Case No: 3300058/2017

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms S Juric	**v**	**Look Ahead Care Support and Housing**

Heard at: Watford **On:** 25, 26, 27 and 28 September 2017

Before: Employment Judge Manley

Appearances:

For the Claimant: In person
For the Respondent: Ms C Lord, counsel

JUDGMENT having been sent to the parties on 11 October 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction and issues

1. The issues were agreed at a preliminary hearing and sent out in a wriiten summary. They read as follows:-

<u>Dismissal due to a protected disclosure</u>

1. Did the Claimant make the following disclosures:

   1.1 Concern that Safeguarding of Vulnerable Adults (SOVA) has not been raised by management as vulnerable man is neglected by a carer not attending Monday to Friday and the 6 months review not taking place in a Detailed Contact Record attached to an email dated 29 September 2015 to '_Crown House and Deaf Services' and others.

   1.2 Allegations of neglect and financial abuse of a vulnerable customer, breaches of conduct (vulnerable man threatening and contemplating making himself homeless to avoid a staff member) breach of policies (customers right to choose their support worker) failure by management to raise SOVA contained in a Detailed Contact Record dated 13 October 2015 sent to Debbie Thomas-Corke, Samaria Primus and Pauline Nugent and others.

1.3 Concerns about financial abuse of vulnerable customers and staff contained in a statement sent by email dated 15 October 2015 to Debbie Thomas-Corke, Samaria Primus and Pauline Nugent.

1.4 Concern about potential financial abuse and neglect contained in a Detailed Contact Record sent by email dated 30 October 2015 to Debbie Thomas-Corke, Samaria Primus and Pauline Nugent, and separately to others.

1.5 Allegations that the Respondent had allowed previous breaches of its Lone Working Policy contained in an email dated 16 May 2016 to Debbie Thomas-Corke, Samaria Primus and Pauline Nugent.

1.6 Concerns that a vulnerable customer was placed at risk, that Pauline Nugent was prepared to place the vulnerable customer at risk by leaving work early, and that the Respondent ignored the Claimant's request for an unbiased disciplinary investigation contained in a letter dated 21 May 2016 to Debbie Thomas-Corke, Samaria Primus and Pauline Nugent.

1.7 Allegation that the Respondent breached its duty of care concerning a vulnerable customer contained in an email dated 18 July 2016 to Marta Pissari, Sue Wray, to Debbie Thomas-Corke, Samaria Primus Pauline Nugent, and Denise Ifield.

1.8 Allegation that the Respondent ignored the Claimant's documents of evidence and failed to acknowledge at any stage of its investigation that a customer was suicidal contained in a document sent to Debbie Thomas, Samaria Primus and Pauline Nugent Sue Wray and Chris Hampson on 7 September 2016.

2. Did the above disclosures amount to a disclosure of information?

3. Did the Claimant reasonably believe that the information tended to show one of the categories listed in S43B(1) of the Employment Rights Act 1996?

4. Was the disclosure in the public interest?

5. Did the Claimant make a protected disclosure?

6. Was the reason or principal reason for the dismissal the alleged protected disclosures made by the Claimant.

<u>Unfair dismissal</u>

7. Why was the Claimant dismissed? Was the Claimant dismissed for a potentially fair reason, namely conduct?

8. Was the dismissal reasonable in all the circumstances?

9. Did the Respondent believe that Claimant to be guilty of misconduct?

10. Did the Respondent have reasonable grounds for believing that the Claimant was guilty of misconduct?

11. At the time the Respondent had that belief, did it carry out as much investigation as was reasonable

Holiday pay

12. Was the Claimant entitled to be paid a further 5 days in respect of accrued untaken annual leave?

Remedy

13. Is the Claimant entitled to any declaration, recommendation or compensation?

If so, should any compensation be reduced due to the claimant's contributory fault and/or Polkey?

2. In summary, the claimant claims automatic unfair dismissal which she claims was connected to one or more of eight public interest disclosures. She claims, in the alternative, ordinary unfair dismissal. There is a short point on holiday pay, which was clarified during the evidence and appeared to relate to five days the claimant did not take because she was suspended.

3. My task is therefore as follows:- to find facts based on the evidence before me; to decide whether any disclosures were made and were, in the claimant's reasonable belief, in the public interest and, if they were, whether one or more of them were the sole or principal reason for the claimant's dismissal. If the claimant cannot show that, I will consider her complaint of "ordinary unfair dismissal". Here it is for the respondent to show a potentially fair reason for dismissal and then, the burden of proof being neutral, I must determine whether the dismissal was fair or unfair.

