The management of the service needs to be given careful consideration. Patricia does a great job of doing her best to manage this very challenging situation, and it would not be fair or possible for the current team to be managed by a less senior or experienced manager.
- I would also add that I am aware that Lynne has made a lengthy submission to the SR, which includes adding psychotherapists in the team to offer treatment for cases they report on. I do not support this because it detracts from the independence of the service. Also, Rashida from social care is clear that she wants an independent assessment team, and she also does not want them to become part of WFT (as she really values the work they do).

Overall, the situation is hugely complex, but I do think the SR could be an opportunity to review the service. It would probably be helpful to plan a meeting to think further about this if you all agree."

88. 'SR' refers to the respondent's strategic review which was taking place at that time.

89. On 30 March 2022 Ms Baig responded to Ms Miller's email of 10 March 2022 asking for information about the work being done by CAT, offering a meeting to resolve the difficulties and stating:

"I would be greatly assisted if you could provide me with the following before we meet.

- *Which cases there are safeguarding concerns on?*
- *Have these safeguarding concerns been escalated to relevant managers?*
- *Whether the cases are in court?*
- *Has expert evidence been provided in these cases and whether the cases are still live care proceedings? Are they PLO cases?*
- *Are the CAT assessors aware of their duties as experts?*

...

I look forward to meeting you and hope we can resolve these difficulties. Meanwhile I think it is best we pause further work until we have worked through these matters."

90. On the same date Ms Pemberton provided a series of emails to Mr Dar for the investigation into the local authority's concerns to be conducted. This included the email sent in relation to Family F alleging racism, concerns in relation to Family S and concerns raised by the Senior Practitioner.

91. On 7 April 2022 a meeting was held between the Head of Children's Commissioning at Camden, Ms Baig, a safeguarding representative from the CCG, Dr Searle, Ms Pemberton, Ms Miller, and Dr McKenna. The discussion included Ms Pemberton discussing the safeguarding concerns raised by CAT, and Ms Baig discussing concerns raised about CAT, recorded in the minutes as follows:

"RB spoke about concentrating on legal and court principles rather than the individual cases in looking at these issues. RB spoke of having been pleased to work with the Tavistock. However, her expectation of CAT as being independent and providing expert reports, that the place for evidence to be tested is court, that in 2 or 3 cases the court was puzzled by the reports that often contradicted the reports of other professionals.
RB stated concerns were raised about CAT, that the duty of experts is to the court. CAT team often lost sight of their role. Guardians stating they didn't want to use CAT again. Camden has made the decision to spot purchase expert reports for now."

92. The minutes then record:

"LS mentioned the internal investigation within HR at the Tavistock.

CM stated that she had only been made aware of the issues in February 2022. Sonia Appleby (previous Safeguarding Lead) had escalated matter of concerns raised by CAT team to CJ in December 2021.

Unanimous decision made to pause service following completion of one last case already referred to team

Agreement at meeting:
KM/CM/PP/LS stayed on and discussed plan
1 Service suspended pending investigation

2 To let Rachel James (Divisional Director, CYAF at Tavi) know outcome of meeting
3 The HR investigation needs to proceed separately especially as we discussed our concerns re. the breach of confidentiality by one of clinicians and some urgency required as it has drifted since June 2021
4 PP will feedback to clinicians in CAT team
5 CMcK will discuss with Dinesh Sinha"

93. There is a dispute between the parties as to what was meant by *'the internal investigation within the HR at the Tavistock'*. We find that this refers to the investigation requested by the local authority and the court, which was to be conducted by Mr Bayayi. Our conclusion is supported by the following:

    (i) The reference to the matter drifting since June 2021 is ikely to be a reference to the concerns raised around that time, which was to be the subject of Mr Bayayi's investigation;

    (ii) In a meeting on 11 April 2022 (discussed in more detail below), it is recorded that the claimant and Dr McQueen were upset about the delay in the investigation and hearing about the detail of the complaints, and were informed that it was only recently the respondent had been aware that the court wanted a formal response. This is a clear reference to the investigation which was requested by the court and was to be conducted by Mr Bayayi;

    (iii) In Ms Pemberton's email to the claimant and Dr McQueen dated 28 April 2022 (discussed in more detail below), she apologises for how long it was taking for the investigation to start, and later refers to *'an investigation into the complaints made about CAT'* and apologises again for the delay in getting the terms of reference to them, which had been requested and awaited a response from HR. This explains why the investigation may have been referred to at that time as 'the HR investigation';

    (iv) Ms Farrington's clear evidence in cross examination was that the HR investigation referred to Mr Bayayi's investigation and there was no other investigation into the claimant. Ms Scott also said that she had been told by HR that this referred to the investigation of Rachel James (who was the commissioning manager), which was outside the cope of her own investigation.

    (v) Although the investigation was not yet underway, it was clearly envisaged a discussed in this correspondence. Mr Bayayi had already been asked to undertake the investigation in principle by this point;

    (vi) No evidence whatsoever has been disclosed of any other investigation ongoing into the concerns about CAT.

94. There is also a dispute between the parties as to what was meant by the words 'unanimous decision'. The claimant suggests this should be taken at

face value and that the decision to suspend the service was made by everyone present. The respondent disagrees. We find that the decision was made by Ms Baig, and was then supported by others, for the following reasons:

(i) The business model between the local authority and the respondent was that the local authority made referrals to CAT and paid for the same. It was up to the local authority whether they paused referrals and sought reports from other providers;

(ii) Ms Baig had already stated in her email of 30 March 2022 (discussed above) "*Meanwhile I think it is best we pause further work until we have worked through these matters."* This indicates that a decision had already been made by the local authority to pause referrals prior to the meeting on 7 April 2022;

(iii) In an email from Ms Pemberton to Dr Searle, Ms Miller and Dr McKenna dated 11 April 2022 discussing a meeting on that date (discussed below), Ms Pemberton states, *"I have just met with Lynne and Dan and informed them of the decision by Rashida to pause the service following the completion of their next assessment."* (emphasis added) This is consistent with the respondent's position;

(iv) In Ms Pemberton's email to the claimant and Dr McQueen dated 28 April 2022 (discussed in more detail below), Ms Pemberton states, *"The Local Authority has asked the Tavistock to pause the use of the Complex Assessment Team…"* This is consistent with the respondent's position;

(v) In Dr McQueen's email dated 27 July 2022 to John Lawlor (discussed further below) he states, *"Secondly the Court has raised concerns about the Tavistock's failure to duly process complaints arising in the course of CAT work, this has led to the situation where the Court is putting pressure on the LA and the LA has resorted to 'pausing' referrals to the CAT in an attempt to force the Tavistock to act…'* This suggests it was Dr McQueen's understanding that the decision had been made by the local authority.

95. On 11 April 2022 a meeting was held between the claimant, Dr McQueen, Ms Miller and Ms Pemberton in which she informed them of the decision to pause the service following the completion of their next assessment. What was discussed at the meeting was summarised in a note by Ms Pemberton. In relation to the issue of raising safeguarding concerns, it is recorded:

"Both feel the safeguarding concerns have not been addressed, in particular they mentioned the [S] *case where the mother agreed to the care order and so the judge may not have read their report as a result. They feel if the judge did read their report then the children will never have been removed and he or she will have seen the poor practice in this case (this is despite the mother saying she agreed to them being in care). The continue to maintain*

their concerns about all the cases raised and feel that going through safeguarding at the Tavistock is the correct way to raise concerns rather than case by case to the LA."

96. The claimant alleges in her witness statement that during this meeting she was told by that she and Dr McQueen were to raise remaining safeguarding concerns outside of the trust if they had any, as Ms Pemberton stated 'that's what Rashida Baig wants', and Ms Miller stated that she didn't think there were grounds for safeguarding concerns and CAT should take them to Camden Social Care. Neither the claimant nor Ms Pemberton were asked about their version of events. Dr McQueen did not give evidence on the point. We find that the claimant's recollection of the meeting is correct. Her version of events is supported by an email from Dr McQueen to Ms Pemberton that evening:

"I am writing to you following our conversation today to confirm your advice that if I/we still have safeguarding concerns I/we would write directly to the Local Authority directly rather than through our line management and Trust Safeguarding."

97. Further, Dr McQueen also sent an email to Ms Miller on the same day:

"I am writing to you to confirm our conversation earlier today and your advice that:
1) you are satisfied that there are not grounds for our safeguarding concerns based on your meetings and reading our reports and care notes, and
2) that you do not see any need for a meeting with us to go through our concerns point by point, and
3) that if we still have safeguarding concerns that we should raise them outside of the Trust."

98. Ms Miller replied that she agreed that was a summary of what was discussed.

99. On 12 April 2022 Ms Pemberton sent a reply to Dr McQueen's email of 11 April 2022:

"Yes that is what Rashida wants and I think that would make sense, so that they they investigate and take up the concerns. But I think it should be a two-step process ie to also inform me and the safeguarding team at the Tavistock as well as directly informing the LA, so that we are aware of the concerns and can also follow up if needed."

<u>Alleged Protected Disclosure 9 – 25 April 2022</u>

100. On 25 April 2022 Dr McQueen sent an email to the Senior Practitioner and the Interim Head of Corporate Parenting at Camden, copying in Ms Pemberton, Ms Miller and the claimant and signing off 'Dan & Lynne':

"We understand from Patricia that Ofsted is inspecting the [S] *family and possibly KE . Patricia suggested that we write to you to ask whether:*

A] Ofsted will be informed of our safeguarding concerns raised regarding [S] *and KE.*
And that
B] Ofsted will be informed that referrals to CAT have been paused.

Please can you confirm to us whether you think that it is relevant that Ofsted is informed of our safeguarding concerns and whether Osted will be informed of the above."

101. The Tribunal also notes that on 25 April 2022 Dr McQueen sent an email to Dr McKenna and Dr Wynick, Head of Psychiatry Discipline. He did not copy in the claimant and signed the email 'Dan' rather than 'Dan & Lynne'. This email sought their advice in relation to where safeguarding concerns should be raised, the pause in referrals, and the Ofsted inspection. This email was originally described in the agreed chronology as being Protected Disclosure 9 and was discussed in the claimant's witness statement however the subsequent agreed List of Issues only refers to the email discussed in the paragraph immediately above.

