



EMPLOYMENT TRIBUNALS

Claimant: Dr S Mann

Respondent: Dr F Mulder and Mr R Laver t/a Helios Medical Centre

Heard at: Bristol **On:** 1, 2, 3, 4, 5 March 2021

Before: Employment Judge Street
Ms G Meehan
Ms J Kaye

Representation

Claimant: Mr James Bromige (counsel)

Respondent: Ms Neeta Amin (counsel)

Written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

REASONS

1. Evidence

- 1.1. The Tribunal heard from Dr Sonia Mann, the claimant, from Ms Dagma Friis Operations Manager, Mr Richard Laver, managing partner, Dr Frank Mulder, clinical partner. Witness statements were provided from Dr Cuellar and Dr Tulloh but they did not attend.
- 1.2. The Tribunal read the documents in the bundle referred to.

2. Issues

- 2.1. The claimant claims constructive unfair dismissal, automatic constructive unfair dismissal contrary to section 103A of the Employment Rights Act 1996 ("ERA 1996") and detriment due to making protected disclosures contrary to section 47B, with breach of contract (wrongful dismissal) and detriment and / or and automatic constructive unfair dismissal pursuant to sections 44 and 100 of the ERA 1996 (health and safety grounds). The Respondent defended all claims.
- 2.2. The issues before the Tribunal to decide are as follows. These were set out in the Order of Employment Judge Goraj on 1 April 2020. A numbering error at paragraph 4.1.1 of the original Order has been corrected.

Constructive Unfair Dismissal

2.3. The Claimant claims that the Respondents acted in fundamental breach of contract in respect of the express/implied term of her contract relating to pay/mutual trust and confidence. The alleged breach(es) were as follow: -

2.3.1. From 26 April 2019 onwards, failing to provide safe systems of work / creating risk of harm to Claimant and/or patients. The Claimant relies on the following alleged matters: -

- (a) 26 April 2019 and/or 1 May 2019 – booking routine appointments into triage clinic
- (b) 7 June 2019 – email from Claimant to the Respondents regarding inadequate time to perform administrative duties
- (c) 11 June 2019 email and WhatsApp message to Respondents raising concerns relating to patient safety and inadequate levels of GP cover
- (d) 12 June 2019 – email to the Respondents raising safety concerns relating to lack of triage provision
- (e) 12 June 2019 – the matters referred to in the Claimant’s grievance to the Respondents
- (f) 12 June 2019 – WhatsApp message to Mr Laver in which the Claimant raised concerns regarding alleged crisis situation in patient safety and
- (g) 12 June 2019 – alleged inappropriate conduct by Ms D Friis

2.3.2. From 26 April 2019 onwards failing to provide safe systems of work thereby creating additional stress to the Claimant and risk of harm to patients. The Claimant relies on the following alleged failures: -

- (a) Insufficient GP coverage and
- (b) Expecting the Claimant to undertake excessive / unsafe levels of work (including expecting the Claimant to cover clinics with pre-booked and emergent patients without any /any sufficient support) creating additional stress to the Claimant and risk of harm to patients. The Claimant relies on the alleged matters referred to at paragraph 2.3.1 above.

2.3.3. 12 June 2019 onwards – causing the Claimant extreme stress resulting in her being off sick on the following dates: - 12 June 2019, 17 June 2019, 21 June 2019 and 4 July 2019.

2.3.4. 12 June 2019 onwards – alleged failure to deal / deal adequately with the Claimant’s grievance dated 12 June 2019.

2.3.5. 3 July 2019 – alleged treatment of the Claimant by Ms Friis

2.3.6. 3 July 2019 – unilateral cancellation of locum shifts without prior consultation / explanation / the Respondent’s decision to challenge the Claimant’s invoice number 37.

(The last of those breaches was said to have been the ‘last straw’ in a series of breaches as that concept is recognised in law).

2.4. Did the Claimant resign because of the breach? The Respondents deny that they committed any breaches.

2.5. Did the Claimant delay before resigning and affirm the contract? The Respondents do not rely on any argument of affirmation.

2.6. In the event that there was a constructive dismissal, was it otherwise fair within the meaning of s.98(1), (2) and (4) of the Act? The Respondents contend that if the Claimant was constructively dismissed (which is denied) that

- (a) The Claimant was fairly dismissed by reason of her conduct and / or that
- (b) She would, in the event of any procedural defects for the purposes of section 98(4) of the Act have been fairly dismissed if a fair procedure had been followed and /or
- (c) That the Claimant was, in any event, guilty of contributory conduct (in the light of the Claimant's conduct).

2.7. The Public Interest disclosure claim/s

2.7.1. What did the Claimant say or write? The Claimant relies on:

- 11 June 2019 – email and WhatsApp from the claimant to the Respondents dated 11 June 2019 raising concerns regarding patient safety and level of GP cover.
- 12 June 2019 – further email and WhatsApp from the Claimant to the Respondents raising concerns regarding the level of GP cover
- 12 June 2019 – the Claimant's grievance
- 13 June 2019 – emails from the Claimant to the Respondents raising concerns about alleged excessive levels of stress and responsibility placed upon her by the Respondents
- 21 June 2019 – WhatsApp message to the Respondents (Mr Laver) regarding the cancellation of triage (doctor first) clinics

2.7.2. In any or all of these, was information disclosed which in the Claimant's reasonable belief tended to show that: -

- The health of safety of any individual, including the Claimant, other members of the Respondent's staff and / or patients had been put at risk as a result of alleged unsafe working practices / understaffing operated by the Respondents.
- Or that any of those things were happening or were likely to happen, or that information relating to them had been or was likely to be concealed?

2.7.3. If so, did the Claimant reasonably believe that the disclosure was made in the public interest? The Claimant relies on the following as going to show the reasonable belief: -

- The safety of patients under the care of the Respondents was at risk
- The health and safety of others in the employment of the Respondents was placed at risk
- The disclosures included concerns relating to doctors (the Claimant's working hours).

Detriment complaints

2.8. If protected disclosures are proved, was the Claimant, on the ground of any protected disclosure found, subject to detriment by the employer or another worker in respect of any of the following:-

- 3 July 2019 – alleged unilateral cancellation of the Claimant’s locum sessions by Dr Mulder (without consultation or explanation)
- 3 July 2019 – alleged unprofessional and disrespectful conduct towards / treatment by Ms Friis when the issue of the unilateral cancellation of the locum shifts was raised by the Claimant
- 12 – 19 July 2019 – failure to deal promptly or at all with the Claimant’s grievance (Dr Mulder and / or Mr Laver)

2.9. The Respondents deny any of the alleged detriments. The Respondents do not rely on the statutory defence in respect of any proven detriments.

Unfair dismissal complaint pursuant to section 103A of the Act

2.10. As the Claimant had two year’s service:

- Has the Claimant produced sufficient evidence to raise the question of whether the reason for the dismissal was any of the alleged protected disclosure(s)?
- Has the Respondent proved its reason for the dismissal, namely conduct.

Breach of Contract

2.11. Whether the Claimant was entitled to any notice of pay in respect of the Respondents’ alleged repudiatory breaches of contract /consequential alleged constructive dismissal.

Other claims pursuant to sections 44(1)(c) and/ or 100(1)(c) of the Act (health and safety detriment/ dismissal).

2.12. The Claimant relies on the matters set out above in respect of PIDA (protected disclosures).

Time / limitation issues

2.12.1. The claim form was presented on 18 October 2019. Accordingly, any act of omission which took place more than three months before that date (allowing for any extension under the early conciliation provisions) is potentially out of time, so that the tribunal may not have jurisdiction.

2.12.2. Can the Claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

- 2.12.3. Was any complaint presented within such other period as the Employment Tribunal considers just and equitable?

Remedies

- 2.13. If the Claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy. The time allocated includes time for dealing with remedy. The claimant has indicated that compensation is / are being sought by way of remedy including
- (a) Injury to feelings (in respect of any established detriments) and
 - (b) Loss of earnings.
 - (c) Personal injury.

3. Findings of Fact

References are to witness statements of the witness named or to the paper page numbers in the bundle.

- 3.1. The Claimant was employed as a salaried General Practitioner (“GP”) at Helios Medical Centre (“Helios”) from 1 June 2015 until her summary resignation on 19 July 2019.
- 3.2. The Respondent is a GP practice owned and operated by its partners.
- 3.3. At the material time, there were two partners. Dr Cuellar was formerly a partner. She left in May 2018.
- 3.4. Mr Laver is a Practice Manager. He joined Helios Medical Centre as Manager and partner in November 2014. In November 2015, he also undertook to manage Sea Mills Surgery.
- 3.5. Mr Laver suffered a stroke in February 2019, resulting in him being signed off as unfit to work from 8 February to 31 July. He retired from the partnership on 31 October 2019, having given notice on 1 April 2019 (166), recognising that he was not in the foreseeable future able to travel the distance to and from work and that he had been advised “it will take time” for his brain to repair. He was facing significant loss of sight and mobility.
- 3.6. In his absence, Ms Friis had support from Ms Kershaw, a practice manager from another surgery, and there were occasions when Mr Laver was consulted. Notwithstanding significant difficulties following his stroke, he carried out some work on a remote basis.
- 3.7. There had been four part-time salaried GPs. Dr Tulloh resigned in May 2019, leaving three part-time salaried GPs, Dr Feder, Dr Platford and Dr Mann as well as Dr Mulder.
- 3.8. On Dr Cuellar’s resignation, other GPs had been taken on but those individuals were no longer with the practice at the material times.
- 3.9. In addition, locums were used on sessional work. That work might be done by salaried GPs, working additional sessions on a locum basis and on locum rates.
- 3.10. The practice has approximately 5000 patients. There was a Care Quality Commission (“CQC”) report published in August 2015, based on an inspection

in July 2015, which was good, showing a safe, effective and caring service to patients.

- 3.11. Ms Friis started work at Helios Medical Centre in March 2019 as operations manager. She had fulfilled that role at Sea Mills, working under Mr Laver. There had previously been an Operations Manager in post until December 2018. Ms Friis is not a trained practice manager.
- 3.12. The practice had detailed grievance, disciplinary, health and safety and whistleblowing policies. Mr Laver was the person with whom whistleblowing concerns were to be raised under the whistleblowing policy in place at the time (page 4 of policy).
- 3.13. Dr Mann's contract entitled her to an annual fee of £8250 per session per week, and the contract hours were 3 sessions, Wednesday morning and Friday all day, calculated as 13 hours in total (128). GPs were expected to complete their work after hours, if necessary for the proper performance of their duties. Overtime could be authorised by the manager, but that provision was not applied during the period in question (128).
- 3.14. There is a limited and informal internal approach to appraisal. There is the usual annual NHS independent clinical appraisal, which here took place in April 2019.
- 3.15. Salaried GPs work for booked clinical sessions typically with 13 slots of 15 mins duration and one 15 minute break, totalling 3.5 hours) (Mulder para 15). Additional time is allowed if a GP is supervising a trainee GP.
- 3.16. There is also a system for triage sessions. Dr Mulder explains that during any given triage session, the duty GP has a list of call-backs which are telephone calls to patients in addition to attending to patients in person in the clinic (Mulder, para 18).
- 3.17. Paperwork includes checking and signing prescriptions, reviewing lab results and dealing with incoming correspondence.
- 3.18. Dr Mulder describes the arrangements at paragraph 23 of his witness statement–

“If on any given day, when 2 doctors are on shift, one is assigned to cover triage as a duty GP to deal with urgent matters that cannot wait until a bookable appointment becomes available. The other Doctor is assigned to attend pre-booked appointments.

- 3.19. He goes on to explain that in the event that there is only one doctor on shift, there are options:
 - a. *Locum GPs are called at short notice to cover shifts*
 - b. *Non-urgent patients are diverted to a later day, or to alternative services such as pharmacists*
 - c. *Urgent patients are diverted to A and E (para 21).*

“Consequently no patient or staff are ever placed at risk due to staff shortages.” (para 23)

- 3.20. Ms Friis says that when she started, she found the staff team to be weak because two nurses had left, and she says the Practice was short staffed with salaried GPs. The Reception staff were stressed and felt unsupported (Friis para 3).
- 3.21. No difficulties are reported by Dr Mann herself or by Dr Mulder with Dr Mann prior to 2019.
- 3.22. Dr Mann had no difficulty with staff relationships until 2019. She was well-regarded and seen as an asset to the practice, as Mr Laver and Dr Cuellar also confirm. She had earlier been offered a partnership but declined. Dr Muldar had found Dr Mann to be pleasant in his dealings with her, and she was co-operative and helpful over arrangements during his holiday absence in 2018 (159, 160) with messages indicating a sound working relationship.
- 3.23. She describes the difficulties arising in 2019 at paragraph 8 of her witness statement: -

“Working life began to get more challenging from January 2019. It became dysfunctional in the practice without an operations manager. Triage clinics were getting busier due to lack of staff, emails were coming in from patients and not being monitored with no policy in place on how they should be processed, 5 minute follow-up telephone calls were being used for new medical complaints, there was a lack of proper procedure with prescribing and lack of adequate paperwork cover when a GP was away. There was discontent in the staff and I heard numerous complaints about stress levels rising. I had also begun to feel stressed.”

March 2019

- 3.24. Dr Mann in her witness statement at paragraph 10 describes concerns about prescribing.

“Around March/Early April, I felt things may start to improve as I felt support was coming in, for example we had a meeting to organise a prescribing policy, something which had not been addressed and needed attention after concerns were raised where a receptionist had started medications for patients without GP input, including controlled drugs where an opioid drug patch was issued to a patient with Parkinson’s disease who had never had it before, with no indication or authorisation by a Doctor.”

- 3.25. In early March 2019, there was an Incident over a prescription for escitalopram.
- 3.26. Dr Mann has this recollection.

“It was in relation to a lady that I knew, who had seen me in a booked clinic and she is a lady who lives predominantly abroad. She had consent to collect prescriptions for herself and her husband. She had asked me to issue a higher

dose for escitalopram for her husband. I had previously said I would like to see him next time, and on this occasion, she had asked again, for the dose to be increased. He was already on 10 mg of escitalopram, the highest usual dose. So I said I need to see him to assess whether he should be on a higher dose. Please ask him to book with me and then I can look into it. So yes, I declined, for her husband. I was not refusing her own medication. The consent on the form was only for the issue of routine medication.

Mohima presented a pile of paper prescriptions, and in there was a 20 mg of escitalopram for this patient's husband and it was based on his past medication list, not current, and I had already had a discussion with his wife, that I was declining issuing it, so I did not know why I was being presented with it to be signed. I asked "what is this about" and Mohima said she said she really needed it, and so we wrote it up as a significant event" (oral evidence).

- 3.27. Mohima was a receptionist.
- 3.28. This was a matter for Dr Mann's clinical judgment. The explanation Dr Mann gives indicates that Mohima was acting in excess of her authority in attempting to obtain a dose of escitalopram at a higher level, even if she was unaware of Dr Mann's earlier refusal or the reasons for it.
- 3.29. On 8 March 2019, Mohima sent an email to the clinicians (162.1). She asked that GPs check prescriptions before signing them and that GPs approve methadone prescriptions. She explained

"As far as I was trained we were allowed to req past drugs, actue (sic) and restart (sic) them, however, now I am being told I can only req current repeat drugs and repeat dispensing only, which I am now only doing."

- 3.30. She said she was not comfortable issuing any controlled drug or methadone scripts although that had been something she had been doing after an earlier receptionist left. Those would now be referred to the GPs.
- 3.31. The issue of that email by Mohima led to her being invited to a disciplinary hearing by Ms Kershaw (163). Possible consequences included a verbal or written warning.
- 3.32. There had just been a policy meeting which had considered the use of the triage system. One of the issues was medication being put to the triage doctor to issue, inappropriately.
- 3.33. On 20 March 2019, a patient was put on the triage call-back list because she wanted her request for a repeat prescription for a controlled drug to be prioritised, having run out shortly after she made the request. Dr Mann was on triage and was asked to deal with it. The notes indicated to her that the patient was not due a repeat prescription for a couple of weeks and on clinical grounds, Dr Mann declined to issue the repeat prescription. In her judgment, the patient needed to speak to a doctor who knew her case the next day and she was put on Dr Mulder's list.

3.34. Dr Mann explains,

“The patient was put on my triage list to call back because she was demanding that this medication as issued. As part of the policy to curb inappropriate calls demanding prescriptions, I was feeding back to reception the reasons for not prescribing and offering an alternative that she could follow up with her usual GP who knew her case” (oral evidence)

3.35. The receptionist she spoke to was Mohima. Dr Mann’s account is that Mohima put the phone down on her, and Dr Mann came out of her room to remonstrate with her.

3.36. Mohima had a disciplinary hearing, also on 20 March, after earlier difficulties and errors in relation to prescribing (163.3). She was given a warning about the seriousness of such mistakes and that she could not afford a repetition. She was invited to a further disciplinary hearing on 21 March regarding the “prescribing issue and dictation to GP”, which is a reference to the incident on 20 March above. Dr Mann provided a statement. Mohima resigned the following day, 22 March, giving a month’s notice.

3.37. Dr Mann refused to work with Mohima after 28 March. That was, she explains because,

“The following week at a clinical meeting, it was casually disclosed that Mohima had said to another receptionist that she thought I was going to hit her. I had come out of my room in exasperation when she put the phone down, and I was trying to explain the policy to her....there was a table between us, quite raised. And so this allegation was unfounded. We discussed it at the practice meeting and it was agreed how could that be possible and afterwards I reflected on it and I felt that was a serious accusation and I therefore asked that witness statements were written up by those who witnessed it” (oral evidence).

