EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mrs Sophie Cooper	AND	Ministry of Defence

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY BY CVP Video ON 16, 17 and 18 September 2024

EMPLOYMENT JUDGE N J Roper **MEMBERS** Mr S Wykes, Mr L Wakeman

Representation

For the Claimant: **In Person**
For the Respondent: **Miss G Hirsh of Counsel**

JUDGMENT

The unanimous judgment of the tribunal is that the claimant's claims that she suffered detriment and that she was constructively unfairly dismissed because she had made protected public interest disclosures are not well founded, and they are hereby dismissed.

RESERVED REASONS

1. In this case the claimant Mrs Sophie Cooper claims that she has been unfairly constructively dismissed, and that the principal reason for this was because she had made protected public interest disclosures. She also brings a claim for detriment arising from such disclosures. The respondent contends that the claimant resigned, and was not dismissed, and it denies the claims.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents to which we were referred are in a bundle of 345 pages, together with a supplemental bundle of 64 pages, and then some more additional entries, the contents of which we have recorded.

3. We have heard from the claimant. For the respondent we have heard from Mrs Wendy Usherwood, Captain Charlotte Park, Mrs Sara Hodds, Mrs Amita Jairath, Mr David Steel, and Mr Simon Fitch.
4. Credibility:
5. The weight of evidence was against the claimant in a number of respects. The claimant's allegations were strongly refuted by a number of the respondent's witnesses, and they were often inconsistent with the contemporaneous documents. On the other hand, the respondent's witnesses were consistent in their recollections and criticisms of the claimant's behaviour. Their evidence was also consistent with the contemporaneous documents which we have seen. The claimant also made a serious allegation against Mr Fitch, namely that he was deliberately lying and concocting his evidence, in order to dispute the claimant's assertions. That allegation was not even put to Mr Fitch by the claimant, and there was no evidence to support this serious allegation. For these reasons the claimant's credibility was affected, and where there was a dispute between the evidence of the claimant and that of the respondent, we preferred the respondent's evidence.
6. Bearing in mind the above, we found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
7. The Facts:
8. The events in question took place at Hamworthy Barracks which are Royal Marine barracks in Poole in Dorset. The barracks has a Medical Centre which is comparable to a civilian GP surgery. It is staffed by doctors, nurses, physiotherapists and administrative staff to provide primary health care, occupational health and force protection service to the service personnel at the barracks. Within the Medical Centre is a Primary Care Rehabilitation Facility ("PCRF") which is an outpatient department which offers physiotherapy and exercise rehabilitation therapy.
9. Captain Charlotte Park, from whom we have heard, was the Officer in Command of the PCRF between August 2020 and August 2022. She is also a Chartered Physiotherapist. Between January 2020 and April 2021 she was deployed overseas on a sensitive and secret posting and therefore only had very limited contact with the PCRF.
10. Mr Simon Fitch, from whom we have heard, is a Band 7 Advanced Physiotherapist who is the Clinical Governance Lead for the PCRF. He works alongside the military Officer in Command which for most the time was Captain Park.
11. The claimant Mrs Sophie Cooper commenced employment with the respondent in the Physiotherapy Department of the PCRF in June 2021. The respondent asserts that she was employed as a receptionist, and the claimant suggests that she was a Medical Administrator. In any event her role involved booking in patients for appointments, organising the physiotherapy storeroom, reporting faults, and conducting other administration tasks associated with processing the physiotherapy patients.
12. The Practice Manager at the Medical Centre was Mrs Wendy Usherwood, from whom we have heard. Mrs Usherwood was the claimant's line manager from the commencement of her employment until Mrs Usherwood retired on 26 January 2023. She had interviewed the claimant for the role, and she was very impressed by the claimant's performance at the interview. There were three other receptionists in the Medical Centre, but the claimant's workplace was specifically within the PCRF, and her work related only to that department as a dedicated physiotherapy receptionist. She initially performed well in the role and was very personable with excellent administrative skills.
13. However, Mrs Usherwood soon noticed that the claimant appeared to be dissatisfied with her status within the Medical Centre. She told Mrs Usherwood that she wanted her job, and she also requested a pay rise on the basis that she was better than two of the other Medical Centre receptionists. This request was declined because it was the claimant's grade which set the salary. The claimant also complained that Ms Brill, who was an administrator working at one grade higher than the claimant, needed to realise that the claimant was "not like other receptionists", and not required to do the same type of tasks as they were. Within a couple of months Mrs Usherwood also noticed that the claimant was

beginning to leave her desk unattended at regular intervals which became problematic. She would also take time out chatting to military medics who were not part of the PCRF and whose work was unrelated.