Events between 27 April 2022 and 10 May 2022

102. On 27 April 2022 a meeting was held between Dr Searle, Ms Pemberton, Ms Hodges and Dr James. There was a discussion about how to respond to CAT's queries raised in correspondence. This includes discussion that Dr McKenna and Ms Miller would need to write a note, that concerns had been investigated and CAT would get a letter from them with the outcome. Mr Shohaab Dar, Interim HR Business Partner, then joined the meeting and there was a discussion about the investigation of the local authority complaints and finalising the terms of reference. He noted he was new in the respondent and had to deal with a lot of HR issues.

103. On the following day Ms Pemberton sent an email to Dr McQueen and the claimant providing a response from her and Ms Miller in relation to the claimant and Dr McQueen's questions. Apologising for the delay in the start of the investigation. The email summarises the position from their previous two meetings:

"The Local Authority has asked the Tavistock to pause the use of the Complex Assessment Team due to the complaints which have been raised about the team and because of the concerns you have raised about the Local Authority. Although you both state you believe that the pause is as a result of you raising your concerns, I believe that it makes sense to wait until we have an outcome from the investigation and review future terms of reference for the team. It is also the right of the Local Authority to decide who they will use to complete their expert witness assessments. I understand that this is not what you will want but it will mean you both moving into other teams once the current assessment you are undertaking has ended and the Local Authority decide on how they wish to use the service.

In relation to the safeguarding concerns, I know you have spoken with Karen Miller and she has given you verbal feedback stating that she and Caroline have investigated and I have also informed you that there was a meeting with the Local Authority. Caroline McKenna and Karen Miller have been asked to provide you with a written account of the outcome of their investigation."

104. The email goes on to provide detailed answers in relation to questions raised in the claimant and Dr McQueen's correspondence about their safeguarding concerns and the pause in referrals. This includes the following:

"A) clarify which if any of our concerns have been accepted?
B) explain what remedial action will be taken to address these and prevent them
from arising again?

All the cases you have concerns about have been or are in court. The social work practice will have been subject to scrutiny by the Children's Guardian, the parents' solicitors and in nearly all cases the judge. All will have had access to the same information as CAT. Clearly there will be cases where you do not believe the social workers have acted appropriately and we would encourage you to share your concerns in writing regarding poor practice where it occurs.

C) explain why you believe that it is proportionate and necessary to suspend
referrals to the CAT pending the outcome of the investigation?

As you are aware there are complaints about the team and until these are investigated and there is an outcome, the local authority has decided to pause their use of the team. They will then consider how they wish to use CAT once the investigation is over. There is also a wider piece of work being carried out across social care in line with new commissioning structures to examine cost effectiveness of services and efficacy of their continued use."

105. On 29 April 2022 Ms Alexander asked for an update in relation to the investigation as the parties were asking to return to case court in order to explain the delay to the judge. This prompted a series of emails culminating on 2 May 2022 with an email from the Chief Executive of the respondent to the Acting Director of HR noting that Mr Cavanagh (Mr Dar's predecessor) was supposed to be leading but had not produced the terms of reference and the matter had been handed over to Mr Dar. He wanted the matter to be sorted out quickly.

106. The terms of reference were then produced on 4 May 2022.

Alleged Protected Disclosure 10 – 17 to 19 May 2022

107. Three emails were written during the period 17 to 19 May 2022. The email of 17 May 2022 was from Dr McKenna to Dr McQueen in reply to his

email to her of 25 April 2022. The email of 18 May 2022 is from Dr McQueen to Dr McKenna and Dr Wynick. It does not copy in the claimant and is signed off 'Dan'. It states:

"Thank you for your email, I do feel isolated and in the dark. Sarah has told us that she is going to meet with Jenny Goodridge about our safeguarding concerns.
I would like to speak with you as I think Jenny will look at the safeguarding rather than the linked institutional issues: future referrals to our team, interminable investigation of complaints, how we are managed and conflicts of interest that may have contributed to the current situation.
Would it be helpful if Lynne joins? She has a detailed knowledge of some of the conflicts that have arisen when the Local Authority has not liked our opinions. I have steered away from this aspect, but it is increasingly clear that this is important."

108. We accept the evidence of Dr McQueen that it was not written on behalf of both of them. He told the claimant he was contacting Dr McKenna and Dr Wynick, who were both psychiatrists in the same discipline as him. He would not have run the email past the claimant.

109. The email of 19 May is Dr McKenna's reply to Dr McQueen, which discusses arranging a meeting between herself, Ms Miller, Dr McQueen and the claimant.

Alleged Protected Disclosure 11 – 1 June 2022

110. On 1 June 2022 Dr McQueen emailed Dr McKenna and Ms Miller copying in the claimant and signing off 'Dan & Lynne', attaching an updated summary of their concerns. The introduction to the summary states:

"Prior to Covid CAT usually came to similar conclusions to the Local Authority and there was no significant criticism of our reports and lots of compliments. There was one case where we disagreed with the Local Authority and the Judge was critical of the local authority and we were told that the Local Authority had problems with our report [our assessment was subsequently proved accurate].

Since Covid and with remote interventions we have found that the Local Authority interventions have sometimes been ineffective and we have found inadequacies in the understanding of cases and care given. However there appears to be a difficulty acknowledging any impact of Covid and remote working, instead some of the families are deemed to be unworkable with.

We are now told that the Local Authority has decommissioned our service, following comments that "they have difficulties with our reports" [relayed by our line manager].

Ostensibly the Local Authority is silencing criticism, shooting the messenger, and making it harder for the Local Authority to improve practice and learn."

111. The summary goes on to discuss details in relation to five specific cases, identifying alleged failures by individuals and systemic failures. This includes details of medical treatment (or lack of it) and both physical and mental harm to children. They note there was a general reluctance in the local authority to learn from their assessments and a failure to disclose their concerns to Ofsted. They alleged there was a failure of safeguarding in the Tavistock to respond to their safeguarding concerns and a failure of Tavistock to deal with complaints about CAT. Finally, they discuss perceived conflicts of interest in their line management and that line management was being unresponsive. The letter concludes:

"Our priority in raising these concerns and in writing this document is to improve the care of children and safety and effectiveness of services."

Other events on 1 June 2022

112. On 1 June 2022 Ms Pemberton emailed the claimant and Dr McQueen in relation to the Children's Guardian's complaint, noting that this had to be followed up and investigated, and apologising again for the delay in the commencement of the investigation.

Alleged Protected Disclosure 12 – 6 June 2022

113. On 6 June 2022 Dr McQueen emailed Ms Pemberton, copying in the claimant and signing off 'Dan & Lynne'. The email contained detailed concerns in relation to the social work practice for Family I not being child centred, including perceived shortfalls in oversight and management of the provision of care of the child:

"As you requested here is a brief summary of our concerns about the social work practice in relation to [I] *not being child centred:*

1- [I] *not informed of why mother was in hospital [nor were foster carers] – despite repeated calls and emails from CAT and Patricia Pemberton to the SW team and assurances that it would happen, as of 06.06.2022 it has not happened.*

2- Contact too frequent and not child centred: SW team inform of our view and the view of the Foster Carers that contact is too frequent and distressing for [I]*: he only gets home at 6.45/7.00pm after contact and is exhausted and more disturbed in his behaviour.*

3- Despite raising concern about contact being too frequent mother has been given an addition 2 hour contact on Wednesday… and as a catch up time having missed contact while ill.

4- Mother did request zoom contact while ill and in hospital but received no response [the social worker as on holiday]

5- When parents come to contact late they are given extra time at the end of contact that further delays [I's] *return to the foster home.*

6- Foster carer not informed of cancelled contacts [I] *has had several wasted journeys and the experience of mother not appearing.*

7- Mother hostile and undermining of foster carers

8- Foster carers not given any background to help them understand the disturbed behaviour they witness.

9- No review of contact despite multiple concerns raised repeatedly."

114. The email goes on to give further details of these matters and correspondence raised about their concerns.

115. Ms Pemberton followed up this email by sending it on to the Interim Head of Service for Resources and the Service Manager for Resources and Service Manager for Looked After Children. We accept Ms Pemberton's evidence that at this point there were so many concerns raised that she couldn't manage them locally and felt she had to escalate them to senior safeguarding leads in the respondent. There remained a dispute about CAT's role and this required a discussion with someone more senior.

Events from 9 June 2022 to 22 July 2022

116. On 9 June 2022 Mr Dar emailed the claimant with the terms of reference for the investigation to be conducted by Mr Bayayi. These were as follows:

"You are directed to investigate the following concerns relating to the conduct of members of the Complex Assessment Team (CAT) and to produce a report detailing your findings. Your investigation should seek to explore the following events

1. Were patient complaints (raised on various dates including 16 June 2021 and 23 July 2021) appropriately investigated in line with Trust complaints procedure?
a) Were the appropriate internal processes followed to address these patient
complaints?

2. Breach of patient confidentiality
a) Did member(s) of the Complex Assessment Team provide patient details to a third party, without the patient's consent?

3. Alleged unprofessional behaviour and racism

1. a) In relation to the patient complaint raised, did member(s) of the complex assessment team treat the patient unprofessionally in their dealings with her?

2. b) In relation to the patient complaint raised, did the actions of member(s) of the complex assessment team amount to racism?

4. Issues around record-keeping (including destruction of notes)
a) Did member(s) of the complex assessment team fail to follow appropriate Trust record-keeping procedures?

It is your role to determine the allegations arising out of these events and ensure that all parties are aware in your invitation letters of the nature of the investigation.

Your investigation must be conducted in accordance with the Trust's disciplinary procedure and/or managing high professional standards (MHPS)."

117. The timetable stated that Mr Bayayi should conclude his investigation within four weeks and a final report should be provided within a further five days, unless timetables were revised with the agreement of Dr James, the Commissioning Manager.

118. On 11 July 2022 Ms Farrington, Interim Chief People Officer, emailed Mr Bayayi stating that the local authority had asked for a copy of the investigation report and seeking an update. Mr Bayayi replied seeking information for him to conduct the investigation which he had already requested from Mr Dar.

119. On 12 July 2022 Dr McQueen emailed Dr McKenna asking for her advice on whether he and the claimant should wait or try to escalate their safeguarding concerns externally as they felt the respondent had not responded appropriately.

120. On the same date Dr James emailed Ms Pemberton apologising for the ongoing delay and lack of HR support in relation to the investigation being conducted by Mr Bayayi and seeking details of the individuals to interview and the name of the patient and their carer. Ms Pemberton responded adding in details of two families, F (racism complaint) and S (Children's Guardian's complaint).