4. The respondent's case is that this was a misconduct dismissal. I therefore have to consider matters such as whether it had a genuine belief in misconduct which was founded on a fair investigation; consider whether the procedure used was fair and whether dismissal fell within the range of reasonable responses.

5. The claimant made an application to amend after I read the documents on the first day of the hearing. She appeared to be making an application to include a new public interest disclosure, which she said was made on 8 May. This was opposed by the respondent. I gave it due consideration. It is an entirely new matter and, given the lengths that have been gone to by all parties and the tribunal to agree the public interest disclosures at earlier hearings, and the fact that the application was made very late in the process, all documents and witness statements having been prepared, I did not allow the amendment. It was not in the interest of justice to prejudice this hearing.

The hearing

6. I heard from five witnesses for the respondent as follows:
   Ms Nugent the claimant's Line Manager,
   Ms Primus, Specialist Support Worker
   Ms Thomas-Corke, the Contract Manager
   Ms Pisarri, the Dismissing Officer
   Ms Luxton, the Appeal Officer.

   I also heard from the claimant herself and there was an agreed bundle of documents of over 450 pages.

7. As a litigant in person, the claimant did need assistance from me with respect to cross-examination and when answering questions as well as understanding the tribunal procedures that we use. I appreciate that she found some parts of this process challenging and I thank her for the way in which she presented her case. The claimant asked for time after we heard the evidence to prepare her submissions and that was agreed.

Facts

8. These are the facts that I find to be relevant to the issues to be determined.

9. Most of the relevant facts are not in dispute. I did hear some evidence about issues about the health and social problems of the respondent's customers, which I consider not to be relevant to the issues before me and I do not therefore repeat those.

10. The claimant commenced employment on 10 September 2012 with the respondent. The respondent offers a service supporting vulnerable adults with complex needs including mental health needs. The claimant was employed as a support worker at Crown House when she dismissed. This is a specialist health service with about 20 residential customers and responsibility for around 190 living in the community. The claimant went to Crown House from another location after she had received a final written warning for breaching professional boundaries in July 2015.

11. The respondent has a number of written policies, which are relevant to this case. I looked at a number of these during the course of the evidence. Some are to protect staff and customers such as policies on lone working, professional boundaries, code of conduct and so on. A Disclosure and Barring Service (DBS) certificate was needed for all those working in the service. There is also a disciplinary procedure and the claimant had regular supervision meetings with her Line Manager. Part of the respondent's compliance documentation is contained within something called Detailed Contact Records (DCR). These are completed usually by the support worker and possibly by other people involved with customers' cases and I have seen number of them in the course of this hearing.

12. In September and October 2015, the claimant made a number of allegations which she now relies upon as the first four public interest disclosures. I will try to summarise them now. They relate to allegations of lack of care theft and other concerns about the well being of one of the customers.

13. The first is on 29 September 2015. This related to a concern about one of the customers, known as RS, that his carer was not attending when he was supposed to and a safeguarding adults referral (SOVA) had not been raised. The claimant then made the second alleged protected disclosure on 15 October 2015. This related to allegations of theft from RS by another support worker known as BA. Ms Thomas-Corke asked Ms Primus to investigate the allegations. Ms Primus did so and she spoke to BA. She also found that there had been earlier similar allegations in 2014, when there was a different provider. She found the allegations to be unsubstantiated. Before that investigation the claimant made the third alleged protected interest disclosure on or around 15 October, which related to more allegations specifically about BA and appear to make allegations of theft. On 30 October the claimant made the fourth alleged protected interest disclosure, which is a note which supported a move to alternative accommodation for RS.

14. On 8 December 2015, there was a team meeting where staff were reminded about lone working. The relevant part of the minutes reads as follows:

    "duty system and lone working – in order to lone work staff must have DBS clearance. Staff must ensure current risk assessments/management is in place and is checked and signed by a manager before lone working or floating support. DTC offers a lone working risk management training session if needed. Staff need to be aware of their customers and their changing needs."

    It is accepted that the claimant was not present at that team meeting, but she agrees that she was sent those minutes and that she read them.

18. On 9 December 2015, there was a meeting between the claimant and Ms Nugent, her line manager. It was noted there that the claimant was very passionate about her work, but that she *"sometimes oversteps the professional boundaries."* She was also reminded of the lone working policy and the need to ring the service when she reached any off site appointments.

19. On 15 December 2016, the claimant was told that her DBS certificate had expired and she was not permitted to lone work. She was told this in writing.