14. Mrs Usherwood had a good relationship with the claimant and attempted to resolve these issues informally. Despite their good relationship the claimant, fell out with a number of other colleagues, and she appeared to take issue with people whom she perceived had authority over her. Her relationship with Captain Park also began to deteriorate during this period. The breakdown of these relationships formed part of a pattern of low-level misconduct on the part of the claimant which began to emerge in early 2022.
15. In January 2022 Mrs Usherwood attempted to encourage the better aspects of the claimant's conduct by awarding her a performance-related bonus. Her line manager told her that this would send the wrong message during a period of low-level misconduct, but Mrs Usherwood considered that it was an appropriate way to foster the claimant's better behaviour in the hope that she could become a real asset to the team. She sought advice from HR and was told to wait for any "new behaviour", that is to say any future misconduct issues, and to contact HR in that event for advice.
16. Against this background Mrs Usherwood continued to support the claimant, and her potential career progression. In November 2021 the claimant had asked the respondent to support her in undertaking a BTEC Management and Leadership course at a local college, and Mrs Usherwood authorised leave of absence for the claimant to do this, and the respondent paid for the course. The claimant asserts that she suffered detriment at the hands of Captain Park (which is the first of nine alleged detriments) to the effect that "in January 2022, whilst the claimant was doing a management course for intended promotion, Captain Park told her that she would "take her down" and that she would "never qualify". We accept Captain Park's evidence that she did not say these words to the claimant at any time. She was aware of the management course which the claimant was doing, and she was fully supportive of it. We also accept Mrs Usherwood's evidence to the effect that she had no knowledge of these comments allegedly made by Captain Park, nor of any other threatening behaviour on the part of Captain Park towards the claimant, and she was never notified of the same.
17. The second of the nine detriments which the claimant asserts she has suffered is that "From February 2022 the claimant repeatedly sent emails to Captain Park and/or Mr Fitch which were ignored and/or not responded to, and the claimant repeatedly had to approach her line manager Ms Usherwood for information." We accept Mr Fitch's evidence that this is not true. He has checked his records and between February 2022 and January 2023 he received 16 emails from the claimant, and he replied to 13 of these. The remaining three were single statement emails confirming that a task had been completed and he felt no need to respond. He also had a number of "business as usual" meetings and work-related interactions with the claimant over this period. We also accept Captain Park's evidence to the effect that she did not ignore emails from the claimant after February 2022. Indeed, because of what Captain Park perceived to be a negative and toxic environment as a result of the claimant's conduct, she made every effort to maintain correspondence and communication with her in a professional and objective manner.
18. The third of the nine detriments which the claimant asserts she has suffered is that: "On 4 March 2022 Captain Park and/or Mr Fitch of the respondent's management held meetings to discuss how to dismiss the claimant." We accept the evidence of both Captain Park and Mr Fitch that there were no such meetings. Captain Park accepts that the claimant's ongoing misconduct was causing difficulties within the PCRF and the wider Medical Centre and that this was discussed with Mr Fitch, Mrs Usherwood and others, but there was never any discussion or meeting as to how to dismiss the claimant. This is consistent with Mr Fitch's evidence, which we accept, that at no stage did he ever hold a meeting with Captain Park or anyone else to discuss how to dismiss the claimant.
19. Meanwhile there was an issue with an ultrasound machine which had not been serviced regularly. The maintenance of this machine was completed on an annual basis by the PCRF, but the service contract had expired during the Covid-19 pandemic, and the service of this machine was cancelled because of the restrictions at the time. Because of an

administrative oversight the machine was not re-serviced once clinical capabilities were resumed after the Covid lockdowns. This issue was brought to the attention of Mr Fitch in early February 2022, and he arranged for the machine to be serviced, which took place on 27 May 2022.

20. The claimant relies on three protected public interest disclosures, and the first two of these relate to medical equipment and the ultrasound machine. The first disclosure relied upon is that the claimant told Mr Fitch in October 2021 that medication being used on patients was four years out of date. The second disclosure relied upon is that in about February or March 2022 the claimant told Mrs Usherwood that medication being used was four years out of date, and that the ultrasound machine was six years out of date.
21. The respondent had understood that the allegation relating to medication must be unfounded simply because all clinicians within the PC are physiotherapists and not doctors or pharmacists. They do not hold prescribing rights, do not administer medication, and do not hold any medication within the department. All medication is securely stored in the on-site pharmacy to which the claimant, and none of the physiotherapists, have access. At this hearing the claimant changed the nature of this allegation to the effect that it was acupuncture needles, to which the physiotherapists do have access, which were out of date.
22. It was in fact Captain Park who first addressed this issue, and she sent an email on 23 November 2021 to the claimant, which she copied to Mr Fitch. She asked the claimant: "When back in business please could you continue an extension of the fine store cupboard clear out to the boxes, cabinets and stands in the treatment room. Debs noticed on Friday that some of the needles and lotions are out of date. Any issues please shout." We accept Mr Fitch's evidence that the first occasion on which he knew that some needles might be out of date was upon receipt of this email on 23 November 2021. As a matter of fact therefore we find that the claimant did not inform Mr Fitch that any medication was out of date in October 2021.
23. This allegation is repeated for the second disclosure in respect of Mrs Usherwood, whom the claimant says she told in February or March 2022. We accept Mrs Usherwood's evidence that she was never informed by the claimant that there was any out-of-date medication being used in the PCRF, and she has repeated the observation that the PCRF and/or the physiotherapists do not hold, issue or use any medication. This allegation has now changed to relate to the acupuncture needles, and again we accept Mrs Usherwood's evidence that the claimant did not inform her of any perceived difficulty or obsolescence of the acupuncture needles. Mrs Usherwood also makes the point that the Medical Centre and the PCRF had a CQC inspection in March 2022 and they were awarded an Outstanding rating. All members of staff including the claimant were spoken to, and there was no issue of any out-of-date medication or other equipment arising during or after that inspection. We therefore reject the claimant's assertion that she told Mrs Usherwood in February or March 2022 that any medication or needles were out of date.
24. The second half of the claimant's second disclosure upon which she relies is that in February or March 2022 she informed Mrs Usherwood that the diagnostic ultrasound machine was six years out of date. In its Amended Grounds of Response, the respondent concedes that the claimant made this disclosure, and that it was a protected public interest disclosure. However, despite that concession, it is not in accordance with the evidence. Both the claimant and Mrs Usherwood gave evidence to the effect that it was on 3 May 2022 when the claimant raised this issue with Mrs Usherwood. We therefore accept that the claimant did raise this issue with Mrs Usherwood, but only on 3 May 2022. Mrs Usherwood agrees that it was appropriate for the claimant to have raised this issue with her, and that she was pleased that she had done so.
25. Meanwhile, in early 2022 there was a difficulty with Captain Park's formal registration as a Chartered Physiotherapist. The relevant register is maintained by the Health and Care Professional Council (HCPC) which is a statutory regulator for 15 health professions including physiotherapists. The system for registration was that registrations were for repeated periods of two years expiring at the end of April. This changed in 2022 such that registrations were not automatically renewed at the end of April. There was