121. On the same date Ms Mountain, the Acting Head of HR, sent an email to Mr Bayayi attaching emails and details received from Ms Pemberton including the original concerns received from the local authority; names of individuals to interview; names of the patient and their carer; and other relevant information for the investigation to be conducted. Her email forwarded Ms Pemberton's email to Mr Dar of 30 March 2022, which had been sent to her by Mr Dar on 3 May 2022.

122. Ms Farrington replied to Mr Bayayi on the same day apologising to him that the matter had not been progressed in a timely way and stating that she would raise this with Mr Dar on his return from leave.

123. On 19 July 2022 Mr Bayayi provided an update on progress of the investigation to Ms Mountain.

124. On 21 July 2022 a report was provided to the claimant and Dr McQueen by the Freedom to peak Up Guardian with whom they had raised concerns.

125. On 22 July 2022 the claimant emailed Ms Pemberton and Dr McKenna seeking a copy of the respondent's disciplinary procedure and/or MHPS (this refers to the document 'Maintaining High Professional Standards in the NHS') having previously requested it from HR and Mr Bayayi.

126. On the same day Ms Pemberton replied attaching the disciplinary policy. We accept her evidence that she did not attach MHPS as she had been told that did not apply.

Alleged Protected Disclosure 13 – 25 July 2022

127. On 25 July 2022 Dr McQueen emailed Dr McKenna, Ms Miller and the Freedom to Speak Up Guardian, copying in the claimant and signing off 'Dan & Lynne'. The email included an excerpt from court documents in the Family KE case showing that their expert report had not been included in the bundle. The mother had complained about this and had taken the view that the local authority had not presented the case in a fair and balanced manner. The local authority had told her that it was not included in the bundle because they wanted to ensure confidential information was redacted. The email notes that Ms Pemberton shared their concerns about the local authority withholding the report.

128. On the same date Ms Pemberton sent an email to Dr McKenna on this subject noting her concern that she was worried if the local authority was not sharing reports because the report did not agree with their case.

129. We accept Ms Pemberton's evidence in cross examination that following this she spoke to the Head of Service at the local authority and was told that the report hadn't been redacted at the time. It had been listed in the bundle but not put in. If anyone wanted to see it, they could see it was missing. This is consistent with an email she sent to Ms Miller about the issue on 11 August 2022.

Events on 26 July 2022

130. On 26 July 2022 Mr Bayayi held an investigation meeting with the claimant. There is a dispute as to Mr Bayayi's manner in the meeting and what the claimant was asked in relation to the concerns of racism raised in the Family F case.

131. In her witness statement the claimant says that at the outset of the meeting Mr Bayayi said, 'you need to tell me your name and your role, because I don't know anything about you or the CAT'. She asserts that he was hostile and aggressive in his tone and his questions were all closed. In relation to racism, she asked what the evidence was that either she or Dr McQueen had been racist, and he said, "There isn't any," then immediately asked "What do you think racism is?" He did not accept her answer and then asked, "For the second time, what do you think racism is?" Again he did not accept her answer and asked, shouting, "For the third time, what do YOU think racism is?"

132. The claimant says in her own notes of the meeting:

"Mr Bayayi then asked me to tell him what I thought racism was. His demanour was stony, hectoring, hostile, antagonistic, scornful, belittling and

intimidating. He said sternly three times: 'you have not answered my question—what do you think racism is'. I said it was discrimination against a person because of their race or skin colour. I was confused and felt he was looking for something specific in my response and I said I didn't understand what he wanted me to say. I felt he was taking a prejudicial stance towards me and I felt intimidated – largely by his scornfulness, hostility and the way I felt he was judging me."

133. Mr Bayayi refutes that he was hostile. He says he did introduce himself as he hadn't met the claimant before. He did ask questions about the role of CAT. He says he asked open questions. He did not shout at the claimant. In relation to the question of racism he says he asked supplemental questions because the claimant's first response was abstract and spoke in generic societal terms, not pertinent to her as the subject of the allegation, and to ensure that he focussed the claimant back to the question as he found her response were occasionally tangential.

134. Mr Bayayi's notes suggest the following discussion:

> *"**What's your understanding of racism** - I know racisms exists and I do not consider myself to be a racist? Confounded by this and have been doing this with many black families and I am very surprised as I have worked with many black families*
>
> ***What would constitute a racist act or omission** – I would have thought that the questions about her parenting may have informed her view that she was discriminated against because she is black.*
>
> ***Did you give context regarding why you were asking the questions that you were** – I think so I could not say now because it was a long time ago. We wanted the meeting in person and had diabetes and long term conditions but said it was not possible. We acknowledged that but apologies. She picks her skin so she did not want to see her face to face – all assessments on zoom.*
> *Make assumptions with a person based on their colour rather than we are all people I can think of many examples e.g. America and here"*

135. We find that the most accurate record of what was said is that in Mr Bayayi's contemporaneous notes, but that this is not a complete note. We find that he asked the three questions noted by him in bold, but must have asked a further question in relation to the claimant's understanding of racism in order to elicit the response about making assumptions with a person based on their colour. Our reasons are as follows:

(i) Mr Bayayi's notes are contemporaneous and fairly detailed and we accept his evidence that they were typed by him during the course of the meeting.

(ii) The answers noted by Mr Bayayi are consistent with his witness evidence that he was asking supplemental questions because he was given generic answers by the claimant.

(iii) Mr Bayayi's notes indicate that he was asking open not closed questions, and he had asked similar questions about the claimant's understanding of matters on different topics.

(iv) The claimant's notes of the meeting are not contemporaneous. The account she gives in relation to the questions asked on racism is brief, but suggests four questions were asked, three of which were exactly the same. Her witness statement gives a different account to this, of Mr Bayayi escalating his questions asking her to answer 'for the second time' and 'for the third time'. Her account is therefore inconsistent.

136. We further find that Mr Bayayi was not aggressive or hostile during this meeting. We prefer Mr Bayayi's evidence as to how the meeting started. In relation to the questions on racism, we conclude from Mr Bayayi's notes that he was persistent in getting an answer to his questions and may have been firm in that regard, but that does not mean his demeanour in asking the questions he did was hostile or aggressive. The questions were perfectly reasonable in the context of an investigation into a serious allegation of racism by a service user. We find that the claimant's perception is likely to have been distorted by her own anxiety and concern about this allegation being levelled at her, and agree with Mr Bayayi that she would have found any such interview hostile. For example, her recollection that Mr Bayayi only asked closed questions is incorrect. The inconsistencies in her accounts of the meeting suggest that her recollections are not clear.

Alleged protected Disclosure 14 – 27 July 2022

137. On 27 July 2022 Dr McQueen wrote an email to Mr John Lawlor, the Chairman of the respondent, copying in the claimant and Dr McKenna and signing off 'Dan'. The claimant conceded in cross examination that this was Dr McQueen's email not hers. The Tribunal concludes that although the claimant was copied in, this was not an email from her. The content of the email is a summary requested by Mr Lawlor of difficulties Dr McQueen and the claimant were experiencing within CAT:

"There are three main strands that appear related, safeguarding, complaints and detriments.

Firstly, the CAT have been raising safeguarding concerns [about the families we assess in the local authority and Tavistock LA-CAMHS team] formally since August 2021 and we have not seen a satisfactory response. Previously our reports would agree with the local authority recommendations 80-90% of the time. However, during the COVID-19 pandemic, we became concerned about local authority practice in relation to several cases, these cases involved examples of poor social worker and clinical practice, poor case formulation and covering up the deficiencies of remote working and withholding of information from the Court and Ofsted. Under Covid more of our reports were in disagreement with the local authority. We have raised concerns about; the practice of some individuals

involved; the outcome for specific cases; the way that safeguarding concerns we have raised have been managed by the Trust and LA; also, Duty of Candour issues in relation to sharing our concerns and reports with Ofsted and the Court.

We have raised these issues through line management, safeguarding, speak up guardian, Medical Director. This remains unresolved despite many messages of support and understanding. There are children and families who in our view continue to come to harm. We were advised by the head of safeguarding and our line manager that there are no grounds for concern and that we should take our concerns outside of the trust. Most recently we have discovered that the LA has not added one of our reports to the legal bundle and resisted requests by the mother's solicitor to include it. This is highly irregular as we are jointly instructed and appear to be being treated by the LA as hostile

witnesses. Our line manager has indicated that she will raise this with the director of children's services in the LA. Over the years that we have been doing this work the Courts and LA almost without exception come to the same conclusions as us, although this sometimes takes time.

Secondly the Court has raised concerns about the Tavistock's failure to duly process complaints arising in the course of CAT work, this has led to the situation where the Court is putting pressure on the LA and the LA has resorted to 'pausing' referrals to the CAT in an attempt to force the Tavistock to act, despite the LA having an ongoing need for CAT assessments. None of this was made clear to us until we deduced it ourselves at which point we were told that at one stage the Court was emailing the LA on a daily basis demanding action from the Tavistock. It appears that the Judge may be unable to progress the F case while F's complaints are outstanding [these were made a year ago] this may be the reason that the children remain in her care, coming to further harm. Complaints do arise due to the nature of our work – diagnosing serious psychiatric disorders in parents and harm in children and making recommendations supporting the removal of children. Historically investigations

were resolved in a few weeks by Lottie Higginson and then Amanda Hawke, both PA's to the CEO.

This system has collapsed. We understand that this may be linked to difficulties and churn in HR. Thirdly detriments: there have been many references from our line manager that the LA is "not happy with our reports" and that this is why referrals to our team have been "paused". We have not received criticism from the Court to the best of our knowledge and have often been praised. Thus, there is a suggestion that we have suffered detriments as a result of coming to independent views that differ from the LA.

Finally, we feel that there are conflicts of interest which have not helped the situation, our line manager is lead for safeguarding in the LA, CAMHS, she advocates for the LA, and treats some the same children we assess when they come under the Looked After Children Team and is also our line manager."

Events from 29 July 2022

138. On 29 July 2022 the claimant emailed Ms Hodges and Ms Mountain asserting that the past year had had a serious detrimental impact on her, and questioning the legality of the investigation on a number of grounds.

She went on to provide responses to the points raised in the terms of reference.

139. Ms Mountain held a meeting with the claimant and Dr McQueen on 1 August 2022 to discuss this.

140. On 1 August 2022 Mr Bayayi provided an update to Ms Pemberton that the report should be concluded by 2 September 2022. He had most people booked in except the complainant whose consent had just been received from their solicitor.