3.38. From Dr Mann’s perspective, there had been a recent discussion with Mohima about prescriptions. This was a further instance of challenging conduct and a concerning allegation about the threat of violence, agreed by Ms Friis to be fabricated.

3.39. Dr Mann sent a text message to Dr Mulder on 28 March,

“I have spoken to Dagma (Ms Friis) today about Mohima’s comment about me. Although it was disclosed to me in a casual manner, I am taking this very seriously. I have asked that both Dagma and Holly write a report of what happened as they were present and I have said that I will not work with Mohima from now on. At the clinical meeting yesterday we discussed reasons why Mohima would say such a thing without cause. In my mind that is not enough and needs further action. To continue working with her, I feel, leaves me vulnerable to further unfounded accusations and in our line of work honesty and trust is of utmost importance.” (156)

3.40. Dr Mulder responded promptly,

“Agree. She was leaving anyway. Think it is in hand now” (290).

3.41. Ms Friis provided a statement for the investigation because of the allegation made that Dr Mann might hit Mohima. This is the full statement.

“I was aware of situation going on with difficult patient on phone to Mohima. Dr Sonia Mann came out of her room stood outside my door and asked Mohima “did you put the phone down on me.” Mo said she did not. Sonia said “yes you did, don’t ever do that again.”

At no time did Dr Mann go behind or near Mohima as the desk was between them and the door closed (they were communicating over the desk)

I spoke to Dr Mann who was quite distressed as Mohima has been constantly rude. This was not the first time I had heard about Mohima’s behaviour, being disrespectful to the doctors” (231).

3.42. The statement says nothing about Dr Mann being aggressive or shouting.

3.43. Mohima was informed on 28 March that she was not required to work her notice (163).

3.44. Ms Kershaw wrote that day to Dr Mann, copying in Dr Mulder, Mr Laver and Ms Friis: -

“Sonia

We have agreed today that Mohima was not required to work her notice period and could leave today.....

I have been provided today with (illegible) witness statements confirming your recollection of events and would like to have a quick catch up next week to ensure that you are happy with today’s mitigation or whether you would like more assurances.” (164)

3.45. That is confirmation that Mohima’s allegation that she thought Dr Mann was going to hit her was dismissed.

April 2019

3.46. On 24 April, Ms Friis raised with Dr Mann that she was being underused. Ms Friis had carried out an investigation using EMIS looking at 5 April and in her interpretation, Dr Mann was not using 50% of appointment time. Ms Friis had raised this on her own initiative and had not discussed it with any clinician.

3.47. Dr Mann was unhappy at this challenge to her professional practice.

“I was shocked and confused, I asked her to explain as I had fully booked clinics and we all were aware that a lack of booked appointments was an

ongoing concern. I asked her to show me what she meant and she then referred to triage clinics. This did not make sense to me as I was working in line with all GPs in the triage of patients. I said I felt uncomfortable and that this should be discussed with all doctors present, in an open meeting.” (Mann, para 17)

- 3.48. Dr Mann raised this with Dr Mulder, and they arranged a meeting the next day (156). He also conducted an informal appraisal that day, describing her, as he himself puts it, as “the good news”. He expressed no concerns about her performance.
- 3.49. Dr Mann also found that on 25 April, Ms Friis had booked a routine medication review into her triage clinic as a result of which she ran late, and that the same was happening in later triage clinics for which she was duty GP (Mann para 18).
- 3.50. On 29 April, Dr Mann requested a pay review, her pay having been static since June 2015 (167.1)

May 2019

- 3.51. Dr Mann raised both matters – the use of triage for routine appointments and the suggestion that her time was not well used – at a meeting on 1 April a meeting at which she is described with hindsight as eloquent but angry (220.1). This is from the minute of the meeting,

“Sonia wanted to discuss the triage system as she had some routine appointments booked into her slots both last week and this week. Sonia mentioned a discussion with Ms Friis last week that made her feel uncomfortable and that she now feels singled out as the appointment complication had only happened to her. Ms Friis explained why she had a discussion with Sonia last week..... we need to ensure everyone is working to capacity.... This should be discussed with the clinical team as a whole however. Sonia should not be singled out, as all GPs are working in line with Triage protocol as it stands. It was agreed between the group that the short staff issue was a big pressure and we hope to appoint into the vacancies will reduce this.

Agreed between us that triage is solely for triage and not routine UNLESS discussed with the GP beforehand. Triage is already hard work and often complicated without the added pressure.” (167.9)

- 3.52. On 13 May, an increase in Dr Mann’s salary was offered bringing it to £8500 per annum per session, totally an addition £750 per year. It was not accepted or paid.
- 3.53. Dr Mann had been carrying out additional sessions on Tuesday mornings that Dr Cuellar had done until 2018. She had accepted them on the basis that she would see how it went. She did them as a salaried GP, rather than as a locum but her written contract did not refer to them.

3.54. On 13 May, she cancelled her Tuesday sessions with effect from 1 June 2019, giving two weeks' notice,

"I will no longer be able to offer regular Tuesday am sessions or partake in the CCG forum from 1/06/19. I can offer to do locum sessions from time to time, either on a Tuesday or Thursday." (167.6)

3.55. She does not explain why she gave short notice. She does explain that she wanted greater flexibility over her work.

3.56. There was a shortage of locum cover in June. Additional locum cover for every Monday, Tuesday and Thursday in June from the salaried team had been requested in May (167.5).

3.57. On 21 May, Ms Friis booked Dr Mann in to work on three Tuesdays in June as a locum together with three Thursdays (168). They are all full days of triage because she had nobody else available at that time. She offers to "switch these triage calls to half day" if she could get someone else.

3.58. There was no untoward incident on 21 May.

3.59. There was a meeting between Ms Kershaw and Dr Mann on the following day, the details of which Ms Kershaw confirmed to Dr Mann that evening, copying in the two partners, given that she was only offering management support and lacked the authority to make decisions.

3.60. Ms Kershaw and Dr Mann had discussed Ms Friis's conduct and it was accepted by Ms Kershaw that,

"...she attempts improvements with gusto but her delivery can sometimes be a little insensitive. I do believe that with some nurturing this can be improved but equally she has arrived with great expectation and in difficult circumstances so her stress levels may dilute her good intent. I trust after she has reflected and you both get the chance to discuss, a line can be drawn." (171)

3.61. Ms Kershaw included guidance on salary and locum fees,

"I completely agree that with the absence of a full complement of salaried GPs and a reliance on locums the admin workload increases for the loyal salaried GPs and this should be considered..."

And,

"I concur that if your locum sessions include triage especially when Frank is away that this should be reflected in your invoice but I cannot authorise."

3.62. She thought that there should be clarity about the role of the triage GP,

"The pressure of locums is apparent across the estate and I feel the reception team deviate from this system to try to alleviate patient discontent ..."

3.63. It ends,

“I know I speak on behalf of Rich and Frank when I say you are a valuable asset to the Helios team and it would be a devastating blow to the practice to lose you.”

3.64. Following that discussion, and in reply to Ms Friis’ proposals in respect of locum sessions on 21 May, Dr Mann asked for some adjustments to her Friday clinics, to accommodate what she described as these “high frequency duty sessions” but agreed to do them.

3.65. In the same email, she wrote saying that she had spoken to Jenny Kershaw about the triage clinics and charges and what is paid to experienced GPs working triage,

“To confirm, I will be charging Triage clinics at an hourly rate of £80 per hour with an extra £100 per session worked.”(168)

3.66. Ms Friis responded promptly agreeing the fees she proposed (170). It was within her authority to do so, as Mr Laver agreed (oral evidence).

3.67. Ms Friis emailed Dr Mulder and Mr Laver the details of Dr Mann’s charges on 31 May (*Laver para 27*). They had not been copied in when she agreed them.

June 2019

3.68. On 7 June, a problem arose over the attendance at the surgery of a patient of Dr Mulder. He wanted a methadone script. Dr Mulder was the prescribing doctor for his methadone and had not left a signed script. Dr Platford was duty GP in the morning. She had a difficult morning. Dr Mann was duty GP in the afternoon. The patient arrived at about 1.15 pm as Dr Platford was leaving for lunch.

3.69. Dr Mann’s account is that,

“I looked at (the patient’s) notes and saw there was no clear plan or note for what dose he should be on. A few weeks prior Dr Feder had written that (the patient) keeps asking for inappropriate medications and a clear plan should be made for him. He had an appointment at a later date with Frank, however, there was nothing documented in that consultation to clarify his prescribing plan. I asked if Frank could be contacted to clarify this. I then said I would review again after lunch and did the script on my return as I then had the necessary information.” (Mann para 27)

3.70. The patient was therefore kept waiting.

3.71. Dr Mann’s clinical notes show,

"Pt walk in seeking prescription for methadone script. Weekly script not done. Under c/o Dr Mulder re methadone scripts. Review of regime and Abbie has spoken to Dr Mulder and he advised script can be issued today."

3.72. She signed the script that afternoon.

3.73. Later that day, the senior receptionist challenged Dr Mann. In her account, Dr Mann says,

"A short while later, Holly came to see me and was visibly angry, she said Joan had just walked out when told (the patient) was here. She asked why receptionists were left alone. I explained what I had advised Abbie and that there was no reason for a Doctor to be present, plus with 2 receptionists together, Abbie was not alone." (Mann para 28)

3.74. Holly with Abbie, the receptionist who had been on duty over the lunch hour, then challenged Dr Platford.

3.75. Dr Mann goes on,

"I was present when Holly accused Joan of leaving reception and not dealing with the issue. Joan was very upset by this, saying it was not her duty to deal with reception in this way and she had had enough of working like this, took her bag and walked out mid-clinic."

3.76. Dr Platford was angry and upset, and exhausted. She walked out in the middle of her clinic and did not return that day.

3.77. Dr Platford emailed the two partners and Ms Friis that evening to say she was seeking a GP to obtain a med 3 with the diagnosis of stress and chest pain, under investigation, giving a brief account of the confrontation and reiterating that she had never in all her career walked out of work.

"I had to leave work early today after an incident and confrontation by Holly which left me utterly incapable of seeing my remaining patients as I was so upset and angry." (181.4)

3.78. Dr Platford added a lengthy note the next day (181.2). She had gone for lunch after a difficult morning which included getting a child admitted as an emergency. She had started work at 7.30 am. She finished for lunch at 1.20, not having had a break.

"I was totally exhausted, feeling faint, and needed to have lunch to get back in time for my afternoon telephone calls so I went home for lunch....."

Both of them came into my room... and Holly accused me of upsetting Abbie and said Abbie was going to leave because of this. Abbie was accusing me of

“running off”. Well yes in a way but because I was no longer duty doctor and simply had no strength left and had a fully booked afternoon surgery.

3.79. Richard Laver commented paragraph by paragraph in his reply,

“You did nothing wrong, Joan, and nor did Sonia if she signed the script. I have issues with you then being confronted....where is the respect?”

3.80. Dr Platford’s email continues,

“For me this was the last straw and I was also enraged and deeply upset about the insensitive way Holly dealt with it, because I just simply was unable to see any more patients (I was already feeling pretty burnt out by the heavy morning with some very complex issues to deal with). ... I now realise I have no resilience left and feel unsupported and undervalued.”

3.81. The email opened with the following,

“The incident has to be seen on a background of extreme pressure at work and a pervasive feeling from both Sonia and I that important issues are not discussed: for example we were supposed to discuss the whole triage system as an urgent matter.... We just never talk about important issues.” (181.2)

3.82. Dr Platford was admitted to hospital with sepsis on Tuesday, 11 June. She had two weeks sick leave (221).

3.83. Dr Mulder was due to go on annual leave for three weeks in the second week of June. Dr Tulloh had left the previous month. Dr Mann and Dr Platford usually covered for each other. Dr Mulder and Dr Cuellar had had a similar arrangement.

3.84. Mr Laver accepts that at this time,

“There was a shortage of staff due to attrition and/or annual leave and gaps were covered by locum GPs including Dr Mann.” (Laver, para 31)

3.85. On 5 June, Dr Mann had sent an email to Dr Mulder, Dr Platford and Professor Feder and two administrators including Ms Friis, asking

“Please can we sort out cover for holidays, for example who is to cover Frank from next week. Joan said she did not have enough time to cover my docman whilst I was away. Do we need to factor in admin sessions?”. (para 25 and 180)

3.86. Ms Friis replied to her alone, asking who should be doing it and how long should be factored in for it.

- 3.87. In response, Dr Mann wrote, on 7 June, “*We should discuss this as a team, asap*”, and also suggested that they adopt a practice policy on emails coming in from patients (179).
- 3.88. Ms Friis reported that Dr Mulder had suggested an hour per week to cover his absence, for the GP who was going to do this, but again writing only to Dr Mann. Dr Mann replied that one hour per week was not enough, copying in her clinical colleagues. Ms Friis retracted, saying she had misunderstood Dr Mulder, and it should be one hour per day, “*but obviously if you need more please let me know.*” Again, she only replied to Dr Mann.
- 3.89. It was not Dr Mann’s responsibility to arrange cover for Dr Mulder’s paperwork.
- 3.90. Dr Mann replied in firm terms on 11 June, again copying in her clinical colleagues,

“I am unable to come in early to do paperwork as suggested in previous email.I think the paperwork needs to be shared amongst all staff. I covered Joan’s paperwork when she was away and now I am expected to cover Franks? I am triage as Locum today and have had no time to do any paperwork, it is now 1 pm. I must say I am unhappy with the way this is being dealt with last minute. ... This is patient safety issue for obvious reasons. Please can management sort this out. Perhaps some other Drs have some suggestions and be cc’d into correspondence on this subject in the future.” (174)

- 3.91. Ms Friis replied, again to Dr Mann only,

“Please be aware that we really want to support you. Yesterday we had Dr Nimenko do Joan’s and most of your scripts and results. It is very difficult when a doctor is off sick to organise everything, especially in view of the fact we do not have a practice manager at the moment. Richard will be back at the end of July so things will get better. We are interviewing doctors to join the practice. Please only do what you can. Anything you can forward to reception me or secretary please do.” (178)

- 3.92. Ms Friis was going to ask the locums to help out so that Dr Mann was not inundated, and she had put on extra GP sessions
- 3.93. The tone is supportive. The question is whether the support was there in practice.
- 3.94. There was no other reply to that email.
- 3.95. There were other signs of pressure on the practice. Professor Feder commented in relation to a technical problem with phone calls on 7 June,

“Triage is pressurised enough as it is... not being able to ring patients is a camel’s (GP’s) back-breaking straw (181)

- 3.96. In Dr Mulder's evidence, he says that he had arranged for Ms Friis to have Sonia cover his paperwork for one hour per day, which perhaps explains why Ms Friis directed her replies at Dr Mann only (Mulder para 60). There is no other message or email or note dealing with this. Dr Mulder did not speak to Dr Mann about it.
- 3.97. Dr Mulder left on holiday on 11 June having stayed to do Dr Platford's clinic.
- 3.98. Dr Mann learned of Joan's illness and absence on Tuesday 11 June and sent a text message to Dr Mulder,

"Hi Frank, I understand Joan is off sick with stress this week. I have sent an email regarding paperwork cover. I explained to Ms Friis I'm not accepting responsibility of covering all paperwork for yourself and Joan as I can just about keep up with my own. Sonia." (157)

His reply,

"Sure. About the one hour a week for paperwork that was a misunderstanding between me and Ms Friis which I hope has been resolved. Joan will hopefully be back next week and we are working on getting more cover. All you can do is your best within reason and take a bite off the stack as best you can in the time available. Thank you for chipping in. Frank." (157)

- 3.99. Her reply,

"Maybe I'm not making myself clear. It's not only about work load but more importantly about patient safety. I take it that you'll be remotely accessing results so nothing important slips the net." (157)

- 3.100. There was no reply to that. There was no reply to Dr Mann's earlier enquiry about arrangements for cover for Dr Mulder, other than Ms Friis's replies above.

12 June 2019

- 3.101. On 12 June, Dr Mann was the only qualified GP present. Dr Mann had a fully booked clinic. There was no triage GP.
- 3.102. Dr Mann was responsible for supervising a foundation doctor. Normally time would be provided for that. Because there was no adequate supervision for the trainee, she stopped attending the Helios that week (Mann para 43).
- 3.103. Dr Mann says, in her witness statement, in relation to the absence of a triage GP,

"I was dumbfounded. I did not think it was possible that this would be allowed to occur, especially after concerns raised about busy triage clinics and the role of routine clinics and triage clinics.

... I asked why there was no triage GP with a fully booked routine clinic. Chloe said she did not know but had been telling patients who called for an urgent appointment to call 111 instead. These patients were then being told to contact their GP as it is the duty of the GP in hours to provide this service. Emails from 111 then came back to the practice that day with patient contact requests." (Mann, para 36, 37)

3.104. Dr Mann asked to have her booked clinic patients cancelled so that she could assume the responsibility of triage. Holly King refused to cancel the patients. Ms Friis was not there.

3.105. Dr Mann says she felt,

"abandoned, unsupported and extremely anxious and overwhelmed. I felt as if I were in freefall without a parachute."