correspondence regarding the change in the renewal process, but this often ended up in various junk folders. In February 2022 Captain Park was deployed away with the Special Boat Service and did not have access to her email accounts. She returned to the country in early March 2022 and returned to work at Hamworthy Barracks. On 10 May 2022 Mr Fitch informed Captain Park that her HCPC registration had lapsed, and that she was immediately restricted from seeing patients and practising clinically. That came as an unpleasant surprise, and Captain Park then followed the relevant guidance on how to remedy the situation and she immediately re-registered with HCPC. She stopped advising or seeing patients as a registered practitioner and did not use the protected titles of physiotherapist or physical therapist until her re-registration was confirmed. By 11 May 2022 Captain Park had reapplied for reinstatement on the HCPC register and had paid the relevant fee. By 8:56 AM on 12 May 2022 Captain Park received email confirmation that she had been successfully re-registered.

26. When Mr Fitch advised Captain Park of the lapse in her registration, he also informed the claimant at that time, and between them they cancelled, postponed or reallocated Captain Park's clinical appointments. When Captain Park returned to Hamworthy Barracks on 12 May 2022 she thanked the claimant for reorganising the clinics and apologised for any inconvenience. To her surprise the claimant then began shouting at her in the public area of the PCRF. The claimant accused Captain Park of not being fit to run the department and criticised her for reporting previous issues of her misconduct to Mrs Usherwood. Captain Park perceived this to be the latest in a series of acts of misconduct from the claimant to her and it was the trigger for her to raise a formal complaint about the way the claimant treated her. She did this verbally to Mrs Usherwood on 12 May 2022 shortly after the incident. Shortly thereafter the claimant sent captain Park a positive WhatsApp message to the effect "Woohoo, Parky you're back in the game [thumbs up] I'll amend diary so that it reflects this and pop your patient back onto your diary".
27. The third protected public interest disclosure upon which the claimant relies is that: "(by way of background from December 2021 through until March 2022 the claimant had raised repeated concerns that a physiotherapist, Captain Charlotte Park, would need to renew her registration on the professional HCPC register before the end of April 2022) and on 12 May 2022 the claimant informed Mr Fitch and Ms Usherwood that Captain Park had not re-registered and was practising illegally".
28. We find that these allegations are simply not borne out by the facts. Mr Fitch only found out about the difficulty with the re-registration on 10 May 2022, and it was Mr Fitch who told the claimant about it. We accept Mr Fitch's evidence that he did not receive any communication from the claimant as alleged between December 2021 and March 2022 regarding the renewal of Captain Park's registration. Similarly, we accept his evidence that he received no communication from the claimant in May 2022 that Captain Park was not registered. It was Mr Fitch who told the claimant about the difficulty, and he then arranged with the claimant to clear Captain Park's clinical diary and assisted Captain Park in her immediate process of re-registration. During the time when the respondent was aware that Captain Park was not registered, she did not engage in any clinical activity.
29. We accept Mrs Usherwood's evidence that she was unaware of this difficulty until Mr Fitch told her on 10 May 2022, and reassured her that steps were being taken to renew the registration and that Captain Park would not treat patients until it was resolved. She was content that the matter would be resolved in this way. Then on the morning of 12 May 2022 she saw the claimant who shouted at her words to the effect that Captain Park was not registered and was still seeing patients which was "not right". Mrs Usherwood recalls that the claimant was gleeful because she had "finally got one over" on Captain Park. Mrs Usherwood reassured her that the matter was resolved, but the claimant refused to accept this explanation and kept on shouting that it was not right for Captain Park to see patients. These events occurred on the same morning as the matter referred to above when Captain Park complained to Mrs Usherwood that the claimant had shouted at her aggressively in front of the physiotherapy team members and patients.
30. In any event the claimant's behaviour towards Captain Park on 12 May 2022 resulted in a formal complaint from Captain Park, and the claimant was subjected to a disciplinary

investigation. On 13 June 2022 a formal investigation commenced which was undertaken by a senior manager Mrs Fisher. She interviewed the claimant, Captain Park, Mrs Usherwood, and Mr Fitch. She had investigated two allegations against the claimant as follows: (1) that the claimant was verbally abusive and had spoken in an aggressive manner to Captain Park; and (2) that the claimant had undermined Captain Park and had done so in front of other members of the team, which had occurred when she vocalised her opinions on registration and other matters in the physiotherapy department." Mrs Fisher concluded with regard to the first allegation that the difference between "assertive" and "aggressive" was subjective and there was no clear evidence as to the manner in which the claimant had spoken to Captain Park. She therefore determined that there was no case to answer in respect of the first allegation. However, she concluded that there was sufficient evidence to show that the claimant had undermined Captain Park in an open office and that she had spoken to Captain Park in an "unprofessional manner". Moreover, the report suggested that this had been done by the claimant in front of other staff members despite Captain Park politely asking the claimant to stop and to have the conversation later.