141. On 2 August 2022 Ms Jenny Goodridge, the Executive Lead for Safeguarding, emailed the claimant and Dr McQueen to say that she would be investigating the safeguarding concerns raised by them, and seeking a meeting.

Alleged Protected Disclosure 15 – 5 August 2022

142. On 5 August 2022 the claimant sent an email to Ms Hodges which was almost identical to the email sent on 29 July 2022:

"I am writing in response to your message of 27.07.22, where you wrote to apologise for any distress caused by the unacceptable amount of time for this investigation to take place. You suggested in your email that Sarah Mountain, HR, would be able to offer some additional support. Dan McQueen and I had a helpful discussion with her on 01.08.22.

I do want to let you and Sarah Mountain know that this past year has had a serious detrimental impact on me, and for reasons that I have carefully documented in a supplementary report, the process to date has been injurious and egregious.

To compound matters even further, the likely legality of the investigation is called into question by the following:

i) the Terms of Reference were not valid at the time of my interview with Mr Bayayi;
ii) the central rational governing the investigation in terms of the nature of the complaints has never been put in writing, therefore, the process has been hallmarked by being prejudicial to me;
iii) the Terms of Reference state that "It is your role to determine the allegations arising out of these events and ensure that all parties are aware in your invitation letters of the nature of the investigation". There were no invitation letters to either Dr McQueen or myself to explain the nature of the investigation.
iv) the nature of the prejudice has been amplified by the original investigation, which was completed by Ms Pemberton, when she concluded there was no case to answer;
v) the prejudice was further reflected in Mr Bayayi's conduct and his attitude, which did not conceal his hostility towards me;
vi) the very late offer of support, and even within your recent correspondence, the causation for this prejudicial and inequitable

manifestation of organisational behaviour is not transparently communicated;
vii) and finally, whether the conduct of the Trust can be seen as reflective of its policies and procedures."

143. In the remainder of the email the claimant gave her response to the matters included in the Terms of Reference.

144. It is apparent from the email that by this time the claimant was receiving advice from her union.

145. The claimant also sent an email to Mr Lawlor on 5 August 2022 asking that the disciplinary process against her be stopped.

146. On the same day the claimant was signed off work with stress, initially for 12 weeks.

147. On 5 August 2022 Mr Lawlor replied to the claimant:

"…I have forwarded your email to Sally Hodges, COO, because this is an operational matter about how to manage due process and I am unable to intervene.
I hope that Sally will be able to answer your questions."

148. On 8 August 2022 a meeting was held, called by Ms Farrington, which was attended by Mr Bayayi and Dr James. Although none of the respondent's witnesses had mentioned this meeting in their evidence, Mr Bayayi says he recalled it taking place after finding an email chain during the course of the hearing. The fact the meeting took place is supported by the email chain, and Mr Bayayi was in the end able to give a detailed account in cross examination of what was discussed. We accept his evidence that the purpose of the meeting was to look at the court case (in relation to Family F), and to come together as suggested by Ms Hodges as she had requested that the terms of reference be revised so Mr Bayayi was able to respond to the family court as well as continue the investigation. He also raised concerns about the conflict of interest (which had been alleged by the claimant and Dr McQueen in relation to Ms Pemberton). He would have mentioned the safeguarding concerns raised by Dr McQueen.

149. On 10 August 2022 Ms Farrington emailed the claimant in response to the email of 4 August 2022 sent to Ms Hodges:

"<u>Concerns</u>
As Sally has stated in her response to you, the investigation is still ongoing. To the extent that your concerns touch on the question of whether or not the complaints were previously investigated (and if so, to what extent), plainly this is a matter of concern for the Trust also; which is why the Terms of Reference include the requirement for those issues to be explored.

I agree with Sally, however, that we will have to wait until the current investigation of the complaints is concluded before reviewing your concerns relating to the investigation itself. This is due to the exceptional

circumstances and time pressure arising from related Family Court proceedings, which require the Trust to conclude its investigation and to produce its report by the end of this month – for use in those Court proceedings in September. I am therefore unable to respond to each of your points raised in detail at this stage.

My proposal, therefore, to ensure that appropriate consideration is given to your concerns, is that the resultant investigation report submitted for the court proceedings is shared with you when it is available, and that you be permitted an opportunity to provide comments on it, if and to the extent that you consider the concerns which you have raised in your letter of 4 August have impacted on the substantive outcome of the investigation. I hope it provides you with some comfort that your concerns have not gone unheard and that they will be given due consideration at the point when the investigation report is available."

150. In relation to the claimant's responses to the terms of reference it was suggested that this be shared with Mr Bayayi. The claimant was told Ms Pemberton would be in touch during her sick leave and she was offered access to the employee assistance programme.

151. On 17 August 2022 Mr Bayayi emailed Ms Mountain with an update on the investigation, stating that he had been having difficulties in arranging a interview with the complainant and had offered six appointments with no response.

152. On the same date the claimant wrote to Dr James complaining about the investigation and the manner in which she says she had been treated by Mr Bayayi in her interview, and by the local authority.

153. On 31 August 2022 Ms Hodges emailed Ms Farrington and Dr James relaying what the local authority had said about renegotiating and reconfiguring the court service.

154. The claimant alleges that on 12 September 2022 Mr Bayayi spoke to Ms Pemberton saying that the mother in the Family S case had made a complaint, but Ms Pemberton told him that the mother would not be complaining about him. The claimant asserts that Mr Bayayi was on a fishing expedition.

155. Mr Bayayi says that the Family S case was included in the emails sent to him by Ms Mountain and Mr Dar, therefore they fell within the scope of the investigation. He was unable to find a complaint or get a response from the family to establish whether there were any concerns and therefore excluded this from the investigation. He would have not known the details of the family prior to the investigation as he had no access to CareNotes.

156. We prefer Mr Bayayi's account of this. Ms Pemberton's initial email of 30 March 2022 before the terms of reference were written included emails relating to Family S because of the Children's Guardian complaint, and those emails were forwarded to Mr Bayayi by Ms Mountain on 12 July 2022.

157. On 12 September 2022 Dr McQueen emailed Dr McKenna with an update of what had happened in Mr Bayayi's investigation to date and stating that there had been no reply from Ms Goodridge in relation to her investigation and asking for advice in her capacity as Medical Director. The claimant is not copied in to this email.

158. Dr McKenna replied to Dr McQueen the same day:

> *"…I have been away, just back today. I need to find out where investigation is at and I will also have a conversation with Jenny.*
>
> *I will come back to you and also respond to your query about informing regulators. We can arrange a time to speak."*

159. On 20 September 2022 the BMA on behalf of Dr McQueen emailed Mr Bayayi asking for an update on the investigation. Mr Bayayi responded that he could not give an update as he was waiting to interview the complainants (presumably referring to Families F and S at this stage). He thought the process would take another three or four weeks.

Alleged Protected Disclosure 16 – 3 October 2022

160. On 3 October 2022 Dr McQueen emailed Dr McKenna copying in Ms Goodridge and the Freedom to Speak Up Guardian. The email is not copied to the claimant and it is signed off 'Dan' only. It contains the advice he had received from MPS (the Medical Protection Society) about raising concerns with a regulator.

161. We find that Dr McQueen did not seek the claimant's authorisation or agreement to send this email. In cross examination Dr McQueen accepted that he could not say that she had authorised it. When first asked whether any disclosure was by Dr McQueen and not the claimant, the claimant's response was that she agreed the letter was signed off by him, she knew he was continuing to get advice. She then said when the question was put again that it was by both of them. However we conclude that this was correspondence from Dr McQueen only relaying the advice he had received from his professional body. It contrasts with the many emails where the claimant is copied in and the emails are signed off 'Dan & Lynne'.

Events from 31 October 2022

162. On 31 October 2022 Dr McQueen emailed various members of senior management at the respondent, copying in the claimant and signing off from both of them, complaining that they had not received an outcome of the investigation by Ms Miller and Dr McKenna or a report from Ms Goodridge.

163. On 8 November 2022 the claimant commenced ACAS early conciliation.

164. During November 2022 Ms Goodridge held meetings with CAT in relation to their safeguarding concerns. In an email dated 14 December 2022 she notes she would be pulling together her findings in a report that she hoped to have finished by early January, and had agreed to share this with the claimant and Dr McQueen. She did not in fact produce such a report before leaving the respondent.

165. The claimant states that on 23 December 2022 Mr Bayayi was due to meet with the claimant for her second interview. She states that her supporter was not invited until she chased about this shortly before the meeting, though in the end her supporter was able to attend on time. Mr Bayayi also attended on time, however the HR representative did not. The meeting was therefore postponed.

166. Mr Bayayi confirms his diary had the meeting on 21 December not 23 December and he attended to tell the claimant that his HR support was not available due to a last minute personal commitment.

167. The invitation to the meeting confirms that it was planned for 21 December 2022.

168. We prefer Mr Bayayi's version of events, which is supported by the meeting invitation.

169. The claimant presented her claim on 19 January 2023.

170. Mr Bayayi produced his interim report on 7 July 2023, and his final report on 23 October 2023.

171. Ms Scott took over from Ms Goodridge as Chief Nursing Officer for the respondent in July 2023. She was tasked to conduct an investigation into the respondent's response to the safeguarding concerns raised by CAT. She produced a written report and discussed her findings with the claimant and Dr McQueen in November 2023.

172. In December 2023 the claimant was told there would be no disciplinary action taken against her.

The Law

Protected disclosure detriment

173. A protected disclosure is defined in section 43A Employment Rights Act 1996:

"In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

174. A 'qualifying disclosure' is defined in section 43B:

"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

…

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

…"

175. There are five stages to be considered under section 43B. See **Martin v London Borough of Southwark** UKEAT/0239/20:

"First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held."

176. What constitutes a 'disclosure of information' has been considered in **Kilraine v London Borough of Wandsworth** [2018] ICR 1850 (clarifying the decision in **Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] ICR 325). The focus should not be on whether there is 'information' on the one hand or 'allegations' on the other. Rather, in order for a statement to be a qualifying disclosure within the meaning of section 43B, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection 43B(1). A disclosure might provide information and make an allegation at the same time. On the other hand, there may be instances where an allegation is made which does not have the required component of conveying information. It is necessary to take into account the context in which a disclosure is made in determining whether it meets the statutory definition.

177. A disclosure may be made in writing or verbally or in another way (see for example **Aspinall v MSI Forge Ltd** UKEAT/891/01 in which handing over a video recording to solicitors was found to amount to a protected disclosure).