3.106. She spoke to Richard Laver, who undertook to try to get cover for the future, and agreed she should act as the triage GP for that day and for Friday if cover could not be found, (Mann, para 45)

"He assured me that they would be seeking cover because later in the week, I had a fully booked clinic, but they had no triage doctor, and we agreed that if cover could not be found, I could cancel that clinic so I could assume the responsibility of triage." (Oral evidence 15/22)

3.107. She wrote to the two partners, coping in the two other doctors and Ms Friis,

"Today I arrived at work to find no triage Dr booked and I have a booked clinic. I asked Holly to cancel my booked clinic to which she replied "no" and then walked out of the practice.

I have seen there is no cover doctor booked for Friday.

I understand Frank left for Greece yesterday, despite the practice left the way it is. Joan is off sick this week. This situation is unacceptable and unsafe.

I have spoken to both Richard and Dagma today. Dagma states she has tried to get locums but failed, however there has been no adverts on BASD (Bristol Association of Sessional Doctors) and no one has yet contacted Gene or Louise who apparently have said they could cover a Thursday or Friday.

There is no clear plan who is responsible for paperwork/labs etc. I've been told "just do what you can". This again is a patient safety concern.

I am the only doctor here left to deal with the whole patient population with no clear idea about locum cover and work load cover.

I feel it is unsafe to continue to practice under these circumstances as it poses a high risk of potential harm to patients.

I understand Dagma is trying to get hold of Frank (I have texted him) and will contact Richard so the CQC can be informed.” (184)

3.108. Mr Laver responded promptly to her email (184). He had been in touch on that Monday with the practice knowing Joan was ill and had been told they needed cover for Tuesday and Friday afternoons and that Frank had covered Tuesday afternoon because no locum had been found. He was advertising for help for Friday. Mr Laver copied his email to the usual team, Dr Mulder, Professor Feder, and the administration.

3.109. He does not mention any report of Wednesday 12 June being without a triage GP.

3.110. Noting that Holly had refused to cancel the clinic and walked out, Mr Laver says,

“Given that Joan walked out on Friday following a confrontation with Holly and you have had an issue this morning, who on site is going to talk to Holly?”

3.111. In relation to her proposal that the CQC should be informed, Mr Laver said,

“I do not wish to notify the CQC at this stage. We would need to notify the CQC if we are unable to provide a service. Let’s see what solutions can be found.”

3.112. Dr Mann also sent a text to Frank Mulder on 12 June, at 10.50 am,

“Situation in crisis, no duty dr booked this morning. I am left alone the whole week. No-one seems to be sorting this out. I think you need to be here, Frank. Sonia.” (157)

3.113. There was no reply to that.

3.114. Professor Feder replied to Mr Laver’s email, agreeing to cover the triage session and *“mopping up results, Rx and docman”* from 11 am onwards on Friday 14 June, but hoping not to do the whole afternoon (185).

3.115. On 12 June, Dr Mann raised a grievance,

“I request a formal grievance meeting to discuss:

- *Lack of support by the Partnership in my role as a Salaried GP*
- *Unsafe working within the practice which has been highlighted on several occasions with ineffectual resolution ie lack of adequate action about concerns raised. Risk to patient safety*
- *Poor communication amongst staff members*
- *No response to last email regarding pay appraisal. (182)*

3.116. She had a detailed response from Richard Laver but he acknowledged he would have to leave the grievance to Frank to address on his return (183).

3.117. On 13 June, at 18.29 pm, Dr Mann emailed a further complaint,

“I am being placed under unreasonable stress and expected to shoulder responsibility as if I was a Partner.... Still no cover tomorrow from Duty GP from 9 am until 11.20 am when Gene has been booked to arrive. I have a fully booked clinic from 9 am This situation is causing me considerable stress, I have had migraines all week and I cannot be expected to work under these conditions” (186).

3.118. Dr Mann was off sick on 14 June until 19 June. She explains in her witness statement,

“The next morning, I was overwhelmed with anxiety, headaches and nausea. I felt I could not work safely. Despite all my attempts to resolve the situation and communicate that I could not be expected to work as duty GP/triage and do a booked clinic, I had no adequate resolution.” (Mann, para 54).

3.119. On 17 June, she provided a fit note citing stress at work, for the period 14 to 19 June (188).

3.120. On 18 June, she replied at some length to Richard Laver, commenting on his comments on her grievance and giving some of the background going back to April and Ms Friis’s conduct then (188.2) She makes her concerns more explicit, for example,

“I am entitled to a working environment in which I feel safe to practice. Last week led to a tipping point. No one communicated with me that Joan was off sick for the week. I only found out by chance as I was leaving the practice on Tuesday. The next day I arrive at work with a fully booked clinic and no triage doctor and receptionist refusing to cancel my booked appointments. I was told Frank had left for holiday on Tuesday evening despite knowing there was inadequate cover organised for the coming week. I texted Frank and I had no response from him. I felt I was left shouldering the responsibility of the practice and felt totally unsupported. Why was I expected to deal with emergencies and a booked clinic along with Joan’s paperwork and Frank’s? Why was it assumed that I could do with work of 2 doctors?” (188.2)

3.121. On 18 June, Ms Friis emailed Dr Mann, copying in Dr Mulder, Mr Laver and Ms Kershaw about Dr Mann’s return to work on 19 June. They had had 3 doctors absent, Dr Mulder, Dr Mann and Dr Platford. While she said,

“I hope you are feeling better. I have implemented as much support over the next few days as I have been able.” (188)

she had not been able to fill the Friday morning triage on 20 June 2019, when Dr Mann had been booked for patient facing appointments,

3.122. Ms Friis also said,

I have had a locum session just doing yours, Joan's and Frank's admin so you won't be overloaded." (188.3)

3.123. Dr Mann reports that on her return to work the following day, her paperwork had not been covered while she was away:

"On the actual day that I arrived back to work, I was told that the paperwork had not been looked at and the EPSs (Electronic prescribing scripts) had not been done because the locums did not have the training, so the reality is that it was not as set out" (oral evidence).

3.124. On 20 June, Dr Mann worked the full day as triage GP. The following day, she had a fully booked clinic but no triage GP had been booked.

3.125. There was a meeting between Dr Mann and Ms Friis on 20 June. Dr Mann was angry at having no GP on triage for the following day, while she was dealing with patients face to face. The expectation was that she would also deal with urgent calls, as Ms Friis confirms in her note of the discussion (188.5). Dr Mann found that unacceptable. Dr Mann commented,

She came in and apologised no cover for paperwork over recent days, locums not able to do EPS or docman, and I remember that she suggested that for the next day, I would have a booked clinic and she would tell people there was no appointment and they would have to call back on Monday, but if really urgent, defer to afternoon. I could not quite believe my ears, I had raised several emails saying this scenario would be unacceptable because unsafe for patients. Unsafe for patients. If you are deferring urgent calls. Putting routine appointments precedence over urgent care. A patient could come to harm" (oral evidence page 16, Mann para 57)

3.126. Ms Friis sent Dr Mann an email at 13.45 that day,

Dear Sonia,

*I have had formal notice from Frank
This is to let you know that you are not responsible for other people's inboxes. If you have the time to look at the global view in EMIS that is appreciated, but a plan is in place for them to be auctioned (actioned) today and tomorrow.*

VBW

Dagma" (188.4)

3.127. On 21 June, Dr Mann sent a text message to Richard Laver,

*“Dear Richard,
Ms Friis yesterday proposed to me that there should be no triage GP and I could still have my booked clinic. She said “other practices do this” and that she will man the front desk and tell patients there is no doctor and to call back on Monday. She said this was discussed with you Richard. This is despite my emails and conversations about how unsafe I felt this scenario would be and a condition for my return to work. Why would she even propose this? She eventually changed my clinic to a triage and cancelled my booked surgery after I said it was unacceptable. I feel there is no real support or trust here. I will not be working today due to the stress of this so please let the practice know. I will discuss this with my own GP and provide a further note on Monday.
Sonia” (248)*

3.128. The reply was,

*“Sonia, Ms Friis emailed me to say that she was proposing this and I asked her to speak to you about it. I will let the Practice know that you are not coming in.
Can I also respectfully point out that I am on sick leave following a stroke and am unable to come in/work at present. This is not something I can do much about. I appreciate this is not ideal for anyone.” (249)*

3.129. Dr Mann replies

“Please let me know who is in charge of running the practice.” (250)

3.130. The reply is

“Ms Friis is the person on site and in charge at present.”

3.131. Dr Mann was off sick that day and a fit note was provided to cover her absence for 21 to 22 June citing “stress at work”(189).

3.132. On Monday 24 June, one of her non-working days, Dr Mann emailed Ms Friis, copying in the partners,

“ Please can you communicate to me what doctors are present this week and for which days/sessions”. (198)

3.133. In a further email, of the same date, confirming her return to work,

"I understand Dr Platford is back this week – please confirm this. I will not be expected to do booked clinic and triage in the same session."
(198)

- 3.134. On 28 June, Dr Mann emailed Dr Mulder asking for her grievance meeting as soon as possible (191). She also asked for a meeting to discuss her pay appraisal.
- 3.135. She also emailed Ms Friis to point out that for the next fortnight she had only triage clinics, which meant that there were no routine appointments for patients which made it difficult to establish continuity of care. She also complained again that triage is blocked with inappropriate calls and prescription requests. She asked for some routine clinics to be included.

Holly King Complaint June 2016

- 3.136. On 30 June, Holly King wrote to Ms Friis,

"In light of recent events, I wanted to tell you about my concerns regarding working with Dr Mann." (191.3)

- 3.137. She makes allegations as to how difficult it was to work with Dr Mann,

"Since I started at Helios in March 2018, I have found it increasingly more difficult working with Dr Mann. She is extremely difficult to approach, she seems to dislike working as part of a team, and is very abrupt in her manner, we have also been told this, by many patients, who refuse to be seen by her."

- 3.138. She then writes about an incident "sometime in May". The incident described the one that took place in March, involving Mohima. She alleged that she had been under pressure to change her statement about that incident, from Dr Mann because in her statement at the time, she had said that Dr Mann had shouted at the employee.

"Dr Mann insisted I change her statement to say she didn't shout."

- 3.139. Two statements have been produced. Both are headed "May". Dr Mann says that the full and damaging statement was never shown to her. She saw a different one.
- 3.140. It is worth referring back to Ms Kershaw's email of 28 June, when the statements taken on investigation confirmed Dr Mann's account of this incident and to Ms Friis' own account at the time, which contained no allegation of shouting or aggressive behaviour by Dr Mann (164 and 231).
- 3.141. Ms King goes on in her email of 30 June to write about the incident on 7 June when a patient, calling in over lunchtime for methadone waited in reception until Dr Mann came back from lunch in the afternoon. Dr Platford

had been challenged by Ms King over this, but in this statement, Ms King places the responsibility on Dr Mann without mentioning Dr Platford,

“On Friday 7 June, she left a young female receptionist alone with a methadone dependent patient for 1/5 hours while she went to lunch, refusing to do his blue script, and told the receptionist to call Dr Mulder at his home. The receptionist felt that she was left in potential danger.”

3.142. She goes on,

“The following Wednesday Dr Mann refused to work her whole days clinic because there was no triage GP that day. She insisted I call every patient to cancel their appointments. I refused, as I considered this to be an extremely unreasonable request. She was aggressive and intimidating.” (191.3)

3.143. She then says she has been off sick since then with stress as a direct result of Dr Mann’s treatment of her and her team.

3.144. There is no other document making an allegation that Dr Mann was aggressive or intimidating.

3.145. Neither Ms Friis nor Dr Mulder remember getting this email. There was no investigation. It was not recognised as a formal grievance *“in respect of her aggressive and abusive conduct towards Ms King personally and the Reception Team in general”* or dealt with as such (see Response para 66).

July

3.146. On 1 June, Dr Mann submitted an invoice for five days of locum sessions, at the rate agreed with Ms Friis, and including a £50 penalty payment to be levied if payment was not made promptly. She had not charged a penalty rate before but, found that delays in payment became time wasting and troublesome so included it on this occasion. Other locums had mentioned making similar provision. She did not actually charge it. There had been no prior discussion about it with the practice,

“It was a new thing I added as an addition to ensure I would get a timely payment because on previous occasions, one spends quite a bit of time chasing invoice payments. It was a new addition. I know that I did not put that in a previous invoice to Mr Laver.” (oral evidence)

3.147. She charged per hour, not per session or sessional hour.

3.148. Another locum GP also submitted an invoice for days at the end of June charging per hour for triage/surgery/admin (191).

3.149. On Tuesday 2 June, Ms Friis wrote,

“Hi Sonia

*I have cancelled your 9th and 16th sessions for locum cover
Kind regards
Dagma" (196)*

3.150. Ms Friis told the Tribunal that this was her decision.

Holly King Back to Work Meeting

3.151. On 3 June, Ms King had a Back to Work meeting with Ms Friis (197.3).

3.152. She had been off work with stress. She is asked about that,

"What caused you to be stressed?"

"I have been stressed for months due to lack of support in management. Sickness with members of staff. Dealing with Kate's work as well as my own work. I was also not supported by my job share."

3.153. She does not mention Dr Mann. She does not repeat her allegation of 30 June that Dr Mann caused her to be off work sick. There is no reference to or discussion of the email of 30 June.

3.154. She does refer to the incident of 7 June,

"On Friday 7 June, I arrived at 4pm to work and close Helios. I found Abbie stressed out, she told me that the blue script person had been in at lunch time, everybody knew him to be volatile and aggressive. Sonia and Joan knew he was out here and Joan went to lunch, Sonia came out saw him and said "I am not dealing with that I am going to lunch. Abbie said what shall I do? Sonia said call Frank. She was left with a patient and no GP on site. He harassed other nursing staff and reception staff until both doctors returned from lunch."

3.155. The complaint continues and is more about Dr Platford than about Dr Mann. Holly King here is not saying that the receptionist was left alone.

3.156. There is a reference to 12 June, when they *"realised we had no-one to do triage."* Ms King is noted as saying,

"Chloe and myself decided we would put no calls through to Sonia. Patient called for a script so I messaged Sonia please do script, I couldn't find locum. Sonia said not good enough have a full clinic, you have to cancel clinic. I said are you serious? I spent all day rescheduling for Joan's clinic now your telling me you want me to cancel your clinic. You are not working as part of a team. I am not doing it and you cancel the patients yourself.....Why do you want to make it difficult. I'm fed up with you being horrid to us"

3.157. She confirms that she walked out.

3.158. No reproof for her tone is noted in Ms Friis' notes.

3.159. Ms Friis asked her what changes she wanted. The list given includes support from GPs for reception, extra staff for holidays or sickness, greater

authority in handling reception staff. There is no mention of the concerns reported in the email of 30 June. It is not suggested that Dr Mann was aggressive or abusive.

3 July 2019 Meeting

3.160. There was a meeting between Ms Friis and Dr Mann on Wednesday 3 July, of which Dr Mann writes,

“I suspected something sinister was happening, as Frank had not replied to my emails but had organised for my locum shifts to be cancelled. I was expecting Frank to be at the clinical meeting that morning, but he was not present. I had to speak to Ms Friis alone. As I had lost trust in Ms Friis, I asked for a receptionist Ellie and Kirsty Edwards to be present. (Kirsty could not attend). I asked Ms Friis why my locum sessions had been cancelled. She said, “I’m not going to say, you’ll have to speak to Frank.” I asked where Frank was, she said he was not coming in and then got up from her chair and moved towards me, saying “I’m not going to do this love, you have to speak to Frank, love”. (Mann, para 61)

3.161. Ms Friis produced a note of the meeting of 3 July, in which she agrees that she refused to discuss the cancellation of the sessions and that they should wait until Frank was available. On Dr Mann insisting, she reports finally saying *“It’s because we can’t afford it”* (197.2)

3.162. Her note includes an account of some of the other incidents, including with Mohima.

3.163. Ms Friis ends, having explained that Mohima was allowed to leave without working her notice,

“In retrospect I was not sure what to do and felt that we were so desperate for GP appointments that it was more beneficial to go with Dr Mann’s demands.”

3.164. She does not mention that Mohima resigned having had a disciplinary hearing and facing a further disciplinary hearing in relation to misconduct in relation to handling a prescription and rudeness to Dr Mann. She does not mention that Mohima was agreed to have made a false allegation against Dr Mann and that that was the reason she was allowed to leave without working her notice.

3.165. She adds that,

“We gave her a good reference.”

3.166. Ms Friis adds an account of the difficulties in June when Dr Mulder was on annual leave and Dr Platford in hospital,

"I asked Dr Mann if she could be duty doctor as well as seeing her patients and that I would have reception screen all calls so that only emergency on the day came to her. The reason I asked this of her is that at my previous practice on the call GP saw patients as well as seeing urgent on the day. I did the best I knew how which was very difficult with Sonia walking out a few times."

3.167. This was the proposal that Dr Mann had earlier found so unacceptable in terms of patient safety, to use reception staff to determine what was an emergency, while Dr Mann continued with her booked clinic. There is no other reference in the evidence to Dr Mann *"walking out a few times."*

3.168. Dr Mann left the surgery after this meeting.

3.169. Ms Edwards, who saw Dr Mann after the meeting, gave a written report later that day of what Dr Mann had told her after the meeting, namely, that Ms Friis had said "Frank needs to be here, love" and continually called her "love" through the short meeting. She reports too that Dr Mann was crying, and asked her to write this up,

"I agreed to as I do feel this is quite significant. Dagma followed Sonia out into the car park but Sonia did not return.