31. Mr David Steel, from whom we have heard, is the Regional Operations Manager for Defence Primary Healthcare South-west. He had had no previous dealings with the claimant or any of the personnel involved in the PCRF. He chaired a disciplinary hearing on 8 September 2022. The claimant attended and produced a detailed pack of documents. It was on reading those documents that Mr Steel first became aware of the assertions contained in the claimant's second alleged protected public disclosure. He remained unaware of the first alleged disclosure until the claimant put reference to this in the minutes of the meeting which she subsequently revised (despite not having raised the matter earlier). He was of course aware of the background circumstances surrounding the third alleged disclosure, because the misconduct for which the claimant was being disciplined had arisen at that time on 12 May 2022.
32. Mr Steel concluded that the incident on 12 May 2022 had formed part of a longer-term pattern of disruptive behaviour which had thus far been dealt with informally by the claimant's line management chain. These incidents of disruptive behaviour provided context to his decision. He felt on the information available to him and on the balance of probabilities that the claimant had undermined Captain Park in front of her colleagues and that this fell short of the standards expected in the Ministry of Defence, as set out in the Civil Service Code and the MoD Corporate Standards of Conduct and Behaviour Policy.
33. Mr Steel issued the claimant with a first written warning which stated: "Your conduct/behaviour when you were verbally abusive to Captain C Park RAMC, the OC PCRF, and undermined her in front of colleagues, fell short of the standards expected in the Ministry of Defence …" This is the claimant's seventh allegation of detriment, namely that she was issued with the first written warning for "voicing an opinion". The claimant also complains that this conclusion was reached even though the first allegation of being verbally abusive had been discounted during the disciplinary investigation, because there was no case to answer. Despite this anomaly, we are satisfied that Mr Steel issued the claimant with this first written warning because of her misconduct on 12 May 2022, namely the manner in which she addressed Captain Park and undermined her. This misconduct went beyond "voicing an opinion" and was witnessed by others who confirmed the same. We are satisfied that Mr Steel made his decision based on the evidence before him, and for that reason, and that it was not materially influenced by any of the claimant's three alleged disclosures.
34. During the course of this disciplinary investigation, Mrs Usherwood had provided to Mr Steel a "timeline" of examples of difficulties which had involved the claimant and her conduct in the PCRF Department. This included a comment from another member of the Department which was made to Mrs Usherwood in confidence, and whose name Mrs Usherwood therefore declined to disclose. The comments were that "On about 14 April 2022 the claimant was accused of being "malevolent" and having "evil eyes" by a member of the physiotherapy team (unknown to the claimant) who said these things to Mrs Usherwood." We accept Mrs Usherwood's evidence that she included these comments in a timeline because they were true, and because they assisted the background context of

the claimant's ongoing course of misconduct. We also accept her evidence that she did not include these comments because the claimant had earlier raised concerns about the ultrasound machine, which in any event Mrs Usherwood had confirmed were appropriate and welcome.

35. The fifth allegation of alleged detriment is that: "On about 13 May 2022 the claimant was uninvited from team meetings by Captain Park and/or Mr Fitch." To put this in context, there were two types of meeting. One type of meeting was a clinical staff meeting which involved discussing the personal information of patients in the physiotherapy department, which the claimant accepts it was not appropriate for her to attend. The other meetings were the normal department team meetings which took place at 11:30 every Monday morning. The time and location of these meetings never changed. We accept the evidence of Mrs Usherwood, Captain Park and Mr Fitch, who are all consistent in their evidence, to the effect that these were normal team meetings to which the claimant was invited, but she chose not to attend them from May 2022 onwards.
36. The claimant's sixth allegation of alleged detriment is that: "In about July 2022 the claimant's job role was taken away from her without discussion or her consent, and she was told that she could be the physio area cleaner by Mr Fitch."
37. Mr Fitch denies these allegations. We accept his evidence that there were no changes to the claimant's job role in or around July 2022. The only significant change which occurred at that time was that Captain Park left her role as Officer in Command and was replaced by Captain Abigail Greene. There were no changes to the claimant's job role at that time. In January 2023 there was a meeting between Captain Greene, Mr Fitch, Mrs Sherwood, and the claimant to discuss her job role because there had been some process-related changes in the department. The claimant and Captain Greene then discussed and agreed what the claimant's updated and expected duties would be. Captain Greene and the claimant then confirmed their understanding of these changes in an exchange of emails in early January 2023. The claimant did not object to these changes nor complain about them at that time.
38. With regard to the cleaning role, the physiotherapy department generally was cleaned by contract cleaners. Some items of medical equipment were cleaned by the physiotherapists themselves between appointments. These were not included in the standard duties for the cleaners. Mr Fitch accepts that he asked the claimant to assist the physiotherapists in cleaning some of the physiotherapy equipment when she had the chance, because that was part of her normal duties. He did not demote her to the role of cleaner as she implies.
39. The eighth allegation of detriment is that in January 2023 after the claimant had moved locations within the department, Mr Fitch wrongly accused her of having destroyed property. The background context is that the claimant had requested not to work in the PCRF and was moved to the main reception at the front of the Medical Centre. After Mrs Sherwood had retired on 23 January 2023, Mrs Hodds became the claimant's line manager. Mr Fitch and Mrs Hodds were discussing whether that transition was proving successful, and Mr Fitch mentioned to Mrs Hodds that he had seen the claimant pull down a poster in an aggressive fashion when leaving the PCRF before shredding it. Mr Fitch thought these actions were "mildly antagonistic", but it was just an observation he had made in reply to questions from Mrs Hodds, and it was not an allegation which he pursued. We accept Mr Fitch's evidence that he saw the claimant destroy this poster, and so his observations as to the claimant's conduct was true. Nonetheless no action was taken against the claimant in the course of any disciplinary process or otherwise. We reject the claimant's assertion that Mr Fitch wrongly accused her of damaging any property or committing any other wrongdoing.
40. The claimant then resigned her employment on one month's notice, and her resignation took effect on 26 April 2023. Her resignation letter suggested that: "This resignation is due to the hostile work environment I have been experiencing since the concerns I raised regarding out-of-date medication and diagnostic equipment within the PCRF department being used on patients. The poor management of the PCRF department which ultimately led to OC treating patients whilst being unregistered and delays in patient care …" The claimant now asserts that her resignation was a constructive dismissal, and she relies on

the eight allegations of detriment above as being the fundamental breaches of contract which forced her to resign.