178. A disclosure may be made about a matter which concerns entities other than the employer (**Premier Mortgage Connections Ltd v Miller** UKEAT 0113_07_0211, **Hibbins v Hesters Way Neighbourhood Project** [2009] ICR 319). Respondent's Counsel in this matter submitted in his opening note that to be a protected disclosure within the meaning of Employment Rights Act 1996 the disclosure must materially relate to the whistleblower's employer. This submission was not pursued in closing on the basis that **Hibbins** was binding on the Tribunal, though it is noted that the respondent questions the correctness of that decision. The Tribunal is satisfied that it is bound by **Miller** and **Hibbins**.

179. The Tribunal agrees with the respondent's submissions in relation to what is meant by the term 'miscarriage of justice' in a civil context, namely that Parliament must have chosen that term, rather than lesser terminology such as 'error of law' or 'injustice' or 'unfairness in legal proceedings' to filter out less egregious wrongs, and that a 'miscarriage of justice' requires a profound injustice or failure of the administration of justice.

180. In relation to endangerment of health and safety however, much less may suffice. The respondent fairly points to **Fincham v HM Prison Service** UKEAT/0925/01, in which the EAT considered a case under s43B(1)(d) where an employee considered they were under pressure from a sustained campaign of racial harassment (this being a case prior to the explicit requirement to show reasonable belief that a disclosure was in the public interest):

"We found it impossible to see how a statement [by the claimant to her manager] that says in terms "I am under pressure and stress" is anything other
than a statement that her health and safety is being or at least is likely to be endangered. It seems to us, therefore, that it is not a matter which can take its
gloss from the particular context in which the statement is made. It may well be that it was relatively minor matter drawn to the attention of the employers in the course of a much more significant letter. We know not. But nonetheless it does seem to us that this was a disclosure tending to show that her own health and safety was likely to endangered within the meaning of subsection D."

181. Guidance was given in **Korashi v Abertawe Bro Morgannwg University Local Health Board** [2012] IRLR 4 in relation to reasonableness of belief that the disclosure tended to show one of the matters set out in subsection 43B(1):

" 61. There seems to be no dispute in this case that the material for the purposes of s43B(1)(a)-(e) would as a matter of content satisfy the section. In our view it is a fairly low threshold. The words "tend to show" and the absence of a requirement as to naming the person against whom a matter is alleged put it in a more general context. What is required is a belief. Belief seems to us to be entirely centred upon a subjective consideration of what was in the mind of the discloser. That again seems to be a fairly low threshold. No doubt because of that Parliament inserted a filter which is the word "reasonable".

62. This filter appears in many areas of the law. It requires consideration of the personal circumstances facing the relevant person at the time. Bringing it into our own case, it requires consideration of what a staff grade O&G doctor knows and ought to know about the circumstances of the matters disclosed. To take a simple example: a healthy young man who is taken into hospital for an orthopaedic athletic injury should not die on the operating table. A whistleblower who says that that tends to show a breach of duty is required to demonstrate that such belief is reasonable. On the other hand, a surgeon who knows the risk of such procedure and possibly the results of

meta-analysis of such procedure is in a good position to evaluate whether there has been such a breach. While it might be reasonable for our lay observer to believe that such death from a simple procedure was the product of a breach of duty, an experienced surgeon might take an entirely different view of what was reasonable given what further information he or she knows about what happened at the table. So in our judgment what is reasonable in s43B involves of course an objective standard — that is the whole point of the use of the adjective reasonable – and its application to the personal circumstances of the discloser. It works both ways. Our lay observer must expect to be tested on the reasonableness of his belief that some surgical procedure has gone wrong is a breach of duty. Our consultant surgeon is entitled to respect for his view, knowing what he does from his experience and training, but is expected to look at all the material including the records before making such a disclosure. To bring this back to our own case, many whistleblowers are insiders. That means that they are so much more informed about the goings-on of the organisation of which they make complaint than outsiders, and that that insight entitles their views to respect. Since the test is their "reasonable" belief, that belief must be subject to what a person in their position would reasonably believe to be wrong-doing."

182. A belief may still be reasonable even if it turned out to be wrong (**Babula v Waltham Forest College** [2007] ICR 1026).

183. The question of reasonableness must be assessed as at the time the complaint or concern is raised, not with hindsight after the complaint has been examined (**Jesudason v Alder Hey Children's NHS Foundation Trust** [2020] ICR 1226).

184. Section 43C provides:

"(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure —
(a) to his employer, or
(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—
(i) the conduct of a person other than his employer, or
(ii) any other matter for which a person other than his employer has legal responsibility,
to that other person."

185. Section 43F provides:

"(1) A qualifying disclosure is made in accordance with this section if the worker—
(a) makes the disclosure to a person prescribed by an order made by the Secretary of State for the purposes of this section, and
(b) reasonably believes—
(i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and
(ii) that the information disclosed, and any allegation contained in it, are substantially true."

186. Section 47B provides:

"(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—
(a) by another worker of W's employer in the course of that other worker's employment, or
(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.
…"

187. Guidance as to what amounts to a detriment is given in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337:

"…one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment"."

188. The point was considered further in **Jesudason**:

"Some workers may not consider that particular treatment amounts to a detriment; they may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way. But if a reasonable worker might do so, and the claimant genuinely does so, that is enough to amount to a detriment. The test is not, therefore, wholly subjective."

189. The claimant is not required to demonstrate a physical or economic consequence. In **Shamoon** the complaint was that the claimant's position had been substantially undermined and that it was becoming increasingly marginalised.

190. The question of whether an act is done "on the ground that" the worker made a protected disclosure is whether the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower (**Fecitt v NHS Manchester** [2012] IRLR 64). "But for" causation is not sufficient.

191. Section 48 provides in relation to the burden of proof:

"(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.
…

(2) On a complaint under subsection …(1A) … it is for the employer to show the ground on which any act, or deliberate failure to act, was done."

192. A claimant does not however succeed in default where an employer fails to show the ground on which they were subjected to a detriment. This is a question of fact for the Tribunal to determine, and it may be open to the Tribunal to conclude that the true reason for a detriment is not one advanced by either party (**Ibekwe v Sussex Partnership NHS Foundation Trust** UKEAT/0072/14) The questions for the Tribunal to ask are as follows (**Kuzel v Roche Products Ltd** [2008] ICR 799, approving the analysis of the EAT below in a claim under section 103A in relation to dismissal rather than detriment):

(1) Has the claimant shown that there is a real issue as to whether the reason put forward by the employers, some other substantial reason, was not the true reason? Has she raised some doubt as to that reason by advancing the section 103A reason? (2) If so, have the employers proved their reason for dismissal? (3) If not, have the employers disproved the section 103A reason advanced by the claimant? (4) If not, dismissal is for the section 103A reason. In answering those questions it follows: (a) that failure by the employers to prove the potentially fair reason relied on does not automatically result in a finding of unfair dismissal under section 103A; (b) however, rejection of the employers' reason coupled with the claimant having raised a prima facie case that the reason is a section 103A reason entitles the tribunal to infer that the section 103A reason is the true reason for dismissal, but (c) it remains open to the employers to satisfy the tribunal that the making of the protected disclosures was not the reason or principal reason for dismissal, even if the real reason as found by the tribunal is not that advanced by the employers; (d) it is not at any stage for the claimant (with qualifying service) to prove the section 103A reason."

193. Further guidance is given in **International Petroleum Ltd and others v Osipov and others** EAT 0058/17:

"(a) the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.

*(b) By virtue of s.48(2) ERA 1996 , the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them: see **London Borough of Harrow v. Knight** at paragraph 20.*

(c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found."

194. The time limits in respect of a claim under section 47B are also set out in section 48:

"(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—
(a) where an act extends over a period, the "date of the act" means the last day of that period, and
(b) a deliberate failure to act shall be treated as done when it was decided on;
and, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(4A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a)."

195. The Tribunal was referred to authority in relation to time limits. For the reasons set out below the Tribunal did not in the end need to consider jurisdiction.

Direct discrimination

196. Section 13(1) Equality Act 2010 provides:

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

Harassment

197. Section 26 Equality Act 2010 provides:

"(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

…

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect."

Time limits for discrimination complaints

198. The time limits for bringing a claim of race discrimination and/or harassment are set out in section 123 Equality Act 2010:

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

199. Section 140B deals with extensions for ACAS conciliation.

200. The Tribunal was referred to authority in relation to time limits. For the reasons set out below the Tribunal did not in the end need to consider jurisdiction.

Conclusions

Protected disclosures

201. The claimant's submissions in relation to protected disclosures seeks to separate them into categories of 'Principle', 'Supplemental' and 'Background'. While the claimant confirmed in cross examination that she agreed with this categorisation, it was not clear to the Tribunal what was meant by delineating the disclosures in this way. In the right hand column of this table Counsel sets out the detriments which are said to flow from each disclosure. However the claimant's closing submissions invited the Tribunal to consider the disclosures as a group. The Tribunal have taken the approach of considering each disclosure in turn to determine whether it is protected or not, however is mindful of the need to look at the context of each disclosure, and had considered the protected disclosures found to have been made as a whole (subject to the issue of knowledge of individuals) when determining causation of detriments.

Protected Disclosure 1

202. The meeting on 19 July 2021 is discussed at paragraph 28 above.

203. The Tribunal is satisfied that disclosures were made during the meeting which contained information which tended to show that the health and safety of an individual or individuals had been endangered. The discussion covered sharing detailed information about specific cases, noting past episodes of harm to various individuals, including a child having permanent, avoidable brain damage, a child encouraging siblings to jump out of a window, a violent father and situation of domestic abuse, and physical difficulties encountered by a mother in getting her children upstairs to their flat. The Tribunal is further satisfied that the claimant had a reasonable belief that health and safety had been endangered. The Tribunal was impressed generally with the concern shown by the claimant towards

the individuals she was involved in assessing, and found this concern to be genuine.

204. It is self-evident that raising safeguarding concerns touches on the public interest. Further, the Tribunal accepts the claimant's evidence that her purpose in raising these concerns was genuinely to ensure that lessons were learned from these cases so that improvements to care could be made. The Tribunal accepts that she reasonably believed that to be the case.

205. The disclosures in this meeting were made to Ms Appleby and therefore to the employer, and were thereby protected disclosures. For convenience in the remainder of this judgment disclosures made in this meeting are collectively referred to as Protected Disclosure 1.