I did not find writing this easy and I will not take sides. I am writing this as requested by Sonia as she asked me to be witness to the conversation. I also feel it that it is the right thing to do as I believe these issues are becoming more and more frequent ... As stated in my email previously, and I note I have not had a reply, I am struggling to feel completely safe and supported here at present." (197).

3.170. Dr Mann sent a text message to Mr Laver at 9.05 that morning,

"Hello, I am unable to work today or the rest of the week due to acute stress, palpitations and headaches. This was precipitated by an incident with Dagma this morning. The attitude she displayed towards me is unacceptable. I have to question what is going on here and why. Is this because I have asked for a grievance meeting? I have a GP appointment on 15th July after which I ..." (214, copy in bundle ends at this point).

3.171. Mr Laver replied,

"Thank you for letting me know, Sonia, and I am really sorry to hear this.

Regards

Richard" (215)

3.172. Dr Mann sent a text message to Dr Mulder at 09.08 that day, in the same words as the message she sent to Mr Laver. The final words of this message are,

"I have GP appointment on 15 July, after which I will provide a fit note.

Sonia

Please can you let me know when we can meet this week?" (158).

3.173. She then sent a further text to Mr Laver,

"Can you liaise with Frank to organise this meeting as yet I have not had a reply to any of my emails sent since the beginning of June?"

3.174. Dr Mulder rang Dr Mann later that day. This was their first conversation since his return from holiday on Monday 1 July.

3.175. We have seen no contemporary note of that conversation from either. Dr Mulder does not deal with it in his witness statement. Dr Mann's account was not challenged.

3.176. In her witness statement, Dr Mann says,

"Our conversation began with Frank saying "I heard from Dagma that you have resigned", I said "I think she would like me to but no I have not resigned". Frank said "There are two ways this can go. If you were to resign, we would not need to go through the grievance meeting, or you could be off sick for 3 months."

"I said that I wanted to know what was going on and why had he cancelled my locum shifts. He would not say but said "Richard will be writing you a letter." (Mann paras 67 and 68)

3.177. It was agreed that there would be a meeting between them that evening, at 6.30 pm. This was not to be the grievance meeting. This was to discuss more immediate issues.

3.178. Dr Mann arranged someone to accompany her. Dr Mulder asked Professor Feder to sit in, confirming that this was not the grievance meeting (191.5). Dr Mulder then changed the meeting from Friday evening to the afternoon of 8 July.

3.179. On 5 July, Dr Mann cancelled the meeting (158). She explains,

"Because by that stage, I believed that the invoice, the whole locum shift saga was a ruse to intimidate me because I had made a disclosure about patient safety and had asked for a grievance and I felt I was in a toxic situation, so I withdrew, I had already, the day before that, I sent a text to say I was not going to attend the meeting and I did not make contact again with the practice again until my resignation on 19 July. So I did not respond.

It was supposed to be 3 July. Frank moved it to 8th and by then I had lost all trust with the practice and was fed up and when I reflected on the events that had passed from 3 June to 3 July, the only conclusion was that this was a ruse to intimidate me, he was leading me down a path I did not want to go down, I wanted my grievance hearing but instead we

were focusing on locum shifts and invoices, so I cancelled.” (oral evidence)

Holly King List of Concerns regarding Dr Mann

3.180. On 5 July, Ms King produced a list of complaints about Dr Mann (198). It is headed “List of concerns regarding Dr Sonia Mann”

3.181. The complaints, some ten in all, cover some matters that have implications for patient safety. Those include failing to sign urgent prescriptions, refusing to call back patients if the patient misses a call, relying on reception to explain medical matters, transferring patients on to junior GPs lists. Others are about her manner, described as abrupt, or not being a team player.

3.182. There is a reference again to the incident of 7 June,

“Dr Mann recently left a female receptionist in the building with a potentially dangerous patient and told the Receptionist to call Dr Mulder, who was actually on his annual leave.”

3.183. This is inaccurate and incomplete. Dr Mulder had not been on his annual leave at the time; Dr Platford’s involvement is not mentioned. In Ms King’s previous account, the receptionist had not been left alone.

3.184. There is a reiteration of the requirement that Dr Mann’s booked clinic was cancelled when there was no triage GP,

“I feel that this is making unreasonable requests of the reception team.”

3.185. While the picture painted is of someone abrupt and rude, there is no reference to aggression and no mention of the March allegation when Dr Mann was accused by Mohima of threatening behaviour.

3.186. Neither Ms Friis nor Dr Mulder remember getting this list. There was no investigation of the matters raised. It was not recognised as raising a concern under the whistleblowing procedure. No action was taken on it.

3.187. On Sunday 6 July, Mr Laver wrote to Dr Mann, copying in Dr Mulder, in the expectation that the meeting on 8 July would be continuing. It addresses locum pay rates.

“First of all, I am really sorry that your relationship with Helios seems to have change so dramatically during the last few months. I believe I am correct in saying that you joined the Practice in June 2015 And, in the almost four years I worked with you, whenever had a “cross word” or disagreement.”

3.188. The letter sets out the agreement of £80 per hour plus a triage premium of £100. But he suggests that rather than the £80 being a true hourly rate,

“My view is that any extra worked over and above a 4 hour session is covered by the “Triage Premium”. Could you please consider this before meeting with Frank.”

3.189. He said her interpretation of the agreed rate was unaffordable and substantially above charges made by others. He was also unhappy about the £50 penalty clause.

3.190. The email ends,

“Sonia, nobody underestimates how good you have been for Helios during the last 4 years and I do sincerely hope that matters can be resolved on Monday.”

3.191. He adds,

“I know that there was a problem with sessions being taken off screen last week and my view is that once the sessions have been agreed they should not have been removed.” (200)

3.192. On 19 July, Dr Mulder emailed Dr Mann, copying in Catherine Ward, He refers to the decline in Dr Mann’s working relationship with Helios over the last few months. He explains that Catherine Ward would be assisting in the management of Helios. He goes on,

“One proposal is that you and Catherine meet to talk through your grievances. This conversation would be protected in that anything discussed or said would be completely off the record and not be repeated or used by either of you to anyone including myself. The aim would be to find a acceptable solution to the current situation for all concerned. This would be without prejudice.

I hope this will help to move things forward.”

3.193. Dr Man submitted her resignation three hours later.

3.194. The letter opens by stating that she is resigning,

“forthwith in direct consequence and acceptance of your repudiatory breaches of my contract of employment. I consider that you have irretrievably broken the implied term of mutual trust and confidence between us....” (203)

3.195. There follows a detailed account of the difficulties arising on and since 11 June, identifying protected disclosures including in her email of 12 June to her clinical colleagues, the message of the same date to Dr Mulder, in her grievance and in her report on the evening of 13 June. She refers to the detriments of being left unsupported when Dr Mulder left the country and in the failure to address the grievance. She highlights the failure to provide

adequate GP cover on 12 June, 14 June and 21 June. She refers to the proposal by Ms Friis for 21 June, and her report of it to the partners of the same day,

“...even though there was to be no duty Dr the next morning (21st), she had not cancelled my booked clinic for the next morning. She instead offered to ‘tell patients there are no appointments and to call back on Monday’ and that any emergencies could ‘wait until the afternoon’. This concerned me deeply as to why she would even suggest this, as I had already stated on several occasions that this scenario would be unacceptable, as it was unsafe for both myself and our patients and placed me under extreme stress. It has never been accepted practice to work in this manner in the 4 years that I have been employed at Helios MC. I felt unsupported because my concerns were not being taken seriously. It was only when pressed that she finally agreed to cancel my booked clinic....”

- 3.196. Dr Mann points out that there was no reply from Dr Mulder, and Mr Laver had told her that he was unable to assist while on sick leave. Dr Mulder had called her. In that call, he had told her he had directed the cancellation of her locum sessions and was challenging her fees. The cancellation of the locum sessions on 3 June was the last straw and, it being the only time her locum sessions once agreed had been cancelled, a detriment directly related to the making of a protected disclosure.
- 3.197. She also reported that he had suggested that if she was to resign, no grievance meeting would need to take place, which she describes as a further a further breakdown of trust and confidence between them, an attempt to circumvent her statutory and contractual rights and evidence on non-compliance with the ACAS Code.
- 3.198. There had been, she said, no acknowledgement of the concerns she raised and no steps taken to hold a grievance meeting (203 – 206).
- 3.199. Mr Laver responded on 24 July 2019, in a kindly worded letter (209), accepting the resignation with regret, and offering again the without prejudice meeting earlier suggested.
- 3.200. He said,

“ On behalf of the Helios team I thank you for your endeavours and we are sorry to lose you.”

and,

“As I said in my last email to you, you have been one of the mainstays of the Practice for the last 4 years and I was saddened to receive your letter of resignation. Whether you decide to meet with us or not please be assured that I will give you a good reference if you require one for any new post you may be considering.”

Law

Constructive Dismissal

- 4.1. An employee has a right not to be unfairly dismissed (section 94 Employment Rights Act 1996 ("ERA 1996")).
- 4.2. A termination of the contract by the employee will constitute a dismissal within section 95(1)(c) of the ERA 1996 if he or she is entitled so to terminate it because of the employer's conduct. That is a constructive dismissal.
- 4.3. For the employee to be able to claim constructive dismissal, the employee must establish that the following four conditions are met:
 - i) There must be a breach of contract by the employer.
 - ii) That breach must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents which justify his leaving.
 - iii) The employee must leave in response to the breach and not for some other, unconnected reason.
 - iv) The employee must not delay too long in terminating the contract in response to the employer's breach, otherwise he or she may be deemed to have waived the breach and agreed to the variation of the contract or affirmed it.
- 4.4. A repudiatory breach of contract is a significant breach, going to the root of the contract (*Western Excavating (ECC) Ltd v Sharp [1978] ICR 221*). That is to be decided objectively by considering its impact on the contractual relationship of the parties (*Millbrook Furnishing Industries Ltd v McIntosh (1981) IRLR 309*)
- 4.5. It also follows that there will be no breach simply because the employee subjectively feels that such a breach has occurred no matter how genuinely this view is held. If, on an objective approach, there has been no breach, then the employee's claim will fail (see *Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493, [2005] IRLR 35*).
- 4.6. Employment contracts contain an implied term of mutual trust and confidence. The parties to the contract will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust which should exist between employer and employee (*Malik v BCCI SA (in liq) HL [1998] AC 20*).
- 4.7. It is not simply about unreasonableness or unfairness. The question is whether the conduct complained of was likely to destroy or seriously damage the relationship of trust and confidence.
- 4.8. it is not necessary in each case to show a subjective intention on the part of the employer to destroy or damage the relationship, a point reaffirmed by the EAT in *Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT*. As Judge Burke put it:

"The test does not require a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his

conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of..."

- 4.9. The Claimant must have resigned in response (or at least partly in response) to the Respondent's breach of contract. The Tribunal must consider the five step test in *Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA Civ 978*,
- (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
 - (2) Has he or she affirmed the contract since that act?
 - (3) If not, was that act (or omission) by itself a repudiatory breach of contract?
 - (4) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term?
 - (5) Did the employee resign in response (or partly in response) to that breach?
- 4.10. The general principles of contract law applicable to a repudiation of contract are that if one party commits a repudiatory breach of the contract, the other party can choose either to affirm the contract and insist on its further performance or he can accept the repudiation, in which case the contract is at an end.
- 4.11. Delaying too long or, by conduct, indicating acceptance of the change, can point to affirmation. It is not contended by the Respondent that the Claimant affirmed the contract.

Protected Disclosure

- 4.12. The provisions relating to protected disclosure are set out at sections 43A to 43K of the 1996 Act.
- 4.13. It is not disputed that the Claimant made disclosures of information. The contest primarily is over whether they were made in good faith, in the claimant's reasonable belief and in the public interest. However, it has also been suggested that there was not sufficient information to identify a risk to patients.
- 4.14. By section 43B,
- "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 –
- (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject... *and*
 - (d) That the health or safety of any individual has been, is being or is likely to be endangered...."

- 4.15. By section 43C, a qualifying disclosure is made, where the worker makes the disclosure to his employer.
- 4.16. A qualifying disclosure will have sufficient factual content and specificity to be capable of pointing to one of the qualifying categories in section 43B (*Kilraine v Wandsworth LBC [2018] EWCA IRLR 846*). The Tribunal must take into account the context and background. There is no rigid distinction between the provision of information on the one hand and the making of an allegation on the other (*Simpson v Cantor Fitzgerald Europe CA [2021] IRLR 238*).
- 4.17. The tribunal also considered in *Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979CA* , considering the public interest requirement. There are four factors to be taken into consideration: the numbers in the group whose interests the disclosure served; the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed; the nature of the wrongdoing disclosed and the identity of the alleged wrongdoer.
- 4.18. Guidance is given from *Blackbay Ventures Ltd (Chemistree) v Gahir UKEAT/0449/12/JOJ* on the steps to be taken by the Tribunal.
1. Each disclosure should be identified by reference to date and content.
 2. The alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered or as the case may be, should be identified.
 3. The basis upon which the disclosure is said to be protected and qualifying should be addressed.
 4. Each failure or likely failure should be separately identified.
 5. Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified
 6. The Tribunal must then consider whether or not the Claimant had the reasonable belief referred to in section 43B(1) and whether it was made in the public interest.
- 4.19. By section 47B(1),

“A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the employer done on the ground that the worker has made a protected disclosure.”

- 4.20. “Worker” has the extended meaning given by section 43K.
- 4.21. By section 47B(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 on the ground that W has made a protected disclosure.

- 4.22. In such a case, the detriment is treated as done by the employer (section 47B(1B)).

- 4.23. Where the Tribunal finds a protected disclosure and detriment, the question is whether or not the detriment was “on the ground that” the worker has made the protected disclosure. The question there 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 and others and Public Concern at Work v NHS Manchester*, [2011] EWCA Civ 1190, [2012] IRLR 64.
- 4.24. By section 103A, an employee is to be regarded as unfairly dismissed if the reason or principal reason for the dismissal is that the employee made a protected disclosure. The burden is on the Respondent to establish the reason for the dismissal (*Kuzel v Roche Products Ltd* [2008] ICR 799). If the employer fails to do so, it is open to the employment tribunal to find that the reason is that asserted by the employee, but it is not bound to do so. The identification of the reason or principal reason turns on direct evidence and permissible inferences from it.
- 4.25. We are referred to *Salisbury NHS Foundation Trust v Wyeth*, [2015] UKEAT/0061/15/JOJ. Where breaches of contract are found, it is for the Tribunal then to determine the reason or principal reason for that conduct.

5. Submissions

- 5.1. Both counsel presented written submissions which were helpful, and amplified them briefly in oral submissions.

6. Reasons

Procedural matters

- 6.1. The hearing had been converted to a Cloud Video Hearing on 2 February 2019 with the consent of the parties. That is because a face to face hearing was not practicable on the dates listed, in the light of the restrictions imposed by the Health Protection (Coronavirus Restrictions) (England) (Amendment) (no 3) Regulations 2020.
- 6.2. Orders had been given limiting the number of words in witness statements and pages in the bundle of evidence. The word limits for witness statements had not been respected by the Respondent, more than 2500 over the limit of 7500. The bundle exceeded the permitted limit of 250 pages fixed in the Order of 2 October 2020 by 163 pages. That was not apparent from the numbering, because of the extensive use of subordinate numbers – for example, 220 followed by 220.1 to 220.16. The bundle was not in date order as directed.
- 6.3. The time estimate and timetable for the hearing is based on a disciplined approach to witness statements and evidence. This was unhelpful and discourteous to the Tribunal as well as in breach of the Orders given.
- 6.4. At the start of the hearing, changes were proposed to the outline timetable established in the Order of 1 April 2020 to allow more time for oral evidence. That was rejected because no earlier application had been made in spite of two subsequent Case Management hearings. The change would have

reduced the time for Tribunal reading or deliberations. The Employment Judge directed that the Respondent have 5.5 hours for cross examination and the Claimant 7 hours, which was accepted.

6.5. Difficulties became apparent over the Respondent's disclosure. That there was a whistleblowing policy only emerged during the third day of the hearing, when it was produced. The Grievance and Disciplinary policies were not obviously those appropriate to the dates at issue. Other documents were missing. The evidence showed that Ms Kershaw had conducted an investigation into events concerning the receptionist Mohima, on which Ms Kershaw reported on 28 March 2019. Those events have been at issue in this hearing but we have only one of the statements Ms Kershaw saw. The letter produced to Dr Mann indicates the outcome but we do not have any full report on the outcome. There is some evidence that Ms Friis sought evidence after Dr Mann had gone off sick or resigned in July 2019, and that those enquiries had been by email but no such emails have been disclosed. Ms Friis initially agreed that she had made email enquiries but on being asked to disclose them decided that her approaches had been made by telephone. We therefore do not know what specific questions elicited the email response from, for example, Rebecca, a therapist, which opens, "Very sorry to hear that – what a sad development." That does not appear to be a response to a telephone conversation. That email goes on to give an account of Dr Mann's demeanour at the meeting of 1 May 2019. There has been no reference to an untoward incident on 1 May 2019. The natural inference is that the Respondent was seeking to bolster a case based on Dr Mann's demeanour or conduct, in the absence of contemporary records or concerns. There is an email too, page 171, rather puzzlingly described in the index as "email Jennifer Kershaw to Claimant (N & W PM Group) Indemnity" and as originally provided was substantially illegible. The content does not justify that heading and on the panel requesting a legible copy, it proved to report a discussion between Ms Kershaw and Dr Mann, one that is both relevant and favourable to the Claimant, contradicting the Response (171). (In fairness, a number of other documents were also illegible). The difficulties were compounded in that the Respondent's witnesses repeatedly referred to documents to support their case which did not in fact support the points made, and not by reason of errors over page numbers.