41. There is in addition a ninth allegation of detriment, which is that after the claimant's employment terminated, the respondent failed to provide a reference for her prospective new employment. The only evidence which the claimant has given on this matter is as follows: "I applied for a new role within the Home Office and gave them the contact details I had been told to use for a reference. Unfortunately, they never received a reply from the HR Department and the job offer was withdrawn." We have seen one contemporaneous document in which the claimant's recruitment adviser at Brook Street confirmed on 21 March 2023 that they were still awaiting a response from the claimant's chosen referee.
42. Mrs Amita Jairath, from whom we have heard, is an HR Operations Manager in the Leaving Services Team (LST). Her unchallenged evidence was that reference requests for former civilian MoD employees such as the claimant are received and processed by the LST team. She checked the respondent's records and confirmed that no reference request had been received from either the claimant or any third party, and specifically that no request had ever been received through Brook Street. Mrs Sara Hodds, from whom we have also heard, was the claimant's line manager from 26 January 2023 until the claimant's resignation on 26 April 2023. Her evidence, which is also unchallenged by the claimant, was that at no stage during this time did Mrs Hodds receive any request for a reference for the claimant and she was unaware of any similar request being made to the Medical Centre.
43. The respondent has a policy which covers requests for references, and it includes the appropriate contact email for that purpose. The claimant conceded in cross examination that she probably used an incorrect address when seeking her reference.
44. Bearing in mind all the above we find that if the claimant did request a reference, then this request was sent to the wrong address. We have heard no evidence to the effect that any particular individual received a request for a reference from the claimant and deliberately decided not to provide one. We reject the allegation that the respondent refused to provide the claimant with a reference.
45. The claimant commenced the Early Conciliation process with ACAS on 15 March 2023, and ACAS issued the Early Conciliation Certificate on 4 April 2023. The claimant presented these proceedings on 9 May 2023. As noted below there was a case management preliminary hearing on 18 January 2024. This identified that one of the List of Issues was that the claims relating to detriment had potentially been presented out of time. The claimant suggested that her managers tried to dissuade her from issuing a grievance whilst at work, but otherwise she has given no evidence as to why it might be said to have been not reasonably practicable for her to have issued these proceedings any earlier, nor why she was in any way precluded from doing so.
46. Having established the above facts, we now apply the law.
47. <u>The Law:</u>
48. The relevant statute is the Employment Rights Act 1996 ("the Act").
49. Section 94(1) of the Act provides the right for employees not to be unfairly dismissed. Section 108(1) of the Act generally requires a qualifying period of not less than two years' continuous employment before this Tribunal has jurisdiction to hear such a claim. There are a number of exceptions, which include where the dismissal arises from having made a protected public interest disclosure under s103A of the Act.
50. Under section 95(1)(c) of the Employment Rights Act 1996 ("the Act"), an employee is dismissed if she terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
51. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. Section 43B(1) provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

52. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it 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.
53. Under section 103A of the Act, an employee is to be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.
54. Under section 47B of the Act, 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.
55. Under section 48(2) of the Act, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
56. Section 48(3) of the Act provides that 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.
57. Decision
58. The claimant's claims to be determined by this Tribunal were agreed at a case management preliminary hearing and set out in my Case Management Order dated 18 January 2024. The claimant's claims are for automatically unfair (constructive) dismissal under s103A of the Act, and for detriment under s47B of the Act. We analyse first whether the claimant made protected public interest disclosures; secondly whether the claimant suffered any detriment arising from any such disclosures; thirdly whether the claimant was constructively dismissed; and finally (and only if she was dismissed) whether the reason (or of more than one the principal reason) for her dismissal was because she had made one or more such disclosures.
59. The Disclosures:
60. We have considered the cases of Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT; Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436 Fecitt and Ors v NHS Manchester [2012] ICR 372 CA; Kuzel v Roche Products Ltd [2008] ICR 799 CA; Blackbay Ventures Limited t/a Chemistree v Gahir UK/EAT/0449/12/JOJ; Chesterton Global Ltd (t/a Chestertons) and Anor v Nurmohamed [2017] EWCA Civ; Underwood v Wincanton Plc EAT 0163/15 IDS 1034 p8 Parsons v Airplus International Limited EAT IDS Brief 1087 Feb 2018; Ibrahim v HCA International Ltd [2019] EWCA Civ 2007. The tribunal directs itself in the light of these cases as follows.
61. The statutory framework and case law concerning protected disclosures was helpfully summarised by HHJ Eady QC in Parsons v Airplus International Limited UKEAT/0111/17 from paragraph 23: "[23] As to whether or not a disclosure is a protected disclosure, the following points can be made - This is a matter to be determined objectively; see paragraph 80 of Beatt v Croydon Health Services NHS Trust [2017] IRLR 748 CA. More than one communication might need to be considered together to answer the question whether a protected disclosure has been made; Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT. The disclosure has to be of information, not simply the making of an accusation or statement of opinion; Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT. That said, an accusation or statement of opinion may include or be made alongside a disclosure of information: the answer will be fact sensitive but the

question for the ET is clear: has there been a disclosure of information; Kilraine v London Borough of Wandsworth [2016] IRLR 422 EAT.