Protected Disclosure 2

206. The meeting on 28 September 2021 is discussed at paragraph 37 above.

207. The claimant alleged that disclosures made in this meeting tended to show that a miscarriage of justice had occurred. The Tribunal has scrutinised the matters found to have been raised in this meeting and cannot discern any information given at this meeting tending to show that a miscarriage of justice had occurred, was occurring or was likely to occur, bearing in mind the definition of the term discussed above. The claimant herself was unclear as to what the alleged miscarriage of justice might be. The information is about concerns in relation to social work practice, not about serious injustice being done in the cases mentioned as a result of any of those concerns. In the circumstances the Tribunal finds that no protected disclosures were made during this meeting.

Protected Disclosure 3

208. The meeting on 8 November 2021 is discussed at paragraphs 45 and 46 above.

209. During this meeting the claimant alleged that because experienced social workers had left and newly qualified social workers had arrived who were not being adequately supervised, children and families were coming to harm. Bearing in mind the guidance in **Kilraine**, the Tribunal considers that the information disclosed about the social workers, coupled with the allegation that this was leading to harm, had sufficient factual content and specificity to be information tending to show that the health and safety of an individual or individuals had been or was likely to be endangered. In accordance with **Miller** and **Hibbins** it is not a requirement that the endangerment be caused by something being done by the respondent.

210. As in relation to the meeting on 19 July 2021, the Tribunal accepts having heard the claimant's evidence that the claimant held a genuine and reasonable belief in the concerns raised by her about the supervision of

social workers in this meeting, and held a reasonable belief that reporting such concerns was in the public interest.

211. The disclosure was again made to Ms Appleby and therefore to the employer, and is thereby a protected disclosure.

212. For completeness, the Tribunal does not consider that the remainder of the meeting, regarding the alleged pressure placed on the claimant and Dr McQueen to agree with the conclusions of social workers and not to make their own independent analysis, would fall under either section 43B(1)(c) or (d).

Protected Disclosure 4

213. The email of 14 December 2021 is discussed at paragraph 50 above.

214. As discussed that paragraph, the Tribunal is satisfied this email was sent by Dr McQueen for himself and on behalf of the claimant, such that any disclosures made within it would be disclosures by her.

215. The content of the email relates to the claimant's concerns about the social work practice in a particular case, the agreement by the mother to care orders, and details the dispute which was emerging between CAT and the local authority. There is nothing at all in the email which discloses past endangerment or potential endangerment to the health and safety of any individual. The Tribunal went on to consider whether there was anything which tended to show a miscarriage of justice or potential miscarriage of justice. Bearing in mind the definition discussed above, the Tribunal considers that the inclusion of the words 'this outcome is unjust' is insufficient. There is no serious injustice identified.

216. The Tribunal therefore finds that there was no protected disclosure made in this email.

Protected Disclosure 5

217. The email of 4 January 2022 is discussed at paragraphs 56 to 58 above.

218. As discussed in paragraph 56, the Tribunal is satisfied that the email was discussed with the claimant and was sent equally on her behalf, such that any disclosures within it would be disclosures by her.

219. The email discussed a particular family and notes that the mother was planning to move and cut off ties, and that the claimant considered there was a serious risk to her mental health, which could include suicide. This is clear and specific information that the health and safety of an individual is likely to be endangered. As for Protected Disclosure 3, it is not a requirement that the endangerment be caused by something being done by the respondent.

220. As before, the Tribunal is satisfied that the claimant genuinely believed this to be the case and that belief was reasonable, further that she reasonably believed it was in the public interest to report the matter to Ms Appleby.

221. The disclosure was again made to Ms Appleby and therefore to the employer, and is thereby a protected disclosure.

Protected Disclosure 6

222. The email of 11 January 2022 is discussed at paragraph 60 above.

223. The Tribunal finds that there is no sufficiently specific information in this email tending to show endangerment or potential endangerment of any individual. It is couched in general terms and is about matters previously raised with Ms Appleby. It is not providing information but is seeking advice about safeguarding structures following Ms Appleby's retirement. It is not suggested that the email tends to show anything about a miscarriage of justice.

224. In the circumstances the Tribunal finds that no protected disclosure was made in this email.

Protected Disclosure 7

225. The email of 7 March 2022 is discussed at paragraphs 82 to 84 above.

226. As discussed in paragraph 82, the Tribunal is unable to say who the email was sent to. The claimant has not proven that she made any disclosure in accordance with section 43C.

227. Further, the content of the email is a detailed account of the ongoing dispute between CAT and the local authority in relation to the proposed provision for a particular family. Having scrutinised the content, it does not refer to any health and safety issues or pertain to any alleged miscarriage of justice.

228. In the circumstances the Tribunal finds that no protected disclosure was made in this email.

Protected Disclosure 8

229. The email of 22 March 2022 is discussed at paragraph 86 above.

230. This short email does not disclose any specific information that tends to show the health and safety of an individual had been, was being or was likely to be endangered. While there is a reference to 'harm' no details are given at all as to what kind of harm this refers to. 'Harm' is a broad term and

may refer to a variety of matters, not necessarily the health and safety of an individual. Nor is there any information relating to a miscarriage of justice. The Tribunal has considered the context of this email, namely that the claimant says this was a case where the local authority did not send a copy of their report. However that was only discovered much later and there is nothing about that in the email.

231. In the circumstances the Tribunal finds that no protected disclosure was made in this email.

Protected Disclosure 9

232. The email of 25 April 2022 is discussed at paragraph 100 above.

233. This is a short email in which the claimant and Dr McQueen ask the local authority whether Ofsted would be informed of their concerns in relation to families KE and S or that referrals to CAT had been paused. Other than mentioning 'safeguarding concerns' it does not disclose any information about those families at all, and there is nothing tending to show that the health and safety of any individual has been endangered or potentially endangered, or any possible miscarriage of justice.

234. In the circumstances the Tribunal finds that no protected disclosure was made in this email.

Protected Disclosure 10

235. The emails of 17 to 19 May 2022 are discussed at paragraphs 107 to 109 above.

236. The emails of 17 and 19 May 2022 were from Dr McKenna. As found in paragraph 108, the email of 18 May 2022 was not written on behalf of the claimant nor did Dr McQueen confer with the claimant before writing it. Even if it contained a disclosure of relevant information, which it does not, it would not be a disclosure by the claimant.

237. In the circumstances the Tribunal finds that no protected disclosure was made by the claimant in these emails.

Protected Disclosure 11

238. The email of 1 June 2022 is discussed at paragraphs 110 to 111 above.

239. This email relates for the most part to the ongoing dispute between the claimant, Dr McQueen and the local authority and makes various allegations against social workers in specific cases. However it does give some specific information which pertains to the health and safety of individuals, similar to that in Protected Disclosure 1. For example, it refers to a child having been recommended intensive child psychotherapy three

times but not having been offered child psychotherapy; to four young children coming to harm by being separated from each other, and to a failure to act to remove children, with *'very severe harm to children including probable preventable irreversible brain damage in one child, severe attachments disorders in the other two'*. We are satisfied that this is specific information tending to show that the health and safety of individuals had been endangered, and that the claimant had a reasonable belief that this was the case, in the same way as Protected Disclosure 1.

240. The end of the email states *'Our priority in raising these concerns and in writing this document is to improve the care of children and safety and effectiveness of services.'* We are satisfied that the claimant reasonably believed that the disclosures were made in the public interest.

241. In the circumstances we find that a protected disclosure was made in this email.

Protected Disclosure 12

242. The email of 6 June 2022 is discussed at paragraphs 113 to 114 above.

243. The Tribunal has considered carefully the content of this email. While it discloses specific information about a particular family, it does not disclose information tending to show that the health and safety of any individual has been, is being or is likely to be endangered, or potential miscarriage of justice.

244. In the circumstances the Tribunal finds that no protected disclosure was made by the claimant in this email.

Protected Disclosure 13

245. The email of 25 July 2022 is discussed at paragraph 127 above.

246. The email relates to an assessment report being left out of a court bundle. We accept the claimant's evidence that at the time she thought it was a 'miscarriage of justice concern'. However, we find that even if the claimant thought a miscarriage of justice might occur as a result of the report being left ought, this was not a reasonable belief. An explanation had been given by the local authority as to why the report was not in the bundle (as set out in the extract reproduced in the email), and the claimant must have known that it would be obvious to the court looking at the bundle that the report was missing. It would have been highly unlikely a decision would have been made by the court without sight of it.

247. In the circumstances the Tribunal finds that no protected disclosure was made by the claimant in this email.

Protected Disclosure 14

248. The email of 27 July 2022 is discussed at paragraph 137 above.

249. As discussed in that paragraph, this was not a communication by the claimant. Further, the claimant accepted I cross examination that she could not see a disclosure in this email, except perhaps the reference to the missing court report. For the same reasons as in relation to alleged Protected Disclosure 13, it was not reasonable to consider that leaving the report out of the bundle would lead to a miscarriage of justice.

250. In the circumstances the Tribunal finds that no protected disclosure was made by the claimant in this email.

Protected Disclosure 15

251. The email of 5 August 2022 is discussed at paragraphs 142 to 144 above.

252. The claimant accepted in cross examination that this email contains nothing about safeguarding concerns. The Tribunal has reviewed its contents and notes that it relates in part to the claimant's complaints about the investigation process and her meeting with Mr Bayayi, and also provides the claimants responses to the terms of reference. There is nothing tending to show a health and safety concern or any potential miscarriage of justice.

253. In the circumstances the Tribunal finds that no protected disclosure was made in this email.

Protected Disclosure 16

254. The email of 3 October 2022 is discussed at paragraphs 160 to 161 above.

255. As discussed in paragraph 161, this was not an email from the claimant or sent on her behalf or with her authorisation, and therefore cannot be a disclosure by her.

256. In the circumstances the Tribunal finds that no protected disclosure was made by the claimant in this email.

Summary in relation to protected disclosures

257. In summary, we have concluded that Protected Disclosures 1, 3, 5 and 11 amounted to protected disclosures. The remaining communications did not amount to protected disclosures.

<u>Detriments</u>

258. The Tribunal has considered the detriments in the categories suggested by the claimant, as set out in the agreed List of Issues.