The Response

- 6.6. In this case, the Grounds for the claim and the Response are markedly different. They give wholly contrasting accounts. The Response challenges the Claimant's conduct and competence.
- 6.7. We approached our analysis by reference to our Findings of Fact and the Respondent's grounds for response.
- 6.8. Paragraphs 1 to 43 of the Response deal with background matters, primarily describing the medical practice and how it operated.

Para 45 – 47

- 6.9. At paragraph 45, it is set out that the Claimant's salary was increased to £8,500 on 12 May 2019. That is not correct. An offer was made, but not accepted or paid.
- 6.10. At paragraph 47, the account of locum pay given is at odds with the evidence. Locum pay was agreed on 22 May to be £80 per hour with a triage premium of £100 per session. The Response omits the triage premium, agreed by Ms Friis on 22 May and properly referred to in Mr Laver's email of 6 July. The Response sets out that a ten-hour day as locum, including a paid lunch break, would entitle the Claimant to £800.
- 6.11. The Respondent's witness Mr Laver gave evidence that locums were paid only for three hours per session. On the basis of the May agreement with the Claimant, she would qualify only for £340 per session, £680 per day. The Response therefore neither reflects the documented facts accurately nor the evidence of the Respondent's witness.

Para 50 – 51

- 6.12. At paragraph 50 of the Response, reference is made to a meeting between Jenny Kershaw and the Claimant, to discuss her decision to cancel her Tuesday salaried sessions. The meeting with Jenny Kershaw took place on 22 May. Ms Kershaw confirmed the discussion by email was about appropriate rates of pay, Ms Friis' attitude and approach, CCG representation and the role of the triage GP. It does not make reference to the claimant's decision to cancel her Tuesday salaried sessions, except for the reference to the CCG representation which took place on Tuesdays. Nor does it show that

“At that meeting the claimant confirmed that with effect from 1 June 2019 she would work as a locum GP to do 3 sessions per week including the previous salaried Tuesday sessions at a rate of £80 per hour.”

- 6.13. Ms Kershaw did not agree rates or dates and explained that as a consultant she had no authority to reach any decision.
- 6.14. Dr Mann had not agreed to work the previous salaried Tuesday sessions on a regular basis as a locum. There is no source for this.
- 6.15. At paragraph 51, it is stated that the Respondent accepted the claimant's offer to work as a locum GP to cover the Tuesday shifts. The claimant offered to work Tuesday or Thursdays as a locum from time to time on 13 May 2019. On 21 May, Ms Friis booked her in for locum sessions on Tuesdays and for three Thursdays in June. The claimant did not stand down from the Tuesday shifts and at the same time ask to cover them regularly on locum rates.
- 6.16. Paragraphs 52 to 55 reflect an analysis of the claimant's work pattern and patient throughput carried out after the termination of her employment by Dr Mulder.

Para 56 - 59

- 6.17. At paragraph 56, it is stated that

“The Claimant had a history of responding in what can be described as a volatile manner to reasonable queries made by the support staff and Respondent 2’s managers.”

- 6.18. We do not have evidence of that, although it is an allegation the Respondents have pursued.
- 6.19. At paragraph 57, by way of illustration of that proposition, it is said that on or around 25 April Ms Friis arranged an informal meeting to discuss Dr Mann’s work schedule, which, given that “there were markedly fewer patient contacts than her work colleagues, caused her to be underutilised”
- 6.20. This was not an arranged meeting. There was neither advance notice of the meeting nor advance disclosure of the analysis and proposed discussion. There was not an analysis of Dr Mann’s schedule, which was arranged by reception or under the triage policy. It purported to be an analysis of her productivity.
- 6.21. The analysis, carried out at Ms Friis’ initiative and without guidance from any clinician, is at pages 220.3 to 220.6. It is not established whether the analysis is based on booked sessions or triage and the documents produced would require careful explanation. There was a particular focus on 5 April, but Dr Mann was not on notice of that so would not have been able to respond. She would have required notice and access to records to respond at the time, much less when asked during the hearing.
- 6.22. At paragraph 58, it is said that the Claimant responded to Ms Friis with aggression. There is no note of the meeting or any contemporary reference to this allegation.
- 6.23. This is a serious allegation. Doctors have to deal with vulnerable individuals often in difficult circumstances. Aggression is unprofessional and potentially harmful. If there was aggression, we would expect to see a record and action taken.
- 6.24. It is reasonable to expect a manager faced with aggressive conduct to make a note and to pass it on to the senior partner.
- 6.25. Dr Mulder had a meeting with Dr Mann two days later, in the course of which he tells us he praised her work – “You are the good news.” She had raised Ms Friis’ actions with him. He was not unaware of that meeting and he had not received any allegation of aggressive conduct on Dr Mann’s part.
- 6.26. There is no evidence that Ms Friis made this allegation at the time.
- 6.27. No such analysis had been carried out for other doctors. Ms Friis acknowledged that she was acting without guidance. She was embarking on performance management of a GP, as a new Operations Manager, without training in practice management and after only a month at the surgery. Dr Mann’s objections were not unreasonable.
- 6.28. It was agreed and recorded at the meeting of 1 May that this was a matter to be dealt with with all GPs, to ensure everyone was working to capacity, and that everyone including Dr Mann was working in line with the current Triage protocol.

6.29. The point relied on in the Response at paragraph 57, is that Dr Mann responds in a volatile manner to reasonable queries. This is not an illustration of that point.

6.30. No other illustration of a “volatile response” is presented in the Response nor is there evidence of any such incident, beyond general allegations from Ms King, addressed below.

Para 60 – 63

6.31. The heading at paragraph 60 is “Events of 21 May 2019”. The account names a receptionist who left on 28 March 2019. There is a reference to Dr Mann’s forthcoming appraisal. Her appraisal was in April. This must be a reference to the incident of 20 March.

6.32. The Response sets out at paragraph 60,

“The Claimant became irritated by the patient’s persistence and shouted at (Mohima) who was so scared she later admitted that she believed the Claimant was going to hit her and became tearful as she spoke.”

6.33. There is a detailed contemporary account from the receptionist concerned, Mohima (163.1). It said Dr Mann shouted at her. It did not say that she thought Dr Mann was going to hit her.

6.34. We have Ms Friis’ statement of what happened . There is no reference in it to Dr Mann being aggressive or shouting. Ms Friis is critical of Mohima’s rudeness.

6.35. The allegation that Mohima was frightened that Dr Mann was going to hit her was dismissed then and at the hearing by Ms Friis as untrue.

6.36. Jenny Kershaw gathered statements and confirmed by email to Dr Mann on 28 March that they confirmed Dr Mann’s account. Mohima was already working her notice, having resigned while facing a disciplinary over this incident, and at this point was allowed to leave without working the rest of her notice (163.3 and 164).

6.37. The account set out in the Response is one that the Respondents had already rejected as untrue.

6.38. It is right to say that Miss Friis now says Dr Mann was aggressive and rude. But she acknowledges not putting it in her statement at the time and could not explain why not. She did not put in in her witness statement either, when dealing with this matter. Nor does she mention that Mohima had made an allegation against Dr Mann which had been agreed to be false. She implies that they were forced to choose between Dr Mann and a receptionist, and they were short of GPs,

“We were short on GPs so I called Mohima into my office with Jennifer Kershaw to see how to fix this problem....We said.... we would pay her a month’s salary so she could move on with her career plans. She was happy with this arrangement. We did not inform Mohima of Dr Mann’s

demands as we did not want to upset Mohima. We have since kept a good relationship with Mohima....” (Friis, para 9)

- 6.39. Dr Mulder was not present but in his witness statement he repeats the allegations that Mohima believed that she was going to be hit by Dr Mann, again without reporting that that allegation was never supported by Ms Friis and had been found to be untrue in the investigation by Ms Kershaw.
- 6.40. Dr Mulder echoes Ms Friis in saying that Mohima was paid a month’s salary in exchange for leaving immediately. That is not what the records show: she gave notice on 22 March and left on 28 March. Dr Mulder in March had appeared to share Dr Mann’s concerns about Mohima’s false allegation (290).
- 6.41. At paragraph 61, it is said that Ms King authorised Miss Hussain to take the remainder of the day off, because she was visibly upset by the Claimant. That derives from a statement from Ms King headed “May”, considered below.
- 6.42. It is then said that the Claimant refused to work on any shift on which Miss Hussain was assigned. She did, but not until Dr Mann found out later that Miss Hussein was making a serious allegation against her and called for the investigation that Ms Kershaw carried out. It was because of Mohima’s false allegation that she was let go on 28 March 2019. Those important details are omitted from the Response and by the witnesses.
- 6.43. At paragraph 62, the response sets out that

“62. The Claimant’s conduct towards (the receptionist) was witnessed by Ms King who wrote a report setting out the Claimant’s unlawful actions of bullying and intimidating a junior member of staff in the work place.

63. Approximately 3 days after the incident of 21 May 2019, the Claimant told Ms King to change her written statement because it would have a negative impact on her upcoming appraisal. The Claimant pressed Ms King until she wrote a fresh statement of events which excluded the fact that the Claimant had shouted at (Mohima) and caused her distress.”

- 6.44. There are two statements from Ms King, at pages 173.1 and 173.2. The top part of each page is identical, but after the first three paragraphs, the accounts differ and the second one has handwritten amendments. They are both typed, so one is a retyped version of the other. We are told that both bear the date “May 2019”, although the top of the second statement is cut off.
- 6.45. The first statement contains the following:

“Mohima then told me that she felt afraid that Dr Mann was going to hit her, so I told her to go home early. I didn’t think Dr Mann would want to talk to her again that day.

The following day, Dr Mann refused to come into work unless Mohima wasn’t there. This put myself and Dagma in a very difficult situation.”

- 6.46. Dr Mann saw a statement from Ms King, but did not see one containing those allegations.

- 6.47. The second statement omits those paragraphs and there is a handwritten annotation that, *“At no point did Dr Mann raise her voice.”*
- 6.48. Ms King reports that she spoke to Dr Mulder during this incident and he came in and saw the patient concerned. If there was misconduct by Dr Mann amounting to unlawful actions of bullying and intimidating a junior member of staff in the work place, it would be reasonable for it to have been reported and discussed immediately. It would be reasonable to expect a written report to Ms Friis and Dr Mulder. It would be reasonable to expect full investigation of Dr Mann’s conduct.
- 6.49. There is no evidence of any contemporary concerns about Dr Mann’s conduct. There was no investigation of her conduct.
- 6.50. There was an appraisal in April, albeit highly informal and unrecorded. It would have been essential to address such conduct at that stage. It was a positive appraisal.
- 6.51. It was Dr Mann who called for an investigation of the incident, when she heard about a false and damaging allegation made that Mohima thought Dr Mann was going to hit her. Ms Kershaw gathered statements and found no such conduct. We have not seen the statements Ms Kershaw gathered, except that of Ms Friis, but it is hardly plausible that Ms Kershaw heard allegations of bullying by Dr Mann and did not address it when carrying out an investigation of the incident.
- 6.52. The statements from Ms King are dated May. It is unlikely that they were written in March: that would be a pretty odd mistake to make. If one of them had been presented to Ms Kershaw in March, the date would have been corrected. If the statement came out of the file or folder relating to Ms Kershaw’s investigation, the right month would have been obvious. Instead, the Response baldly relies on the “Events of 21 May”, a day about which we have seen and heard no evidence.
- 6.53. We find that they were not written in March. They could not have been written in May, because in May, Ms King would have known she was writing about something that happened earlier. They must have been written later.
- 6.54. At paragraph 63, it is said that Dr Mann pressed Ms King to write a fresh statement of events, excluding the fact that the Dr Mann had shouted at Mohima and caused her distress. That is something said by Ms King in her email of 30 May, referring, again, to an incident involving Mohima “sometime in May”. That is the only evidence for it, apart from the two differing copy statements.
- 6.55. Ms King had a back to work interview on 3 May at which she discussed a couple of incidents concerning Dr Mann but did not mention this. She then wrote a list of concerns about Dr Mann dated 5 May, which does not include this incident or any account of shouting or aggressive behaviour (197.32 and 198.1).
- 6.56. The contents of paragraphs 62 and 63 are wholly unreliable.
- 6.57. If Ms King wrote an original statement for Ms Kershaw’s investigation, we have not seen it. It is not the one now relied on by the Respondent. We have been given no explanation.

Para 64

- 6.58. At paragraph 64, the Response deals with the events of 7 June, the attendance of a methadone patient over the lunch hour, when Dr Platford was on duty in the morning and Dr Mann in the afternoon.
- 6.59. It sets out that the Claimant was aware that the patient was waiting for her, but she left him in the reception area alone with a young receptionist who later complained that she felt vulnerable.
- 6.60. This incident is described in the email from Dr Platford to Mr Laver of 8 June. Dr Platford says that the receptionist was not alone.
- 6.61. Dr Mann confirms that the receptionist was not alone (Mann para 28).
- 6.62. In Ms King's email of 30 June, the allegation is that Dr Mann left the young receptionist alone for an hour and a half while she went to lunch, telling the receptionist to ring Dr Mulder at home and the receptionist felt in potential danger.
- 6.63. In Ms King's Back to Work meeting of 3 July, she says both doctors left the receptionist on her own. She also says other staff were present.
- 6.64. Dr Mann's account is that she checked the notes, realised Dr Mulder had to be consulted and gave that instruction to the receptionist. That is confirmed in the patient record (181.1). Ms King herself reported that Dr Mann gave that instruction before leaving both in the 30 June email and in the back to work meeting (191.3).
- 6.65. The Response omits reference to that explanation for the delay in issuing the script.
- 6.66. There is a later version of this from Ms King on 5 July, saying that when Dr Mann told the receptionist to ring Dr Mulder, he was on annual leave. He was not, not until the following week.
- 6.67. The accounts from Ms King are not contemporary, not consistent and inconsistent with other evidence.
- 6.68. There was no further investigation and no other record is produced.

Para 65 - 66

- 6.69. At paragraph 65, it is set out in the Response that on 12 June, the Claimant refused to work her entire clinic because there was no triage GP on that day.
- 6.70. It is accepted by Dr Mulder and by Mr Laver that that was consistent with practice policy. It was the right thing to do.
- 6.71. She told Ms King to cancel her booked clinic to enable her to undertake triage.
- 6.72. There is an account of this from Ms King (197.3) from 3 July 2019, the Back to Work interview. She says, on being told to cancel the clinic

"I said are you serious? I spent all day rescheduling for Joan's clinic now you're telling me you want me to cancel your clinic. You are not working as part of a team. I am not doing it and you cancel the patients yourself."

- 6.73. She then walked out.
- 6.74. There is no suggestion of reproof by Ms Friis in her notes at the overt disrespect noted.
- 6.75. It was accepted at the time, including by Ms Friis, that Ms King was wrong to refuse to cancel the clinic. Mr Laver was shocked at the disrespect being shown.
- 6.76. The Response continues by describing Dr Mann responding with anger, and shouting at Ms King in an aggressive, abusive and intimidating manner. That is not in the account given on 3 July. It appears in a different account from Ms King, the one on 30 June, an email to Ms Friis, which opens,

“In light of recent events, I wanted to tell you about my concerns regarding working with Dr Mann...”

- 6.77. There she sets out that in relation to this incident, that Dr Mann was aggressive and intimidating and.

“I have been off sick with stress as a direct result of her treatment of me and my team.” (191.3)

- 6.78. The allegation that Dr Mann’s conduct made Ms King ill following the incident of 12 June is repeated in the Response at the end of paragraph 65.

- 6.79. In the Back to Work interview on 3 July, Ms King is noted as being asked

“What caused you to be stressed?”

- 6.80. Her response is,

“I have been stressed for months due to lack of support in management. Sickness with members of staff. Dealing with Kate’s work as well as my own work. I was also not supported by my job share.” (197.3)

- 6.81. She does not say that Dr Mann’s conduct made her ill.

- 6.82. There is no other evidence that Dr Mann’s conduct made Ms King ill.

- 6.83. Ms King included a reference to the incident of 12 June in her list of concerns about Dr Mann of 5 July 2019. The comment made is that cancelling the clinic was unreasonable. There is no mention of aggression.

- 6.84. The single reference to aggression is in the short email of 30 June. We have seen no acknowledgment of that email, or any evidence of investigation. It was not mentioned in the Back to Work interview notes.

- 6.85. To assert in the Response that Dr Mann behaved on this occasion aggressively and that she caused Ms King’s illness on the basis of only this evidence is surprising.

- 6.86. The Response at paragraph 66 refers to the email of 30 June as a formal grievance against Dr Mann in respect of her aggressive and abusive conduct towards Ms King personally and the reception team in general.