62. [24] "As for the words "in the public interest", inserted into section 43B(1) of the ERA by the 2013 Act, this phrase was intended to reverse the effect of Parkins v Sodexho Ltd [2002] IRLR 109 EAT, in which it was held that a breach of legal obligation owed by an employer to an employee under their own contract could constitute a protected disclosure. The public interest requirement does not mean, however, that a disclosure ceases to qualify for protection simply because it may also be made in the worker's own self-interest; see Chesterton Global Ltd (t/a Chestertons) and Anor v Nurmohamed [2017] IRLR 837 CA (in which the earlier guidance to this effect by the EAT ([2015] ICR 920) was upheld).
63. In whistleblowing claims the test of whether a disclosure was made "in the public interest" is a two-stage test which must not be elided. The claimant must (a) believe at the time that he was making it that the disclosure was in the public interest, and (b) that belief must be reasonable - See Ibrahim v HCA International Limited [2019] EWCA Civ 2007.
64. The statutory framework and case law concerning protected disclosures was also summarised by HHJ Tayler in Martin v London Borough of Southwark (1) and the Governing Body of Evelina School (2) UKEAT/0239/20/JOJ. He referred to the dicta of HHJ Auerbach in Williams v Michelle Brown AM UKEAT/0044/19/00 at para 9: "it is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. 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 subparagraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held."
65. The claimant relies on three disclosures, and we deal with each in turn:
66. Disclosure 1: In about October 2021 the claimant told the physio manager Simon Fitch that the medication being used on patients was four years out of date.
67. We have accepted Mr Fitch's evidence that the first occasion on which he knew that some needles might be out of date was upon receipt of Captain Park's email on 23 November 2021. As a matter of fact, we have therefore found that the claimant did not inform Mr Fitch that any medication was out of date in October 2021. We dismiss the claimant's assertion that she made a protected public interest disclosure of this nature at that time.
68. Disclosure 2: In about February and March 2022 the claimant told her line manager Wendy Usherwood that the medication being used on patients was four years out of date, and that the diagnostic ultrasound machine was six years out of date.
69. For the reasons explained above we have rejected the claimant's assertion that she told Mrs Usherwood in February or March 2022 that any medication or needles were out of date. The first half of this alleged disclosure did not happen, and there was no protected public interest disclosure as at that date.
70. As for the second half of this disclosure, the respondent has conceded that there was a protected public interest disclosure in this respect, but for the reasons explained above we find that this occurred on 3 May 2022 and not before. Were it not for this concession which has already been made by the respondent, we would have examined much more closely the extent to which there was a breach of any legal obligation and/or the extent to which anyone's health and safety could be said to have been at risk. In addition, we would have examined much more closely the extent to which the claimant genuinely believed that this disclosure was in the public interest and whether such belief was reasonable (in respect of which she did not give any evidence). Be that as it may, it would be unfair on the claimant at this stage to reopen the respondent's concession, save for the date for the reasons explained above.
71. We therefore find that the claimant did make a disclosure which complied with sections 43B(1)(b) and/or (d), and which was made to her employer pursuant to section 43C(1)(a) of the Act, and which was therefore a protected public interest disclosure. However, the claimant only enjoys the protection of the statutory provisions relating to protected public interest disclosures with effect from 3 May 2022, and not before.

72. Disclosure 3: (by way of background from December 2021 through until March 2022 the claimant had raised repeated concerns that a physiotherapist, Captain Charlotte Park, would need to renew her registration on the professional HCPC register before the end of April 2022) and on 12 May 2022 the claimant informed Mr Fitch and Mrs Usherwood that Captain Park had not re-registered and was practising illegally.
73. For the reasons explained above we have rejected the assertions that the claimant raised any concerns about Captain Park's registration before May 2022, and that it was Mr Fitch who informed the claimant of the difficulty on 10 May 2022, and not the other way round. There was no disclosure in this respect. Mrs Usherwood concedes that on the morning of 12 May 2022 the claimant did shout at her that Captain Park was not registered but in the context of her being gleeful to have "got one over" on Captain Park.
74. It is arguable in this context on the part of the claimant that she did pass information to Mrs Usherwood (and not Mr Fitch) that Captain Park was not registered as a Physiotherapist and therefore should not treat patients. To do so would be a breach of a legal obligation, and it is arguably in the public interest that all Chartered Physiotherapists are correctly registered. However, at that stage the problem had been resolved, and in the context of the relationships in the PCRF department, and the antagonism between the claimant and Captain Park, we do not accept that (at the time of the alleged disclosure) the claimant genuinely believed that there was a breach of any legal obligation, or that it was reasonable for her to hold that belief. In any event the claimant has given no evidence to the effect that she believed her disclosure (by way of shouting her comments at Mrs Usherwood) was in the public interest. For these reasons we reject the assertion that the claimant made her third protected public interest disclosure upon which she relies.
75. In conclusion therefore the claimant did make one protected public interest disclosure to Mrs Usherwood on 3 May 2022, but not otherwise.
76. We now turn to the nine claims of detriment, which will only be relevant in the context of the claim under section 47B of the Act to the extent that they can be said to have been suffered on the grounds of having made this disclosure. This means that Detriments 1 to 4 inclusive must be dismissed as detriments under section 47B, because they arose before the claimant's only protected public interest disclosure on 3 May 2022. There are also out of time issues regarding the remainder which are addressed below. Nonetheless each of the first eight detriments falls to be analysed and determined because they are relied upon as alleged fundamental breaches of contract to support the claimant's claim for constructive dismissal.
77. Detriment:
78. Detriment is to be interpreted widely: see Warburton v the Chief Constable of Northamptonshire Police [2022] EAT - it is not necessary to establish any physical or economic consequence. Although the test is framed by reference to a reasonable worker, it is not a wholly objective test. It is enough that a reasonable worker might take such a view. This means that the answer to the question cannot be found only in the view taken by the ET itself. The ET might be of one view, and be perfectly reasonable in that view, but if a reasonable worker (although not all reasonable workers) might take the view that, in all the circumstances, it was to his detriment, the test is satisfied. It should not, therefore, be particularly difficult to establish a detriment for these purposes.
79. The claimant relies on the following nine detriments, and our findings in each case are as follows:
80. Detriment 1: in January 2022, whilst the claimant was doing a management course for intended promotion, Captain Park told her that she would "take her down" and that she would "never qualify".
81. For the reasons explained above in our findings of fact above, we accept the respondent's evidence that these comments were never made, and we dismiss this allegation of detriment.
82. Detriment 2: From February 2022 the claimant repeatedly sent emails to Captain Park and/or Mr Fitch which were ignored and/or not responded to, and the claimant repeatedly had to approach her line manager Ms Usherwood for information.