Pausing of referrals – Detriment 1

259. The Tribunal accepts that the pause in referrals could reasonably be seen as a detriment.

260. For the following reasons the Tribunal finds that the decision to pause referrals was not made by the respondent, but by the local authority:

(i) The email of 30 March 2022 from Ms Baig refers to safeguarding concerns raised by CAT and to questions as to their role as experts. At that stage Ms Baig suggested that there should be a pause;

(ii) In relation to the meeting of 7 April 2022, we have already made a finding at paragraph 94 that the decision was made by the local authority, and was then supported by others.

261. The claimant submits that the local authority is asking the respondent to pause, and it is the respondent 'doing' the pausing of the service, and that only the respondent can pause the service, not the local authority. That is not the way the case is pleaded. The List of Issues invite the Tribunal to consider whether there was a 'pause of referrals'. But in any event, it seems to the Tribunal that this is an exercise in semantics. The only work done by the service was dealing with referrals from the local authority. If the local authority decided not to refer cases to CAT, there was no work, and the service was effectively paused as a result.

262. Even if we were to accept the claimant's suggestion that the respondent was active in the decision, we find that the reason for the pause in referrals (and therefore the service) was not because protected disclosures had been made, but rather because there was a need to deal with both the safeguarding concerns and the serious complaints made against the claimant (and Dr McQueen to a lesser extent) before the local authority was willing to use CAT again. This is only 'but for' causation. This is analogous to the factual situation in **Jesudason**, in which it was found that the respondent had written correspondence in response to communications which amounted to protected disclosures in order to set the record straight, and there was no link with the claimant as a whistle-blower. The Employment Appeal Tribunal found that this was only consistent with the rejection of the claimant's case that the true motivation and purpose were to disparage and discredit the claimant by presenting him as irrational vexatious and dishonest and/or that this all stemmed from a hostility born of his history of whistleblowing. In the present case, the pause was not on grounds that a protected disclosure had been made, but because of a genuine and reasonable need to resolve the concerns raised on both sides.

263. We also reject the claimant's suggestion that the lifting of the pause was inextricably linked to the delay in the subsequent investigation. It would not be the respondent's decision when the local authority chose to start referrals again, and there were also discussions taking place about restructuring the service. There is no evidence whatsoever to substantiate the claimant's submission that the respondent had consistently delayed the publication of the report, because of the protected disclosures, in order that the lifting of the pause should occur. We discuss the reasons for the delay further below.

264. We therefore find that Detriment 1 was not conduct of the respondent, and was not in any event on the grounds that protected disclosures had been made.

Placing CAT under a clandestine review – Detriment 11

265. The starting point for the Tribunal here was trying to work out what the claimant's case is on this issue.

266. The way the claimant puts this in the claim form is at paragraph 97b:

"Placing the CAT under a clandestine "review", that is the Claimant and CAT were not informed they were under review at an unknown date but continuing at the time of writing and further failing to lift the clandestine "review"…"

267. The respondent contended in its Amended Response that this was insufficiently particularised and could not sensibly be responded to.

268. The claimant's witness statement refers to the 'clandestine review' at paragraphs 114 to 127. She refers to the following matters:

(i) The mention of an 'internal investigation' in the minutes of the meeting of 7 Aprill 2022; and

(ii) Mr Bayayi's attempt to interview the Children's Guardian in the Family S case and an alleged complaint by the mother in that case, such that he was investigating more widely than the terms of reference.

269. In the claimant's Counsel's opening note, the 'clandestine review' is described as follows:

"Clandestine review of CAT (which includes the Claimant) which the Claimant was not aware, e.g. investigation after the confidentiality matter had been addressed and 'closed' in October 2021, the advice of pausing the service in January 2022 prior to any investigation, the internal HR investigation with an unknown outcome referenced in the meeting 7 April 2022 [1495], Hector Bayayi's investigation, and an investigation by Patricia Pemberton"

270. In the hearing when asked by the Judge what was meant by a 'clandestine review', Counsel for the claimant somewhat opaquely referred to elements being investigated, looked at, discussed and conclusions made, with points in the report which were not in the Terms of Reference. That is very different to the way the matter is pleaded, which suggests a hidden review separate to the investigation that the claimant was aware of.

271. In closing submissions, Counsel for the claimant invited the Tribunal to find that Mr Bayayi had gone on a fishing expedition, and investigated bullying and racism with Ms Pemberton, despite this not being part of the terms of reference. This had not been raised at all previously as being part of the 'clandestine review' allegation. She referred to the reference in Mr Bayayi's report to a letter to the local authority from Ms Pemberton on 27 February 2022, and again to the minutes of the 7 April 2022 meeting.

272. The way in which this allegation has changed over time is unfair to the respondent and has made the Tribunal's decision making difficult and time consuming. Nevertheless we have considered each of the points now raised:

(i) We have already found that the reference in the minutes of the 7 April 2022 meeting to an 'internal HR investigation' must refer to Mr Bayayi's investigation. The claimant was well aware by that stage that an investigation was going to be carried out, and it was not 'clandestine';

(ii) We have already found that Mr Bayayi's attempt to interview the Children's Guardian and the mother in the Family S case was because he was given a copy of the Children's Guardian complaint and he therefore thought that the Family S case was included in the scope of the investigation. He would have had no way of knowing about Family S if that was not the case. Having looked into the matter, he found there was no complaint and he had no response from the family, so excluded this from his investigation. There is no evidence that he was on a 'fishing expedition' at all, there was no detriment to the claimant, and there was nothing to connect this action with the protected disclosures made;

(iii) We have already found that the reference to a letter dated 27 February 2022 was an error, and that there was no additional investigation at this time. In so far as Mr Bayayi's investigation was commenced after the confidentiality matter had been addressed and closed, the reason for this was because the court and the local authority required a formal investigation, not because protected disclosures had been made;

(iv) In relation to matters considered by Mr Bayayi that were not set out in the terms of reference, the Tribunal accepts Mr Bayayi's evidence in cross examination that there were matters which came out during

the investigation and it was sensible to look further to see if there were any patterns. This was not clandestine. All such queries were included in the report to see, albeit that the claimant did not see the report at the time. In any event this point would not have been at all apparent to the respondent from the way case was pleaded and the claimant's witness evidence as to what she considered to have been 'clandestine'.

273. In the circumstances there was no 'clandestine review' on any of the many and changing grounds suggested, and therefore no detriment to the claimant in this regard. Further there was nothing connecting the matters complained of and the protected disclosures found to have been made.

Obfuscate the route to raising safeguarding concerns within the respondent – Detriments 2, 3, 4, 7, 10A

274. Detriment 2 relates to Ms Miller advising the claimant and Dr McQueen to raise remaining safeguarding concerns outside the Trust if they had any. As discussed at paragraphs 95 to 98 above, we find that this was said in the meeting.

275. The next question is whether this amounted to a detriment. The Tribunal can see how potentially the removal of a line of safeguarding reporting might reasonably be perceived to be a detriment by the claimant, however the claimant was clearly informed the next day that reports should also be made to the respondent. Therefore if there was a detriment at all, it was only fleeting. There is no evidence at all that the reason Ms Miller said this was on the ground protected disclosures had been made. It is noted that this was not put to Ms Pemberton in cross examination, who was in the meeting. We find the actual reason, as given in Ms Pemberton's email the following day, was that this is what the local authority had requested.

276. Detriment 3 concerns Ms Pemberton advising the claimant on 12 April 2024 to report her safeguarding concerns to Ms Baig.

277. Ms Pemberton's email of 12 April 2024 in fact confirms what Dr McQueen suggested, namely that they should report to the local authority (not Ms Baig personally), but goes on immediately to say that they should also report to Ms Pemberton and the respondent's safeguarding team. The Tribunal cannot see how any detriment to the claimant arises from this email. Further, it was not put to Ms Pemberton in cross examination that the reason for suggesting that CAT report to the local authority was on the ground that protected disclosures had been made.

278. Detriment 4 concerns Ms Pemberton confirming that there would be a written report on the investigation of the claimant's concerns, but never providing such a report. The Tribunal finds that it is correct that Ms Pemberton said there would be a written account of the outcome of Dr McKenna and Ms Miller's investigation, in her email of 28 April 2022. We

are further satisfied that not having a written report of the findings of the investigation could reasonably be perceived to be a detriment and that the claimant did view this as a detriment.

279. The Tribunal finds that when Ms Pemberton said an account would be provided, that is genuinely what was intended. It was not the fault of Ms Pemberton that a report was not then provided. This was the responsibility of Ms Miller and Dr McKenna. Nor was it put to Ms Pemberton that a report was not produced on grounds that protected disclosures were made. Overall we found that Ms Pemberton was doing her best to assist the claimant and Dr McQueen, and her correspondence to them was supportive. Shortly after this in August 2022 Ms Goodridge took over the investigation. She left the respondent without having produced a report. We accept the candid evidence of Ms Scott, as discussed in the detailed written investigation report prepared by her in around November 2023, that the reason a report was not produced was because of poor management by the respondent. The respondent had not appointed a lead to take responsibility for managing CAT's concerns, and the lack of a single point of contact had led to confusion about what was communicated to CAT and how their concerns were progressed. There were also a lot of changes of personnel and four key individuals were in interim posts (Chief Medical Officer, Head of Safeguarding, Chief Nursing Officer and Head of HR/Chief People Officer). In the circumstances we find this was the reason the report was not produced, and not because the claimant had made protected disclosures.

280. Detriment 7 is Mr Lawlor advising the claimant that he could not take up an investigation into her concerns because they were 'operational'. This was not to do with any concerns about safeguarding, it was to do with the claimant's request for the disciplinary process against her to be stopped. Mr Lawlor explained why he could not deal with it himself and passed the matter on to Hodges. The Tribunal finds that this could not reasonably have been perceived to be a detriment to the claimant. Further, there is no evidence at all that the reason Mr Lawlor declined to deal with the matter himself was on grounds that the claimant had made protected disclosures. Shortly prior to this Mr Lawlor had himself requested a summary of CAT's safeguarding concerns, which suggests he was trying to help with that issue.

281. Detriment 10A concerns Dr McKenna saying would 'find out' where investigation is at in her email of 12 September 2022, in response to an email from Dr McQueen which the claimant was not even copied in to, asking Dr McKenna for advice in her capacity as Medical Director. The context of this email is that Dr McKenna had been away on holiday. It appears from the email she was simply agreeing to find out what was happening with the investigation and speak to Ms Goodridge now she had returned. This was a wholly innocuous comment and the Tribunal does not understand how this could reasonably be perceived by the claimant to be a detriment. There is also no evidence whatsoever that this comment was motivated by protected disclosures having been made.