- 6.87. That email was sent on a Sunday, probably while Ms King was off sick. It was not treated at the time as a formal grievance. We have no evidence of any formal grievance procedure or even of an acknowledgement. It is not mentioned in the Back to Work interview three days later. It was not seen as a formal grievance at the time.
- 6.88. It is short, referring briefly to three incidents discussed above, but with variations from the other accounts. This time only Dr Mann is blamed for leaving the receptionist “alone”. It is the only account Ms King gives of Dr Mann being “aggressive and intimidating”, without illustration.
- 6.89. If this were a genuine view of Dr Mann, there would be implications both for the practice and for patients. GPs care for vulnerable patients, there is an additional duty to ensure that behaviour is professional including when under stress. We would be concerned at the lack of action, save that Dr Mulder clearly did not have that concern. His evidence was that he hoped that the former good relationship between the practice and Dr Mann could be restored and he reminded the Tribunal that he had thought sufficiently highly of her to offer a partnership. Mr Laver did not have those concerns. He hoped that matters could be resolved, as set out in his final emails to Dr Mann and in his oral evidence. Ms Kershaw, albeit dependent on the views of others, not being a regular staff member at the surgery, had said in May that it would be a devastating blow to lose Dr Mann. Those views are inconsistent with the picture painted of a doctor behaving so badly.
- 6.90. The allegations of 30 June were not investigated. The handling of that email is more consistent with gathering evidence against Dr Mann than it is with the proper management of the practice.
- 6.91. Paragraphs 65 and 66 of the Response of an inappropriate refusal to see patients, of aggressive, abusive and intimidating conduct towards a member of staff, of making that staff member ill due to work related stress and of there being a formal grievance against Dr Mann as a result are not supported by the evidence.

Para 67

- 6.92. Before paragraph 67 is the heading “Ms Holly King’s Whistleblowing disclosures in respect of the Claimant’s conduct which placed patients at risk”
- 6.93. The document identified as the whistleblowing disclosure is the list dated 5 July (197.5). Amongst ten general complaints against Dr Mann, there are those that raise patient safety issues, such as failing to sign urgent prescriptions, failing to call back a patient or leaving it to reception to explain complex medical issues. There are no dates and few specifics, although there is again the allegation that Dr Mann (only) left a receptionist with a potentially dangerous patient, and again that her request for the cancellation of the clinic was unreasonable.
- 6.94. That there was a whistleblowing policy was only disclosed on the third day of the hearing.
- 6.95. Under the whistleblowing policy, Mr Laver is the person who is to handle investigation. Ms Friis acknowledged that in his absence, that fell to her.

- 6.96. Ms Friis did not remember when she first saw this list. She does not remember what she did about it. She did not refer it to Mr Laver.
- 6.97. Dr Mulder did not remember when he first saw it.
- 6.98. It was not recognised as a whistleblowing complaint at the time. No action was taken on it. There is no evidence of any investigation or onward referral.
- 6.99. Dr Mann's complaints have been dismissed by the Respondents on the basis that they lack specifics and are in too general terms to be classed as whistleblowing. Her complaints are specific and the issues identifiable. These allegations lack detail or dates and are cast in general terms.
- 6.100. The whistleblowing policy was not applied to Ms King's list or to Dr Mann's repeated reports.
- 6.101. This list of concerns merited action to establish whether there was a genuine basis for the concerns expressed or to deal with false accusations capable of damaging Dr Mann's reputation. No action was taken.
- 6.102. It is surprising then that this is relied on in the Response as whistleblowing disclosures against Dr Mann.

Para 72 – 73

- 6.103. At paragraph 72 and 73, the Respondent discusses the clinic of 12 June 2019.
- 6.104. It sets out that the Claimant worked as the sole GP on shift for both am and pm sessions. That was because Dr Platford had fallen ill suddenly and admitted to intensive care.
- 6.105. Dr Platford had walked out on 7 June after being challenged by Ms King over her management of the methadone patient, giving notice that she seeing her GP and would be providing a fit note (181.4) The practice had notice of her absence. Mr Laver had been in touch with the practice on Monday 10 June (184). There had been time to arrange a locum.
- 6.106. Paragraph 73 goes on to explain that no locum GP was booked for 12 June because the Claimant's known workload was light and she could able cope as an experienced and competent GP.
- 6.107. This is not an explanation supported by evidence. There is no evidence of any such decision being made. Dr Mann sent angry messages in the course of the day and followed up with a grievance. If this had been the reason for the lack of a locum, it would be supported by contemporary evidence. It was not. Nor is the triage or emergency workload predictable.
- 6.108. Ms Friis could not explain to us why there was no locum.
- 6.109. The allegation that Dr Mann was aggressive and abusive to Ms King is repeated. That has been dealt with above.

Para 76

- 6.110. At paragraph 76, the Respondent has moved on to address Dr Mann's invoice of 1 July. It sets out that the Respondent had agreed to pay Dr Mann £800 for 10 hour sessions, at £80 per hour, so her invoice included an excess fee of £160 per session.

6.111. That is not an accurate account of the agreement reached over Dr Mann's fees, agreed between her and Ms Friis in writing on 22 May. It is not consistent either with the evidence of Mr Laver, who was familiar with locum fees.

6.112. The figures Ms Friis agreed on 22 May were those put forward by Dr Mann,

"To confirm, I will be charging Triage clinics at an hourly rate of £80 per hour with an extra £100 per session worked."(168)

6.113. Mr Laver's oral account was that each locum session was three hours and any hourly fee agreed related only to the three core hours of the session. On Mr Laver's view, therefore, a full day of locum work would be paid on the basis of two sessions. At £80 per sessional hour with an additional £100 triage premium, the fee would be £340 for one session, £680 for the whole day. He was adamant that they did not pay hourly, that the reference to an hourly fee was limited to the three hours of each session.

6.114. Here, the Response refers to an hourly fee, leading to a ten-hour day at £80 per hour, £800.

6.115. Dr Mann's invoice, including her agreed triage premium as a senior GP, was for £960 for a full day, 9.5 hours; had the respondent included the agreed triage premium on the rate the Response says was due, the charge would have been £1000.

6.116. We have seen another locum invoice based hourly pay for days worked, not for three hours per session.

6.117. Mr Laver also suggested in his email of 6 July that the triage premium would cover hours worked in excess of four hours in a session.

6.118. It is not clear why the Response fails to refer to the agreement reached in the email exchanges, that Mr Laver said he would honour, or why Mr Laver's evidence differs from the account in the Response.

Para 81

6.119. At paragraph 81, the Response sets out that *"the Claimant may not attend her shifts because of the disputed invoice, the Respondent covered her shifts with locum GPs."* The shifts being referred to are not identified.

6.120. The invoice was submitted on 1 July. Ms Friis cancelled the sessions for 9 and 16 July on 2 July and found other locums for those sessions. It is likely that those are the sessions being referred to.

6.121. Ms Friis says she was not told to cancel the shifts. It was her own decision. Mr Laver's view was that agreed shifts should not be cancelled.

6.122. Ms Friis gave no reason for cancelling the sessions at the time. To the Tribunal she said she canceled the sessions to give an opportunity for the fees to be sorted out because she had been told that Dr Mann was too expensive. The invoice directly reflected the fees agreed with Ms Friis herself on 22 May so that is surprising. But the point here is not that. The Respondent is saying

that they thought Dr Mann would not attend. That is not the reason the Respondent's witness gave.

- 6.123. Ms Friis did not tell us that she cancelled because Dr Mann was unlikely to attend nor is there evidence to suggest that Dr Mann failed to attend booked sessions.
- 6.124. Dr Mulder has also indicated that he gave the instruction to cancel the sessions, and that is mentioned by Dr Mann in her resignation letter. Again, he does not suggest it was because Dr Mann was unreliable in attendance.
- 6.125. We do not accept paragraph 81 as accurate.

Para 83

- 6.126. Paragraph 83 refers to the telephone call between Dr Mulder and Dr Mann on 3 July. It does not reflect the Claimant's unchallenged account of the telephone call with Dr Mulder on 3 July (that if she resigned, there would be no need for a grievance meeting). It describes a decision to agree a face-to-face meeting between them to take place within 2 or 5 days. In fact, they agreed a meeting that same evening, as confirmed in text messages between them (191.5). Dr Mulder then cancelled it, proposing a meeting on 8 July.
- 6.127. Paragraph 83 is not an accurate account.

Para 94

- 6.128. At paragraph 94, the Response asserts that the Respondent sought to agree a grievance hearing date with the Claimant, however she refused to cooperate with them, and this sole fact prevented her grievance from being heard. That is not accurate.
- 6.129. The grievance was put in on 12 June 2019. Dr Mulder was on holiday. Dr Mann's messages of that day and the grievance indicate concerns about patient safety. In a small GP community, that might prompt a response by telephone, or at least acknowledgment. Mr Laver wrote promptly to Dr Mann. Dr Mulder did not respond in writing to the grievance or contact her about it while he was away or on his return on Monday 1 July. She tried to follow it up on 28 June and 3 July. She had no response.
- 6.130. There was no action on her grievance.
- 6.131. The implication of the Response seems to be that the face-to-face meeting proposed was to address the grievance, and it is expressly stated that Dr Mann cancelled it. That meeting was not to address the grievance. Dr Mulder wanted Professor Feder to attend and confirmed to him that this was not the grievance meeting. Mr Laver did not think it was the grievance meeting. There is no letter inviting her to a grievance meeting. No grievance meeting was offered. Nor did she cancel on that occasion.
- 6.132. Dr Mulder said to us, but not to Dr Mann, that at that meeting, they would have decided how to progress the grievance. The meeting did not happen. There was no further action on the grievance.
- 6.133. There is a clear and detailed grievance policy. Nothing prevented the grievance being addressed.

- 6.134. We can understand some reluctance to pursue the grievance while Dr Mann was off sick. That is not the pleaded reason in the Response. It was the Claimant's "refusal to co-operate". That is not an accurate account.

Para 95

- 6.135. At paragraph 95, the Response repeats that the Claimant was removed from the locum rota in anticipation that she would not attend, however "this was entirely based on her history of not attending work at short notice if there was a pending matter to be resolved.
- 6.136. We have no evidence of any occasion when Dr Mann did not come to work other than on health grounds. She had a good health record until these events.
- 6.137. There was no evidence put before us that in any way supported this allegation. As already explained, we have no evidence that that was the basis for the decision to cancel the sessions.

Para 98

- 6.138. Paragraph 98 onwards addresses the chance of a later dismissal. Dr Mulder's evidence at the close of the hearing was that he hoped that they would be able to overcome their differences and the good working relationships of the past could be restored. That Dr Mann was a valued GP is clear from Mr Laver and Jenny Kershaw. They had not wanted to lose her. That is consistent too with the proposed "without prejudice" discussion – an offer that appears to suggest some willingness to retrieve a good working relationship.

Para 100

- 6.139. Paragraph 100 asserts that following a fair disciplinary procedure, it is likely that the Claimant would have been dismissed on the grounds of serious misconduct.
- 6.140. That is not supported by the evidence including the oral evidence. The witnesses identified no serious misconduct and the documentary evidence is that they hoped Dr Mann would come back.
- 6.141. In spite of the terms of this Response, Dr Mulder's oral evidence was that concerns really only arose for him during June 2019, while he was on holiday.
- 6.142. Given the opportunity to explain his concerns both of conduct and competence, Dr Mulder only relied on questions regarding competence from June 2019 and his view that Dr Mann should have been able to manage being in a crisis situation on her own, "pretty normal in a small practice". He had no major concerns about her conduct before May, but referred to "the alarm texts" while he was on holiday about a "fairly normal GP problem situation, then to infer that there is a patient safety issue, it seemed exaggerated..."
- 6.143. Asked again about his concerns about her relationships and conduct, he said,

“Those concerns did not surface until I went on holiday, only then revisiting what was said. What did people say etc. my initial inclination was not to assume that she had been shouting to people or would be hitting other people, no I thought that was out of character, but then experiencing how, well my experience of elements of the communication was that she was becoming quite persistent and quite aggressive, so how then was it at the time and how many such issues were there.”

- 6.144. On the basis of those answers, as well as the surrounding evidence, it is clear that there was no history of concern about Dr Mann’s conduct or relationships and only her concerns as raised in her grievance and messages while Dr Mulder was on holiday brought into question her behaviour or competence. The only concerns arose in June, from the date of the messages on which she relies as whistleblowing reports.
- 6.145. Dr Mulder did not bring forward any serious misconduct. What the answers disclose is that he was by the time of the hearing at least influenced by the allegations made by Ms King, given his reference to May and to shouting and hitting.
- 6.146. We do not know when he saw Ms King’s various statements. No investigation was carried out in respect of her allegations. We do not know when the “May” statements were first seen. Ms King’s later documents are dated 30 June, 3 July and 5 July. Dr Mulder returned from holiday on 1 July. Any concerns of Dr Mulder based on these documents must have been very new at the time of the claimant’s absence from 3 July and resignation on 19 July.
- 6.147. No serious misconduct against the Claimant is established, was put to her in cross examination or is evidenced in the documents.
- 6.148. Paragraph 100 is unsupported by the evidence.

Para 104

- 6.149. Para 104 is striking in its content.

“It is the Respondent’s case that the Claimant was aware that her own actions placed junior staff and patients at risk as set out in Ms King’s letter dated 5 July 2019. Consequently at the time she sent her grievance on 12 June 2019, she was aware that any breach of a statutory duty to safeguard patients lay with her and not the Respondents. It is also submitted that the Claimant made disclosures for the purpose of orchestrating events to bring about a false whistleblowing and constructive dismissal tribunal claim. Accordingly her disclosures were not made in good faith or in the public interest.”

- 6.150. These are amongst the most serious accusations.
- 6.151. We have not heard evidence that shows that this list of 5 July 2019 was a live issue at the time or that it prompted any action.

- 6.152. If there is an allegation from a member of staff that a doctor is putting patients at risk, it needs to be taken up not only through internal processes but through the CQC and the GMC. This is presented as an accusation of professional misconduct.
- 6.153. That was not done.
- 6.154. From that inaction, it is clear that these matters were not a concern.
- 6.155. From that, the motive for making the allegations in paragraph 104 has to be questioned. It is difficult to find another explanation than that they were made for malicious purposes to besmirch the claimant and damage her reputation and to mislead the tribunal.
- 6.156. With regard to the allegation that the Claimant was in breach of her statutory duty to safeguard patients, then it is also the case that the responsibility lies squarely with the Respondents as her employers. Dr Mann has a professional responsibility, but the employer is under a primary duty to provide safe patient care. If they felt her actions were putting patients at risk, they could have gone to the CQC as well as taking management action. They did not.
- 6.157. The suggestion that there should be a report to the CQC came from Dr Mann in her email of 12 June.
- 6.158. Although it was Mr Laver who responded to the email, the responsibility professionally lay with Dr Mulder. He was on leave but has been presented as always available even when on holiday. He did not respond or take action.
- 6.159. Dr Mann's email read,

"I understand Dagma is trying to get hold of Frank (I have texted him) and will contact Richard so the CQC can be informed....."

"feel it is unsafe to continue to practice under these circumstances as it poses a high risk of potential harm to patients." (184)

- 6.160. Mr Laver preferred to look for other solutions. The CQC need only be informed *"if we are unable to provide a service."*
- 6.161. It was still open to Dr Mulder to make a report if he had serious concerns about patient safety or about the competence of his GP.
- 6.162. Mr Laver had told us that the doctor on site was responsible for clinical decisions under the overall authority of the partners. The doctor on site proposed that the CQC should be informed of the inadequacy of cover and he, apparently without clinical guidance, has decided that the CQC did not need to be informed.
- 6.163. We asked Dr Mann why she did not make the referral herself. This was her answer.

"On 12 June, I really felt it (the surgery) wasn't fit for purpose. And I got reassurances from Richard that he was trying to find cover, so I relied on that and continued working, and at that point I went into an extreme health crisis,

and I was suffering so much physically and mentally that I had to withdraw from services.

I was saying if you make me triage, it is a solution. Not an ideal situation at all, but that way we could get through it, but then it all went on happening and then it was the final straw, and eventually, I was broken and I just withdrew, when you feel victimised and not listened to, and there is then a small part of you that makes you feel quite worthless and you just shut up” (witness upset).

- 6.164. It would have been sensible and appropriate for a referral to be made, but we make no criticism of Dr Mann for not making one.
- 6.165. The allegation that the Claimant made disclosures for the purpose of orchestrating events to bring about a false whistleblowing and constructive dismissal claim is an allegation of calculated wrongdoing. It is in essence an allegation of fraud. It has the potential to end her professional career.
- 6.166. It would be serious professional misconduct to make such unfounded claims against her employers for financial gain, with all the implications for the practice.
- 6.167. It is wholly unsupported by evidence.
- 6.168. Dr Mulder confirmed in oral evidence that he thought that the emails from Dr Mann on 12 June indicated that that was her plan. Even with his explanation that he thought as a competent GP she should be able to cope with a normal small practice crisis, that does not explain or justify an accusation of misconduct on this level.
- 6.169. The resignation letter sets out the history with accuracy and cogently and cannot be read as supporting an allegation that the situation was concocted for financial gain.
- 6.170. We are satisfied that her disclosures were genuinely made in good faith and in the public interest. It is beyond doubt that she so believed.
- 6.171. At paragraph 105, the Respondent relies on the CQC assessment. It is worth pointing out that that was carried out in 2015. It does not assist in relation to the circumstances and events in 2019.
- 6.172. The Respondent denies detriment. This is dealt with below, but plain detriment is identified in the resignation letter.