83. For the reasons explained above in our findings of fact above, we accept the respondent's evidence that this did not happen, and we dismiss this allegation of detriment.
84. Detriment 3: On 4 March 2022 Captain Park and/or Mr Fitch of the respondent's management held meetings to discuss how to dismiss the claimant.
85. For the reasons explained in our findings of fact above, we have found that no such meetings took place, and this allegation of detriment is also dismissed.
86. Detriment 4: On about 14 April 2022 the claimant was accused of being "malevolent" and having "evil eyes" by a member of the physiotherapy team (unknown to the claimant) who said these things to Mrs Usherwood.
87. It is true that an unnamed member of the Department did say these things to Mrs Usherwood. Mrs Usherwood had then disclosed this information in the course of the disciplinary investigation against the claimant. To that extent we accept that the claimant has suffered detriment in this respect, because an adverse comment against her (from an unknown person whom she is not able to challenge) was recorded in the course of the disciplinary investigation. However, we accept Mrs Usherwood's evidence that she inserted this comment because it was an accurate reflection of what had been said to her. There is no evidence that the comment made was false but more importantly there is no evidence that the person making that comment, and/or Mrs Usherwood, had made or included the comment because the claimant had made her disclosure about the ultrasound machine to Mrs Usherwood. We therefore reject the assertion that the claimant suffered this detriment because she had made a protected public interest disclosure, and in any event this allegation is out of time for the reasons explained below.
88. Detriment 5: On about 13 May 2022 the claimant was uninvited from team meetings by Captain Park and/or Mr Fitch.
89. For the reasons explained above in our findings of fact above, we reject this assertion that the claimant was "uninvited". The claimant remained invited to the department meetings every Monday morning, and from May 2022 she chose not to attend. This allegation of detriment is rejected.
90. Detriment 6: In about July 2022 the claimant's job role was taken away from her without discussion or her consent, and she was told that she could be the physio area cleaner by Mr Fitch.
91. For the reasons explained in our findings of fact above, we reject the assertion that the claimant's job role was altered or removed without her consent. It is true that the claimant was invited to help the physiotherapists clean some of their equipment when she had the time to do so, but this is in the context of her normal duties, and it was not in any way a demotion to the role of cleaner, when the general cleaning duties remained to be undertaken by the cleaning team. We also reject this allegation of detriment.
92. Detriment 7: On 11 October 2022, the claimant was given a written warning by David Steel for "voicing an opinion".
93. We also reject this allegation of detriment, because it is not true. The reasons why Mr Steel gave the claimant the first written warning on that date are clear, and they are set out in that warning. This was because: "your conduct/behaviour when you were verbally abusive to Captain Park and undermined her in front of colleagues fell short of the standards expected in the Ministry of Defence ..." This warning was given because of the claimant's conduct, and the manner in which she spoke to Captain Park, and not because she voiced an opinion. In any event, we also accept Mr Steel's evidence that his decision was made on the basis of the evidence before him, and not because the claimant had made any of her alleged three disclosures.
94. Detriment 8: in January 2023 after the claimant had moved locations within the department, Mr Fitch wrongly accused her of having destroyed property.
95. For the reasons explained in our findings of fact above, we accept Mr Fitch's evidence that he had seen the claimant damage a poster and had mentioned it in passing to Mrs Hodds. No action was taken against the claimant in that respect. We reject the assertion that Mr Fitch wrongly accused the claimant of damaging property. This allegation of detriment is also rejected.

96. Detriment 9: after the claimant's employment terminated, the respondent failed to provide a reference for the claimant for prospective new employment.
97. Whereas it is correct that the claimant did not receive a reference, it seems that her request for the same was not sent to the correct department, and there is no evidence that any individual took a decision on behalf of the respondent which was to refuse to provide the claimant. In addition, there is no evidence before us that any such decision was taken because of any alleged disclosure made by the claimant. This allegation is therefore rejected.
98. In conclusion therefore we have only upheld one of the claimant's nine allegations of detriment, namely Detriment 4. We have also rejected the assertion that the claimant suffered this detriment on the ground that she had made a protected public interest disclosure, and in any event this allegation is out a time for the reasons now explained below.
99. Detriment Claims Presented Out of Time:
100. The claimant commenced the Early Conciliation process with ACAS on 15 March 2023 (Day A"), and ACAS issued the Early Conciliation Certificate on 4 April 2023 (Day B"). The claimant presented these proceedings on 9 May 2023. Accordingly, any act or omission which took place before 20 January 2023 is potentially out of time. This affects the first seven detriment claims only. Given that Detriment 8 and Detriment 9 have been dismissed as not having occurred, there cannot said to be a series of similar acts or failures to those which were included within the relevant time limit. The only surviving detriment, namely Detriment 4, took place on 14 April 2022, some nine months out of time. The claimant has given no evidence as to why it was not reasonably practicable for her to have brought a claim in respect of alleged detriment within time, and for these reasons we would have dismissed this claim as being out of time in any event.
101. For the detailed reasons set out above our judgment is that the claimant's claims that she suffered detriment under section 47B of the Act are not well founded, and they are hereby dismissed.
102. Constructive Dismissal
103. As noted above, the claimant also relies on the first eight numbered detriments as being fundamental breaches of contract in respect of the implied term of trust and confidence. We next consider the extent to which the claimant's resignation can be construed to be her constructive dismissal.
104. We have considered the cases of Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 CA; Malik v Bank of Credit and Commerce International SA [1997] IRLR 462 HL; Courtaulds Northern Spinning Ltd v Sibson [1987] ICR 329; Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA; Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA; Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA; Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA; Tullett Prebon PLC and Ors v BGC Brokers LP and Ors [2011] EWCA Civ 131; Claridge v Daler Rowney [2008] IRLR 672; Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23 CA; Lewis v Motorworld Garages Ltd [1985] IRLR 465; Nottingham County Council v Meikle [2005] ICR 1 CA; Abbey Cars (West Horndon) Ltd v Ford EAT 0472/07; and Wright v North Ayrshire Council [2014] IRLR 4 EAT; Leeds Dental Team v Rose [2014] IRLR 8 EAT; and Hilton v Shiner Ltd - Builders Merchants [2001] IRLR 727 EAT.
105. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he

complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

106. In Tullett Prebon PLC and Ors v BGC Brokers LP and Ors Maurice Kay LJ endorsed the following legal test at paragraph 20: "… whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract."

107. In Courtaulds Northern Spinning Ltd v Sibson it was held that reasonable behaviour on the part of the employer can point evidentially to an absence of significant breach of a fundamental term of the contract. However, if there is such a breach, it is clear from Meikle, Abbey Cars and Wright, that the crucial question is whether the repudiatory breach "played a part in the dismissal" and was "an" effective cause of resignation, rather than being "the" effective cause. It need not be the predominant, principal, major or main cause for the resignation.

108. With regard to trust and confidence cases, Dyson LJ summarised the position thus in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA: The following basic propositions of law can be derived from the authorities: 1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761. 2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as "the implied term of trust and confidence". 3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship. 4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the breach must: "impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer".

109. This has been reaffirmed in Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA, in which the applicable test was explained as: (i) in determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied; (ii) If, applying Sharp principles, acceptance of that breach entitled the employee to leave, he has been constructively dismissed; (iii) It is open to the employer to show that such dismissal was for a potentially fair reason; (iv) If he does so, it will then be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally (see Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA) fell within the range of reasonable responses and was fair."

110. The same authorities also repeat that unreasonable conduct alone is not enough to amount to a constructive dismissal (Claridge v Daler Rowney [2008] IRLR 672); and that if an employee is relying on a series of acts then the tribunal must be satisfied that the series of acts taken together cumulatively amount to a breach of the implied term (Lewis v Motorworld Garages Ltd [1985] IRLR 465). In addition, if relying on a series of acts the claimant must point to the final act which must be shown to have contributed or added something to the earlier series of acts which is said, taken as a whole, to have broken the contract of employment (Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA).

111. The judgment of Dyson LJ in Omilaju has recently been endorsed by Underhill LJ in Kaur v Leeds Teaching Hospital NHS Trust. Having reviewed the case law on the "last straw" doctrine, the Court concluded that an employee who is the victim of a continuing

cumulative breach of contract is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation by the employee.

112. In addition, it is clear from Leeds Dental Team v Rose that whether or not behaviour is said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties is to be objectively assessed, and it does not turn on the subjective view of the employee. In addition, it is also clear from Hilton v Shiner Ltd - Builders Merchants that even where there is conduct which objectively could be said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties, if there is reasonable and proper cause for the same then there is no fundamental breach of contract.

113. The claimant relies on a fundamental breach of the implied term of the contract relating to mutual trust and confidence. The alleged breaches are the alleged Detriments numbered 1 to 8 which are set out below (Detriment 9 is not included because it is said to have occurred after the termination of employment).

114. For the reasons set out above we have determined that the only alleged detriment which has been factually made out is Detriment 4. This is to the effect that: "On about 14 April 2022 the claimant was accused of being "malevolent" and having "evil eyes" by a member of the physiotherapy team (unknown to the claimant) who said these things to Mrs Usherwood."

115. It is true that an unnamed member of the Department did say these things to Mrs Usherwood. Mrs Usherwood had then disclosed this information in the course of the disciplinary investigation against the claimant. However, we do not accept that this can be said to be conduct on the part of the respondent which is calculated or likely to destroy or seriously damage the trust and confidence between the parties because there is reasonable and proper cause for the same. There was one comment made in April 2022 by an unnamed colleague. Mrs Usherwood was entitled to include that comment in her timeline of events in the context of a disciplinary investigation. The claimant's claim of detriment and her complaint in this respect is not against Mrs Usherwood for including this comment, but rather in respect of the person who made the accusation in April 2022. We do not know who made it, and we cannot say whether the comment was justified or not. Be that as it may, we cannot say that it is conduct on the part of the respondent which objectively could be said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties.

116. In any event, even if the comment did amount to such impugned conduct, then it took place in April 2022, and the claimant knew about it at the latest in the summer of 2022 during the course of the disciplinary investigation. She did not resign her employment until nearly a year later in April 2023. We do not accept that there was any breach of contract in this respect, but even if there had been, the claimant had clearly affirmed the contract of employment by working on for nearly a year.

117. For these reasons we conclude that the claimant resigned her employment, and that she was not constructively dismissed.

118. S103A Automatically Unfair Dismissal:

119. Given that we have concluded that the claimant resigned her employment, and that she was not dismissed, in the absence of any dismissal the claimant's claim that she was dismissed because she had made one or more protected public interest disclosures is not well-founded, and it is hereby dismissed.

120. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraphs 1 and 57; the findings of fact made in relation to those issues are at paragraphs 7 to 45; a concise identification of the relevant law is at paragraphs 48 to 56; how that law has been applied to those findings in order to decide the issues is at paragraphs 60 to 119.

Employment Judge N J Roper
Dated 18 September 2024

Judgment sent to Parties on

10 October 2024

Jade Lobb

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