Refusing to investigate the claimant's and CAT's safeguarding concerns or delaying investigation of concerns about various families – Detriments 8, 12

282. Detriment 8 concerns Ms Farrington's email of 10 August 2022, in which it is alleged she said that she couldn't investigate the claimant's concerns. The Tribunal finds that this is not what was said in her email. Rather, she stated that it would have to wait until the current investigation (i.e. Mr Bayayi's investigation) was concluded before the claimant's concerns were reviewed. A proposal was then made in relation to addressing the concerns raised at a later date. In the circumstances this conduct is not made out.

283. Although it was not put in this way in the list of issues, the Tribunal has nevertheless considered whether failing to deal with the claimant's concerns there and then, which might be perceived as a detriment, was on the grounds that the claimant made protected disclosures. We find that the reason was that set out in the email, namely that addressing the claimant's concerns had to wait because of exceptional circumstances and time pressure arising from the related Family Court proceedings which required the respondent to conclude its investigation and produce its report by the end of the month. Although that did not in fact happen, there is nothing to suggest that this is not what Ms Farrington intended. Moreover, we accept Ms Farrington's evidence given in cross examination that she was not aware of the protected disclosures. There is no evidence at all to suggest that the reason she did not support an investigation at that point was on grounds that protected disclosures had been made, and this was not put to her.

284. Detriment 12 concerns the failure or delay by Ms Baig, Dr McKenna and Ms Miller to produce a report into the claimant's concerns. Ms Baig is not an employee or worker of the respondent and the respondent is not responsible for any action or inaction by her. The report that Dr McKenna and Ms Miller intended to produce is discussed above in relation to detriment 4. The Tribunal finds that the reason no report was produced was due to poor management and Ms Goodridge taking over the investigation. There is no evidence at all that the reason for the failure was on the ground that protected disclosures had been made.

Subjecting the claimant to disciplinary investigation – Detriments 5, 6, 9, 10

285. Detriment 5 relates to restarting the investigation into the claimant notwithstanding its closure in October 2021. A letter apologising for the claimant's conduct in relation to confidentiality was sent in October 2021. A formal investigation was commenced in June 2022, which included that allegation (among others). This was plainly a detriment to the claimant. However it is clear from the correspondence from January 2022 that the reason this investigation was commenced was because the Family Court had ordered that the local authority had to keep the Court updated as to 'the ongoing investigation arising from the CAT report' and Ms Alexander had

requested that the case be discussed with Ms Pemberton's manager (see paragraphs 62 and 63 above). We find that Dr Searle reasonably concluded that a formal investigation was required as a result of this, rather than the informal investigation that Ms Pemberton had carried out previously (see paragraph 64). There is no evidence that Dr Searle was motivated by the fact that protected disclosures had been made.

286. This detriment has two further parts. It is alleged that (a) the respondent took an inordinate amount of time to resolve the investigation, to ensure that 'the process is the punishment', and (b) the respondent adopted a disproportionate approach to the investigation given the low level nature of the allegation.

287. The Tribunal agrees with the claimant that there was an inordinate delay in the investigation being concluded. It was intimated in January 2022 that an investigation would be required, and Mr Bayayi was asked at that time whether he could in principle conduct it. Mr Bayayi was given terms of reference in June 2022. He did not conclude his interim report until over a year later in July 2023, and his final report was produced on 23 October 2023. The Tribunal also accepts that being under investigation for this length of time was a detriment to the claimant.

288. The Tribunal reviewed with care the evidence given by Mr Bayayi and the challenges made to his credibility as a result of the way in which his original statement and revised witness statement were prepared. The claimant submitted that no weight should be given to Mr Bayayi's evidence. The Tribunal agrees that the portion of the statement dealing with whether Mr Bayayi knew about the protected disclosures being made is problematic. His original statement indicated that he was not aware of any of the protected disclosures, save that the claimant had discussed safeguarding in general terms during the meeting on 26 July 2022, and that he considered this fell outside of his investigation. Having refreshed his memory from the documents, Mr Bayayi's amended statement conceded that he did not know about protected disclosures before the investigation was commissioned, but documents were shared with him by Ms Mountain on 12 July 2022 and by Mr Dar on 19 July 2022, and he escalated concerns raised in the meeting of 26 July 2022 to Dr Searle, Dr James and Dr Hodges. Both the claimant and Dr McQueen raised that there were safeguarding concerns what they felt had not been addressed, but that they did not discuss the disclosures. They were advised by him to speak to the Freedom To Speak Up Guardian. This change in stance may be the result of Mr Bayayi not appreciating what documents were alleged to be protected disclosures, as he had not in fact seen the pleadings referred to in his original statement, and therefore not appreciating that in fact he was aware of some of those documents (albeit not all the documents have been found to be protected disclosures). The Tribunal finds though that he was aware at least generally of the concerns which had been raised, even if he did not consider it necessary at the time to look at the detail himself.

289. Against that background, the Tribunal has considered whether the reason for the inordinate delay in dealing with the investigation was a deliberate act by Mr Bayayi 'to ensure that the process is punishment' as pleaded, and whether this was on the ground that protected disclosures had been made.

290. We find that Mr Bayayi has given cogent reasons for the delay in the investigation. There was an initial delay in the first instance between January and June 2022 in the investigation being formally commissioned, and then a further delay into July 2022 before Mr Bayayi was given any documentation. There were then significant delays in setting up interviews with individuals external to the respondent, including within the local authority. There were related delays due to Mr Bayayi's attempts to interview those involved in the Family S case, because he had received a document pertaining to Family S and was trying to find out if there was a formal complaint (as discussed in paragraphs 154 to 156 above). We also find that the delay was compounded by Mr Bayayi's workload, the long period when the claimant and Dr McQueen were on sick leave, and some delays due to the claimant's companion not being available. Once the interim report was produced Mr Bayayi was not responsible for the further delay, which was due to internal review processes including legal review.

291. Turning to the manner in which the allegations were investigated, we reject the claimant's submission that these were 'low level' allegations. Mr Bayayi's remit included investigating serious allegations of breach of confidentiality by the claimant (which were substantiated), and racism. The matters were sufficiently serious that the Family Court itself had intervened to seek an outcome. A thorough investigation was warranted.

292. We have considered whether the delays or the way in which the investigation was approached may have been at least in part as a result of some ill feeling towards the claimant because she had made protected disclosures, and as a desire to punish her. We can find no evidence whatsoever to support this suggestion. The impression the Tribunal gained, having reviewed Mr Bayayi's original statement, revised statement and answers to questions posed in cross examination, was that he was doing his best to progress the matter in the face of repeated stumbling blocks. As regards the protected disclosures, we accept his evidence that he simply did not consider this to be anything to do with him. He properly escalated the matter when it was raised by the claimant and Dr McQueen that their safeguarding concerns had not been addressed, but felt this fell outside the scope of his investigation. In short, he did not think it was his problem to solve. There was also no reason for Mr Bayayi to seek to punish the claimant or to bear any ill will towards her. We accept his evidence that in his view, he did not know the claimant, he was not the claimant's manager or the decision maker, and he was only commissioned to conduct the investigation and nothing more.

293. In the circumstances we do not find that Detriment 5, in so far as it is proven to have occurred, was on grounds that protected disclosures had been made.

294. Detriment 6 relates to the claimants allegations about Mr Bayayi's conduct in the meeting of 26 July 2022. As discussed at paragraphs 130 to 136 above, the Tribunal has preferred Mr Bayayi's account of this meeting. No detriment occurred.

295. Detriment 9 is the allegation that Mr Bayayi went on a 'fishing expedition' by asking for further details about Family S, 'designed to cause anxiety to C'. As discussed above, the reason for Mr Bayayi enquiring into Family S was because he had received documents pertaining to Family S. It was reasonable for him to explore whether there was a complaint which had to be investigated as a result, and he concluded that there was not. There was no detriment to the claimant whatsoever, nor any evidence that Mr Bayayi conducted himself in a way designed to cause anxiety to the claimant.

296. Detriment 10 relates to the claimant's allegation that Mr Bayayi failed to ensure the diarized meeting on 21 December 2022 went ahead, thereby extending the investigation into 2023. As discussed at paragraphs 165 to 168 above, we have accepted that the reason the meeting did not go ahead was simply a case of HR not being available at the last minute due to a personal commitment. Mr Bayayi nevertheless attended the meeting to explain to the claimant it would have to be rearranged. There is no evidence that this was a deliberate act by Mr Bayayi to extend the investigation into 2023, and as discussed above we find that there was no ill feeling towards the claimant as a result of her having made protected disclosures.

Summary in relation to detriments

297. In the circumstances, all complaints of detriment on grounds that protected disclosures were made fail.

Jurisdiction

298. As a result of our findings we have not considered it necessary to address the issue of whether the claimant's complaints of detriment had been brought in time.

<u>Direct race discrimination and harassment</u>

Direct discrimination

299. The claimant alleges that she was subjected to aggressive questioning by Mr Bayayi by asking "what do you think racism is" three times.

300. As we found in paragraphs 130 to 136 above, we reject the claimant's suggestion that Mr Bayayi subjected the claimant to aggressive questioning.

His initial question and follow up questions were reasonable in the context of the serious allegation of racism made.

301. In any event we find that Mr Bayayi would have treated a non-White person in the same way. We find his intention was to robustly investigate what he considered, quite reasonably, to be serious allegations.

302. The complaint of direct race discrimination therefore fails.

Harassment

303. The same conduct is relied upon in relation to harassment. As before, we do not find the conduct alleged occurred.

304. Even if Mr Bayayi's questions were unwanted conduct and on their face related to race, we further find this did not have the purpose of and cannot reasonably have had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. These were straight forward questions to be asking in the context of allegation of racism. The Tribunal considers that it cannot be the intended purpose of the statute that employers should be subject to harassment claims when asking reasonable questions in relation to race of workers accused themselves of racism.

305. The complaint of harassment related to race therefore fails.

Jurisdiction

306. It is noted that the discrimination complaints are on their face out of time, however as a result of our findings the Tribunal did not find it necessary to consider whether it would be just and equitable to extend time.

Judge's Note

307. I apologise for the delay in this judgment reaching the parties. The Tribunal's deliberations were delayed as a result of my absence for personal reasons.

Employment Judge Keogh

Date 13 September 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

20 September 2024

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FOR THE TRIBUNAL OFFICE