In conclusion

- 6.173. The Response should set out the facts to be established by the evidence. This Response fails to do that. Repeatedly, the facts as set out in the Response are unsupported by evidence or directly contradicted by evidence. The Response relies on inaccurate statements, even where the facts could readily be checked; an inaccurate history; allegations made retrospectively, not founded on contemporary evidence; serious allegations presented as fact that did not reflect contemporary concerns and that were never investigated; and some of the evidence presented, in particular that from Ms King, appears to have been constructed after the event.

- 6.174. Dr Mann was well regarded until the summary of 2019. We have seen repeated evidence to that effect. She was seen as a good doctor, valued by the practice.
- 6.175. We have notes or statements from Ms Friis in respect of the incident with Mohima, which she overheard, and of the meeting with Dr Mann on 20 June (188.5) and 3 July (197.2). There is one allegation of Dr Mann shouting, in the meeting of 3 July in which Ms Friis refused to discuss the cancellation of locum sessions. Apart from that one reference to shouting, the emails do not disclose a report by Ms Friis of inappropriate conduct by Dr Mann or of misconduct.
- 6.176. We have in total five documents from Ms King, which are seriously inconsistent and inaccurate. Those headed “May” are not contemporary accounts and we do not know when or why they were produced. The other accounts from Ms King, who has since left the practice, are dated from 30 June to 5 July and again are not contemporary with the events described. They contain one general allegation of aggression not repeated elsewhere. In one, there is the suggestion that Dr Mann’s conduct made Ms King ill, not repeated in the back to work meeting or later “List of Concerns”.
- 6.177. The other serious allegation documented is that Mohima thought Dr Mann was going to hit her, although that is not in Mohima’s contemporary statement and Ms Friis was clear to us that it was not true. Mohima left under a cloud, accused of making false allegations against Dr Mann, facing a disciplinary and whose allegation was dismissed as untrue at the time.
- 6.178. Mr Laver held Dr Mann in high regard and regretted her going, according to his emails of 6 July and 24 July.
- 6.179. Dr Mulder’s oral evidence points to nothing more than “subliminal” concerns before June 2019 but expressly relates any significant concerns about Dr Mann’s conduct, relationships and competence to the period in June when she was raising concerns about the practice, and only because of her messages protesting at the lack of GP cover and how seriously she took it.
- 6.180. The allegations in the Response that Dr Mann
- Resigned because she refused to follow reasonable management instructions
 - Orchestrated events to bring about a false tribunal claim
 - Responded in a volatile manner to reasonable queries
 - Bullied and intimidated a junior member of staff
 - Was aggressive and abusive to a senior receptionist and the reception team
 - Caused a senior receptionist to be signed off by her GP due to work-related stress
 - Had a history of failing to attend booked sessions
 - Was repeatedly insubordinate
 - Conducted herself so aggressively to junior staff that they were absent from work on her shifts
 - Was guilty of serious misconduct
 - Placed junior staff and patients at risk
 - Failed to co-operate, preventing her grievance being heard

- Made vexatious allegations with malice in making her claim are unsupported by evidence and untrue.
- 6.181. There are also the allegations of poor performance. Those in the Response come from Ms Friis' initial analysis and further analyses carried out by Dr Mulder in September and October 2019. They were not put to Dr Mann. They are based on analyses of computer records such as patient throughput. They are not matched with records of work content. Insofar as they are said to show unused appointment time, Dr Mann did the work booked for her and followed the triage policy in place. If an afternoon turned out to be light, it does not show incompetence or lack of capacity. Beyond that, the exploration might be the start of an exploration of different working practices with a view to improvements, but the analysis does not of itself establish that Dr Mann was a poorly performing doctor relative to her colleagues. She had a good personal reputation at the practice and in her former career. It would take something more than such a computer analysis to displace that. In our judgment, no reasonable employer would rely on that analysis as evidence of poor performance amounting to incompetence.
- 6.182. Accepting that Dr Mulder has confidence in his analysis however and not substituting the Tribunal's judgment for the employer's, his oral evidence showed that he did not rule out her return and a return to previous good relationships. The evidence does not show that there was poor performance likely to lead to her dismissal, and in a Response that makes wide-ranging allegations, that is not the pleaded case.
- 6.183. In resolving conflicts in this case, we have found Dr Mann herself to be clear and accurate in her evidence. By contrast, we found the Respondent's witnesses to be unreliable. The Respondent's witnesses had repeated difficulty in supporting their evidence by reference to the documents, even when referring to the pages they themselves cited in support. That was not the case for the Claimant.
- 6.184. Even in her oral evidence, Ms Friis continued to say that there were times when Dr Mann sat in her room doing nothing. She said there was evidence of that on the computer system. No dates are identified, no records produced and it has never been put to Dr Mann, nor was it put to her in the hearing.
- 6.185. Dr Mulder in explaining his concerns about Dr Mann spoke again about "hitting" as if that was an actual and current allegation, not a reference to something agreed to have been false months before the Claimant's resignation. Both say that they were forced to let Mohima go because of Dr Mann's demands, not because of a serious and false allegation. These are examples of the scope for reputational damage that can be caused by relying on and repeating unchecked allegations and rumour.

7. Findings in relation to the issues

Constructive Unfair Dismissal

7.1. The issues are set out again for ease of reference.

7.2. The Claimant claims that the Respondents acted in fundamental breach of contract in respect of the express/implied term of her contract relating to pay/mutual trust and confidence. The alleged breach(es) were as follows: -

7.2.1. From 26 April 2019 onwards, failing to provide safe systems of work / creating risk of harm to Claimant and/or patients. The Claimant relies on the following alleged matters: -

- (a) 26 April 2019 and/or 1 May 2019 – booking routine appointments into triage clinic
- (b) 7 June 2019 – email from Claimant to the Respondents regarding inadequate time to perform administrative duties
- (c) 11 June 2019 email and WhatsApp message to Respondents raising concerns relating to patient safety and inadequate levels of GP cover
- (d) 12 June 2019 – email to the Respondents raising safety concerns relating to lack of triage provision
- (e) 12 June 2019 – the matters referred to in the Claimant’s grievance to the Respondents
- (f) 12 June 2019 – WhatsApp message to Mr Laver in which the Claimant raised concerns regarding alleged crisis situation in patient safety and
- (g) 12 June 2019 – alleged inappropriate conduct by Ms D Friis

7.2.2. From 26 April 2019 onwards failing to provide safe systems of work thereby creating additional stress to the Claimant and risk of harm to patients. The Claimant relies on the following alleged failures: -

- (a) Insufficient GP coverage and
- (b) Expecting the Claimant to undertake excessive / unsafe levels of work (including expecting the Claimant to cover clinics with pre-booked and emergent patients without any /any sufficient support) creating additional stress to the Claimant and risk of harm to patients. The Claimant relies on the alleged matters referred to at paragraph 7.2.1 above.

7.2.3. 12 June 2019 onwards – causing the Claimant extreme stress resulting in her being off sick on the following dates: - 12 June 2019, 17 June 2019, 21 June 2019 and 4 July 2019.

7.2.4. 12 June 2019 onwards – alleged failure to deal / deal adequately with the Claimant’s grievance dated 12 June 2019.

7.2.5. 3 July 2019 – alleged treatment of the Claimant by Ms Friis

7.2.6. 3 July 2019 – unilateral cancellation of locum shifts without prior consultation / explanation / the Respondent’s decision to challenge the Claimant’s invoice number 37.

(The last of those breaches was said to have been the ‘last straw’ in a series of breaches as that concept is recognised in law).

Safe system of work creating risk of harm to claimant and or patients.

- 7.3. On 5 and 7 June, Dr Mann expressed concern about the time available to do administrative work and holiday cover. On 11 June she reiterated concern about adequate cover, raising both workload and patient safety. On 12 June she raised concern about the inadequacy of GP cover and the failure to provide a safe system of work causing risk of harm to doctors and patients. That was because she was the only GP handling the surgery with single-handed responsibility for a booked clinic and triage. The circumstances she complained of were repeated by failures to provide adequate GP cover on 14 June and again on her return after sick leave on 21 June. Her paperwork was not covered during her absence. She was expected to cover Dr Mulder's paperwork, as he explains, without proper notification or consultation.
- 7.4. She was off sick from 14 to 19 June, again from 21 to 22 June.
- 7.5. There was adequate cover from 23 June to 3 July. She was at work.
- 7.6. The matters she complains of go directly to the health and safety of doctor and patients.
- 7.7. She properly raised the issues in her grievance on 12 June, amplified on 18 June.
- 7.8. She pressed for the grievance to be addressed on 28 June and 3 July, but without response. She made clear her continuing concern about the failure to provide a safe system of work and risk of harm to patients.
- 7.9. The risk of harm to patients is clear.
- A stressed and exhausted GP
Dr Mann gives an example of an instance when she heard that something in a patient's condition that might have required urgent attention was possibly overlooked and she was prompted to reflect how it would be easy to overlook something under stress, pressure of work and fatigue
Prescription requests are put forward by receptionists. We have instances in the evidence of receptionists giving way to patient pressure and putting in requests for a previous medication or a higher dose, or even for a new medication, with scope for error in the GP failing to check properly.
 - Introducing obstacles in accessing prompt care
The systems used to divert triage patients from the doctor running a fully booked clinic, should not have involved asking them to ring 111, but she tells us that it did. Patients were told by reception to ring 111 and were told by 111 to go back to the surgery, with notification from 111 to the surgery to call the patient back. A patient might face an unacceptable delay in securing advice or treatment or may misjudge the urgency, faced with barriers in accessing advice, with consequent harms. The same might arise by ill-judged or ill-informed assessments by reception of the urgency of the consultation, given that their options included deferring cases. The point of GP triage is to prevent those harms.
 - The failure to address paperwork meaning that responding to lab results or providing prescriptions is delayed with potentially adverse consequences. That is implicit in the failure to arrange adequate GP cover, in particular in making inadequate arrangements for holiday cover. It is notable that while Dr Mulder says he arranged for Dr Mann to cover

his paperwork while on holiday he did not consult her or tell her or arrange sufficient resources of time for her to do it or respond to her request that proper arrangements were put in place. However he did later, on 20 June, ask Ms Friis to notify Dr Mann that she was not responsible for other people's inboxes, which again raises a question about arrangements for patient care. Dr Mann's experience was that locums did not adequately cover it and had not all been trained to use the systems in place to do so. Ms Friis was expressly asking Dr Mann to show a locum colleague how to use the system at the meeting on 20 June.

- The failure to provide an overall safe system of work for all staff, placing reception staff under pressure and exposing GPs to inappropriate pressure from them. We have seen that in Mohima's conduct and in particular in Ms King's. The pressure in each case was to act in a way that was potentially harmful to patients. In each case it was persistent and renewed, and no corrective action was taken in the case of Ms King. Mohima was dismissed but allowed to leave on full notice pay and without a final disciplinary.

Failure to provide safe systems of work causing stress and risk of harm

- 7.10. The Claimant relies on
- Insufficient GP cover
 - Unsafe levels of work, including pre-booked and triage
- 7.11. We accept those for the reasons already given.

Causing claimant extreme stress leading to her being off sick on various dates

- 7.12. There is a correlation between the days of maximum stress and the periods when Dr Mann was off sick. It is clear and agreed that she was under stress, the Respondent's staff and partners recognising it. No other reason has been established. She has a previously good health record. The fit notes provided refer to "stress at work".

Failure to deal with the grievance

- 7.13. On 12 June, Mr Laver very reasonably considered that Dr Mulder would have to deal with the grievance. He himself was off sick, having given notice of retirement because a return to work was not possible. The issues related to clinical practice and Dr Mulder was the clinical partner. There was no response from Dr Mulder about it at any stage until after Dr Mann had stopped work on 3 July. The step then offered – a protected conversation with someone from outside the practice – was not in keeping with the grievance policy and cannot be seen as a step in the handling of a grievance. It does not help that the proposed individual, a manager from a nearby practice, was someone not known to Dr Mann and not properly introduced in that email. Importantly, the

grievance related to GP work and patient safety, which were matters of Dr Mulder's responsibility and that an external non-clinical consultant was not likely to be able to address.

Unilateral Cancellation of Locum shifts

- 7.14. Dr Mann was emailed the cancellation of the locum sessions on 2 July. The email was sent to her NHS email address which she does not check on days when she is not working. She saw it on 3 July. No explanation was given. The cancellation was unexpected – there was no practice of cancelling agreed sessions. Mr Laver agreed that the sessions should not have been cancelled.
- 7.15. Dr Mann is a salaried GP. She supplements her service to the practice by locum sessions. The practice relied on her and salaried GPs to do that. The decision to cancel and the failure to consult or explain goes to trust and confidence in the working relationship, even though the locum services are not covered by the employment contract.

Alleged treatment by Ms Friis

- 7.16. Dr Mann asked for the explanation for cancelling sessions she had agreed at the respondent's request at the meeting with Ms Friis on 3 July 2019. Ms Friis agrees that she refused to discuss it and that she tried to show Dr Mann out. She agrees that she does use endearments, such as "love". We accept Dr Mann's account that she called her "love" in a way that was disrespectful and belittling.

The challenge to the invoice

- 7.17. In respect of the invoice submitted for locum fees, Dr Mann's written agreement for payment of locum fees supports the invoice. We have different versions from the Respondent of what the fees should have been but the invoice is supported by the agreement reached, one which the Respondent has acknowledged was made, and was within Ms Friis' authority to make.
- 7.18. The decision to challenge the invoice based on that express agreement again goes to the question of trust and confidence. Locum work is intimately interconnected with the employed earner work, with salaried GPs a preferred point of call in order to secure continuity of service.
- 7.19. Mr Laver sets out the basis for the challenge, from his perception, in the letter of 6 July 2019. The dates of the matters claimed as the "last straw" are therefore 3 July and 6 July.

In conclusion

- 7.20. Applying the law to the facts, we find there were a series of cumulative repudiatory breaches in the implied term of trust and confidence in the failure to provide a safe system of work, failure to address the claimant's concerns

including over patient safety, cancellation of locum sessions, the refusal to explain, the disrespect with which she was treated in the failure to communicate and in the conduct of Ms Friis and in the challenge to the locum invoice.

- 7.21. Did the Claimant resign because of the breach?
- 7.22. We accept that the Claimant resigned because of those breaches. She resigned promptly and expressly refers to the breaches in the grievance and in the resignation letter.
- 7.23. Did the Claimant delay before resigning and affirm the contract?
- 7.24. The Respondents did not rely on any argument of affirmation and it is clear that the resignation was prompt.
- 7.25. In the event that there was a constructive dismissal, was it otherwise fair within the meaning of s.98(1), (2) and (4) of the Act? The Respondents contend that if the Claimant was constructively dismissed (which is denied) that
- (a) The Claimant was fairly dismissed by reason of her conduct and / or that
 - (b) She would, in the event of any procedural defects for the purposes of section 98(4) of the Act have been fairly dismissed if a fair procedure had been followed and /or
 - (c) That the Claimant was, in any event, guilty of contributory conduct (in the light of the Claimant's conduct).
- 7.26. The Claimant was not fairly dismissed by reason of her conduct. There was no fair procedure. She would not have been fairly dismissed if a fair procedure had been followed. No misconduct is established. The Respondent did not have a reasonable belief in her misconduct based on reasonable investigation at the time of her resignation. She was not guilty of contributory conduct.
- 7.27. The Respondent has failed to show a fair reason for the constructive dismissal.
- 7.28. This was an unfair constructive dismissal

The Public Interest disclosure claims

- 7.29. These are the agreed issues.
- 7.30. What did the Claimant say or write? The Claimant relies on the following:
- 11 June 2019 – email and WhatsApp from the claimant to the Respondents dated 11 June 2019 raising concerns regarding patient safety and level of GP cover
 - 12 June 2019 – further email and WhatsApp from the Claimant to the Respondents raising concerns regarding the level of GP cover
 - 12 June 2019 – the Claimant's grievance
 - 13 June 2019 – emails from the Claimant to the Respondents raising concerns about alleged excessive levels of stress and responsibility placed upon her by the Respondents

- 21 June 2019 – WhatsApp message to the Respondents (Dr Laver) regarding the cancellation of triage (doctor first) clinics.
- 7.31. The disclosures relied on are set out in the primary Findings of Fact but are gathered here again for ease of reference: -

11 June

“Hi Frank, I understand Joan is off sick with stress this week. I have sent an email regarding paperwork cover. I explained to Dagma I’m not accepting responsibility of covering all paperwork for yourself and Joan as I can just about keep up with my own. Sonia.” (157)

“Maybe I’m not making myself clear. It’s not only about work load but more importantly about patient safety. I take it that you’ll be remotely accessing results so nothing important slips the net.” (157)

12 June

“Today I arrived at work to find no triage Dr booked and I have a booked clinic.

I asked Holly to cancel my booked clinic to which she replied “no” and then walked out of the practice.

I have seen there is no cover doctor booked for Friday.

I understand Frank left for Greece yesterday, despite the practice left the way it is. Joan is off sick this week. This situation is unacceptable and unsafe.

I have spoken to both Richard and Dagma today. Dagma states she has tried to get locums but failed, however there has been no adverts on BASD (Bristol Association of Sessional Doctors) and no one has yet contacted Gene or Louise who apparently have said they could cover a Thursday or Friday.

There is no clear plan who is responsible for paperwork/labs etc. I’ve been told “just do what you can”. This again is a patient safety concern. I am the only doctor here left to deal with the whole patient population with no clear idea about locum cover and work load cover.

I feel it is unsafe to continue to practice under these circumstances as it poses a high risk of potential harm to patients.

I understand Dagma is trying to get hold of Frank (I have texted him) and will contact Richard so the CQC can be informed.”

I feel it is unsafe to continue to practice under these circumstances as it poses a high risk of potential harm to patients.”(184)

12 June - Grievance

“I request a formal grievance meeting to discuss:

- *Lack of support by the Partnership in my role as a Salaried GP*

- *Unsafe working within the practice which has been highlighted on several occasions with ineffectual resolution ie lack of adequate action about concerns raised. Risk to patient safety*
- *Poor communication amongst staff members*
- *No response to last email regarding pay appraisal. (182)*

13 June

“I am being placed under unreasonable stress and expected to shoulder responsibility as if I was a Partner.... Still no cover tomorrow from Duty GP from 9 am until 11.20 am when Gene has been booked to arrive. I have a fully booked clinic from 9 am This situation is causing me considerable stress, I have had migraines all week and I cannot be expected to work under these conditions” (186)

21 June

*“Dear Richard,
Dagma yesterday proposed to me that there should be no triage GP and I could still have my booked clinic. She said “other practices do this” and that she will man the front desk and tell patients there is no doctor and to call back on Monday. She said this was discussed with you Richard. This is despite my emails and conversations about how unsafe I felt this scenario would be and a condition for my return to work. Why would she even propose this? She eventually changed my clinic to a triage and cancelled my booked surgery after I said it was unacceptable. I feel there is no real support or trust here. I will not be working today due to the stress of this so please let the practice know. I will discuss this with my own GP and provide a further note on Monday.
Sonia” (248)*

7.32. The next issue is, in any or all of these, was information disclosed which in the Claimant's reasonable belief tended to show that: -

- The health of safety of any individual, including the Claimant, other members of the Respondent's staff and / or patients had been put at risk as a result of alleged unsafe working practices / understaffing operated by the Respondents
- Or that any of those things were happening or were likely to happen, or that information relating to them had been or was likely to be concealed?

7.33. The messages are specific, clear, sufficiently factual and specific. Information is disclosed.

7.34. We are satisfied of the Claimant's reasonable belief in what she was disclosing and that it indicated risk to patients and GPs. Her reports address unsafe working practices that had happened, were happening and were likely

to be happening again in that there was inadequate GP cover for both paperwork and patient consultations and previous alerts had been disregarded.

- 7.35. Each raises the issue of patient safety expressly or by clear implication. The safe operation of a medical practice is a legal obligation. Failure to provide sufficient medical cover imports risks to the health and safety of patients. The last four disclosures raise the issue of the health and safety of the GP, that is, raising concerns about the safety for employees of the practice system of work.
- 7.36. To take the final disclosure as an example, that of 21 June, Dr Mann very plainly expresses her concern about how unsafe for patients the proposal made for their care was. This had been her repeatedly expressed view. Mr Laver was unable to deal with it and referred her back to Ms Friis. Ms Friis was the person whose decisions were in Dr Mann's professional opinion, failing on a day-to-day basis to secure adequate arrangements for GP cover.
- 7.37. The Grievance itself is brief, but the context of previous emails and messages makes it very clear and it was in any case amplified in the further comments sent on 18 June, some six days later (188.2).
- 7.38. It is surprising to see a challenge made on the basis that the risk to patient safety was not made clear (Mulder, para 5). Inadequate GP cover and inadequate attention to emails, prescriptions and lab results self-evidently carry risks to patient safety. This deal with more fully above. This is a practice that serves 5,000 people and has responsibility for patient care including routine care and emergency responses during normal working hours. The risks Dr Mann was referring to did not need further amplification.
- 7.39. Going back to the issues, the next is: if so, did the Claimant reasonably believe that the disclosure was made in the public interest? The Claimant relies on the following as going to show the reasonable belief: -
- The safety of patients under the care of the Respondents was at risk.
 - The health and safety of others in the employment of the Respondents was placed at risk.
 - The disclosures included concerns relating to doctors (the Claimant's working hours).
- 7.40. The account she gave over the history of those emails and WhatsApp messages is consistent, clear, well set out too in her resignation statement and witness statement, reiterated in her oral evidence. We are wholly satisfied of her belief in her disclosures and that they were made in the public interest for the pleaded reasons. She was raising with her employers legitimate concerns about the safety of patients and the health and safety GPs in employment at the respondent.
- 7.41. We accept all those pleaded as being protected disclosures.

Detriment complaints

7.42. The issue here is, was the Claimant, on the ground of any protected disclosure found, subject to detriment by the employer or another worker in respect of any of the following:-

- 3 July 2019 – alleged unilateral cancellation of the Claimant's locum sessions by Dr Mulder (without consultation or explanation)
- 3 July 2019 – alleged unprofessional and disrespectful conduct towards / treatment by Ms Friis when the issue of the unilateral cancellation of the locum shifts was raised by the Claimant
- 12 – 19 July 2019 – failure to deal promptly or at all with the Claimant's grievance (Dr Mulder and / or Mr Laver).

7.43. The Respondents deny any of the alleged detriments. The Respondents do not rely on the statutory defence in respect of any proven detriments.

7.44. The detriments pleaded, as set out are established. The most important is the failure to deal with the grievance, which, if properly and promptly addressed could have led to the situation being resolved.

7.45. Addressing the causal relationship between those proven disclosures and those proven detriments, we do not have any sufficient reasons established by the Respondent for their actions. It is for the Respondent to show that the protected disclosures were not a material influence on what they did.

7.46. Both Dr Mulder and Mr Laver attribute the deterioration in the relationship with the Claimant to June 2019, and specifically to the period from the making of her protected disclosures, 11 June onwards. The natural inference is that the reason for the deterioration was the Respondents' reaction to those disclosures.

7.47. In our judgment, the detrimental treatment of the Claimant from June arose in a context in which those disclosures played a significant part. Dr Mulder and Ms Friis were both challenged personally in her criticism of the arrangements, Dr Mulder for going on holiday having made inadequate arrangements for the staffing of the surgery and implicitly for his view of what adequate arrangements would be, and Ms Friis in her failures to find and book locum cover or to understand the deep mistrust Dr Mann was expressing as to the adequacy of the arrangements she was making.

7.48. Ms Friis cancelled the locum work on 2 July. The pleaded response gives as the reason for cancelling the locum shifts that Dr Mann was unreliable. We do not have evidence of that. The sessions she did not attend were those when she was concerned about the safety of the arrangements for her work and the stress of that and the undue level of demands on her. When she did not attend, it was on the grounds of her health. There has been no evidence of unreliability other than on health grounds, in the last few weeks of her employment. Nor was this the reason given in evidence.

- 7.49. Ms Friis gave no reasons at the time and no satisfactory reason has been given since. Various reasons have been proposed aside from the suggestion that Dr Mann was unreliable: that she was too expensive or that she was overcharging over and above the agreed fees, that locum time had been booked out to training. It is hard to see any as the probable reason – Dr Mann’s invoice reflected the agreement over fees and addressing any concerns over it did not require cancellation of booked sessions, there was one query from Ms Friis about locum time and training which was not followed up. We know from Mr Laver that it was not normal practice to cancel agreed sessions and the evidence shows too plainly the difficulty the surgery had in getting enough locum cover. There would need to be a good reason for cancelling.
- 7.50. Dr Mann had been raising her concerns in each of her protected disclosures with added urgency.
- 7.51. Key here is her concern over safety of the arrangements. From 11 June, she was persistently challenging the arrangements made for her work over their safety, including with a suggestion that report to the CQC was appropriate and necessary.
- 7.52. Her view of this and the guidance she gave was not accepted.
- 7.53. Dr Mulder remained out of the picture.
- 7.54. Ms Friis persisted in not understanding or rather not accepting the approach to take. She went on with inappropriate suggestions contrary to Dr Mann’s guidance. Dr Mann increasingly mistrusted her. Of course, the guidance that should matter here is that of the doctor on duty. Dr Mulder was away and Mr Laver was leaving matters in the hands of Ms Friis. The consequence is increasing breakdown in the working relationship between Dr Mann and Ms Friis.
- 7.55. The final protected disclosure is that of 21 June, when Dr Mann again reported to Mr Laver that the arrangements for 22 June were unsafe. He undertook to tell the surgery that she would not be coming in, having confirmed that Ms Friis was in charge there.
- 7.56. We do not have evidence of what happened next. It is a necessary inference that Mr Laver reported that text message exchange to Ms Friis, in telling her that Dr Mann would not be coming in. It is a reasonable inference, more than reasonable, that he explained enough to show that Dr Mann was persisting in her view that the arrangements made were unacceptable to her.
- 7.57. Ms Friis’ notes of the discussion on 20 June show her reluctance to accept what was being said. She made the same proposals for 21 June that had been so roundly rejected as unsafe on 13 June and earlier.
- 7.58. We are not aware that she was getting any guidance.
- 7.59. Mr Laver should have known that she was suggesting that week what she had suggested the week before, but he was off sick and this was beyond what he could deal with.
- 7.60. It is inescapable that the cancellation of the locum clinics by Ms Friis on 2 July arises from the breakdown of the relationship between Dr Mann and Ms Friis and that that in turn arises out of the protected disclosures which are

based on the inadequacy of the arrangements that Ms Friis makes in the light of Dr Mann's concerns over safe management.

- 7.61. Ms Friis may have been out of her depth. But at that point she apparently had no guidance from her employers. The concerns raised in the grievance had not been addressed.
- 7.62. The alternative interpretation is that Dr Mulder told her to cancel the sessions – though it is not clear why she then denied it. If it was Dr Mulder's decision, that tells us that her employers were content with the arrangements Ms Friis was making and did not accept the genuineness of Dr Mann's concerns. Anger about the concerns being raised seems the only explanation for Dr Mulder's failure to discuss matters on his return with Dr Mann.
- 7.63. For whatever reason, Ms Friis persisted in the arrangements that Dr Mann condemned as unsafe and which are the basis for the protected disclosures. If she knew of the unhappiness of her principals at that time with the invoice, that too would have come as a challenge to her management, given that she had agreed the rates charged. That too goes to the working relationship between her and Dr Mann.
- 7.64. In our judgment, Ms Friis cancelled the locum sessions in the light of the breakdown in their working relationship, following the repeated reports of Dr Mann which challenged her management, as only too fully exposed in the messages from 11 June and later, culminating in the meeting of 20 June and the messages of 21 June. Without those disclosures, the locum sessions would not have been cancelled. The various reasons put forward by the respondent are not coherent and in our judgment are designed to provide a smokescreen.
- 7.65. The conduct of Ms Friis in the meeting of 3 July can only be attributed to the breakdown of the working relationship. The cancellation of the locum sessions was her decision, and she was refusing to explain or justify it. She behaved in a disrespectful manner, sadly not inconsistent with the general attitude of administrative staff in this practice, again prompted by repeated challenges to her management in the content of Dr Mann's concerns.
- 7.66. The grievance is one of the protected disclosures.
- 7.67. There were two reasonable options open to Dr Mulder when that was lodged. One was to set in hand the grievance procedure or at least to acknowledge it and set a timetable. The other was to contact Dr Mann to acknowledge her concerns and set about addressing them or setting a timetable to do so.
- 7.68. Surprisingly, he did neither. There is no contact that he initiates to Dr Mann from 12 June until 3 July when he spoke to her after the meeting with Ms Friis. She had asked for the grievance to be dealt with on 28 June and again on 3 July. He still did nothing to advance the grievance. The meeting on 8 July was not to be about the grievance and he did not speak to Dr Mann about using that meeting to set in hand handling the grievance when they spoke on 3 July.
- 7.69. No steps were taken on the grievance.

- 7.70. We have to consider why there is no response. Why was the grievance not addressed at all?
- 7.71. We have to look at Dr Mulder's conduct during his holiday and on his return. Dr Mann had expressed urgent concerns. He had worked with her for four years and had had sufficient confidence in her to offer a partnership. Yet he did not acknowledge her concerns or contact her to offer reassurance even on his return.
- 7.72. In our judgment, Dr Mulder was angry and dismissive of the protected disclosures, of the allegations of unsafe practices.
- 7.73. He identified Dr Mann as the problem because she could not cope, not that the practice was unsafe. That is borne out by his enquiry later in September or October into patient throughput, an analysis conducted after her resignation, when her performance was not a current issue.
- 7.74. He reports that he proposed to clear the air at the meeting intended for 08 July, but not by addressing the protected disclosures. This was to address other issues.
- 7.75. The nearest that he comes to addressing the grievance is the offer of a protected discussion with someone from another practice. Dr Mann didn't know who that person was. It was not another GP and it was not someone who had the authority to address the issues she raised. That proposal from Dr Mulder did not address the grievance. He was avoiding the issues raised in the disclosures.
- 7.76. Dr Mann's account was unchallenged. She says that on speaking to her on 3 July, that he said in effect, "You can resign or go off sick". He does not address this in his witness statement and his comment was that he did not think he put it in quite that way. He did not dissent from it.
- 7.77. The effects of his actions were to give her exactly that choice – what he offered was not a resolution. He did not offer to deal with the grievance or to address the concerns she raised.
- 7.78. When he next wrote to her it was to suggest a meeting with someone who was unable to address the issues she raised. She was entitled to conclude that he was not going to deal with the grievance or the protected disclosures.
- 7.79. That avoidance and prevarication leads us to conclude that he failed to deal with the grievance because of the protected disclosures. His response to the disclosures was to identify Dr Mann as the problem and so he did not deal with the issues she raised.
- 7.80. Of particular note is the oral evidence of Mr Laver and Dr Mulder that the deterioration of the working relationship was only after the claimant's disclosures and grievances, that is, from 11 or 12 June 2019. The necessary inference for the Tribunal is that without those disclosures and the later disclosures, the working relationship might have survived, particularly in the light of Dr Mulder's view that even in July, it was not impossible that working relationships might yet be restored to the level of trust and confidence enjoyed in 2018. Mr Laver's fair tribute on 6 July points the same way.

7.81. We conclude that the detriments were on the grounds of the protected disclosures.

Unfair dismissal complaint pursuant to section 103A of the Act

7.82. We have found that Dr Mann was constructively dismissed.

7.83. We did not in so doing find a reason for the dismissal. We have found that the Respondent has not proved a reason.

7.84. The remaining issue in relation to section 103A have been identified as follows:

- Has the Claimant produced sufficient evidence to raise the question of whether the reason for the dismissal was any of the alleged protected disclosure(s)?

7.85. The question is one clearly raised by the evidence that concerns arose only on the making of the protected disclosures.

7.86. We then have to consider the reason behind the Respondent's conduct. It is hard to rationalise behaviour that is unexplained, and in itself shocking, conduct that defies belief.

7.87. Dr Mann left because of the breaches and the failure to address the grievance. Within the grievance is one of the protected disclosures.

7.88. In our judgment, the Respondents gave the protected disclosures no credence. They did not accept that her concerns were well founded. They did not recognise why this was a serious matter.

7.89. It was that failure to recognise the seriousness of the situation or to respond to the protected disclosures including that contained in the grievance that led directly to the resignation for the breaches of contract we have found.

7.90. The reason for the dismissal must be the protected disclosures. It is that Dr Mann refused to work in system she saw as unsafe, she was entitled to refuse and the Respondents were not prepared to do anything about it and were unhappy at her challenge.

7.91. In the defense of this claim, there has been a blanket denial of breaches of contract, pervasive, vitriolic and untrue attacks on the claimant's conduct and credibility, inconsistencies leading to obfuscation, evasion, failures of disclosure and false evidence. All that goes strongly to support the conclusion that the real reason for repeated breaches of contract were the fact that the claimant was challenging the way the surgery was run. The Respondents were unhappy with that challenge, without giving it weight.

7.92. The principal reason for the constructive dismissal was indeed the protected disclosures.

Breach of contract

- 7.93. The issue here is, “Is the Claimant entitled to any notice of pay in respect of the Respondents’ alleged repudiatory breaches of contract /consequential alleged constructive dismissal?”
- 7.94. It follows from our findings that the Respondents are in breach of contract and that this was a wrongful dismissal.

Other matters

- 7.95. Amongst the list of issues, time limits were raised. That was not pursued in the Respondent’s closing submissions but in any event, having regard to the ACAS dates, we do not find the claims to be out of time in respect of either the unfair dismissal or the protected disclosures from 11 June, the more so given conduct extending over the following period. If we are wrong on that and for the avoidance of doubt, we find it just and equitable to extend time having regard to all the circumstances including the claimant’s health at the time, the difficult circumstances leading up to her resignation including the respondent’s conduct towards her
- 7.96. There was an opening statement in the Response that the claims were misconceived in their entirety and strike out was invited, a proposal put with some vigour. It will be clear from that the claims were not misconceived and that contention was misplaced.
- 7.97. Other claims pursuant to sections 44(1)(c) and/ or 100(1)(c)of the Act (health and safety detriment/ dismissal were not pursued, oral judgment having been given as above. At this stage of the case, neither withdrawn nor dismissed. That can be resolved on the final conclusion of the case.

**Employment Judge Street
Date: 22 March 2021**

Reasons sent to the parties: 24 March 2021

FOR THE TRIBUNAL OFFICE