20. On 15 February 2017, there was an incident involving a customer where the claimant used her mobile phone to call him. Ms Primus was concerned about this and was concerned that it was a breach of professional boundaries and she reminded the claimant of this. The claimant said she was trying to help the customer find his mobile phone and had to use her personal mobile for work purposes, but it was suggested that she could have used the office landline.

21. Later that month on 26 February, there was a supervision meeting between the claimant and Ms Nugent. It was here noted that the claimant was not *"attentively listening"* and that she was not following processes. She was reminded of lone working and *"SJ to remember to meet the customers at the appointments as her DBS was not received as yet".*

22. The claimant had been booked on professional boundaries training. She told me that there had been attempts to arrange this some months earlier, but she attended it on 10 March 2016.

23. On 11 April, it seems the claimant attended a social security benefit PIP appeal hearing with a customer. The claimant said that she had completed a DCR, indicating that she had accompanied the customer to the PIP appointment. I accept that it does not appear that management was aware that she had accompanied that customer before she put it on the DCR.

24. There was a further supervision meeting on 21 April. On 25 April the claimant accompanied customer SD to the Western Eye Hospital. It is unclear to me whether the claimant is alleging she had permission for this, but I cannot find that she had express permission. In any event on her return she was commended by management because she had secured a specialist appointment for SD on 6 May for his eyes.

25 SD was a customer with complex needs, including difficulties with his eyes and his ears, as well as serious mental health issues. The risk assessment which was carried out, which was on the file with respect to this customer, was that he was assessed as high risk. The claimant tells me that most people who stay in the hostel have that similar assessment. I heard rather conflicting evidence on the precise nature of this customer's health difficulties. Certainly the claimant suggested later when the matter was investigated that he could not see and at some point she called him blind; although she said she said that to emphasise the difficulties she believed he was in. She also made reference to him bumping into things and the fact that he had been suicidal. It is not for me to say how well or unwell he was either on 25 April or as I will come to later on 6 May, as I simply do not have the sufficient information. Clearly, given that he was living in the hostel, he was not entirely well, but how unwell he was is difficult for me to assess nor do I need to.

26. On 1 May Ms Primus permitted the claimant to accompany a customer to A&E. I accept that this was an honest error. She believed, and I accept this, that the claimant had her DBS. The claimant also accompanied another customer to a PIP consultation, but I do not believe that she is arguing she had permission before she went to that appointment nor can I see any reference that she did.

27. The first and most substantial issue occurred on 6 May. On this day, the claimant accompanied the customer SD to the specialist hospital appointment that she had made towards the end of April. She had been told by Ms Nugent that she was not allowed to go. The claimant's evidence was that this was the third occasion that it had been mentioned, but she did not put that clearly to Ms Nugent. I accept that it might well have been mentioned before, but the claimant's evidence was that she was told about 10 minutes before she was due to leave that she could not go because she had no DBS. There was some concern about whether the appointment could be kept because of the need for adequate staff cover. In any event, I find as a fact that the instruction that the claimant should not go was clear and unequivocal and in line with policies that the

claimant was well aware of.

28. The claimant set off by bus with SD to the appointment. There were then a number of phone calls between the claimant, Ms Nugent and others. The claimant estimated around five or six in the next few hours. On one occasion, she said she was told to get off at the next bus stop and return. Later, she was told to leave the customer at the hospital and return. In any event, she did not return to the office. When she reached the hospital with SD, they found that the specialist appointment had been cancelled and she took the decision to accompany SD to A&E. She refused to leave SD until a replacement was sent. A replacement was then sent by the respondent and the claimant returned to Crown House. When she returned, she was asked questions about her behaviour and I find that it is possible that Ms Nugent may have made reference to her own difficulties in collecting her child from nursery because of the incident.

29. On 7 May the claimant wrote a DCR of 6 May hospital attendance. An additional comment appears on the DCR attributed to the worker who had relieved the claimant at the hospital, where she had reported that the Doctor who had seen SD had said there were no serious issues and that he would be able to drive. There is some evidence that he did have some eye conditions including the possibility of glaucoma.

30. On 10 May, it is the respondent's case that the claimant attended work when she was not on shift. Ms Primus' evidence was that she asked her to leave. The claimant agreed that there was such a discussion, but not on that day. In view of the fact that this incident was recorded by Ms Primus in a note which was later drawn up for the investigation into the claimant's behavior on 6 May, I find that this conversation did happen on 10 May and the claimant did attend work when not on shift.

31. There was a further incident on 11 May. The claimant attended a GP appointment with a customer whilst off duty and without management's knowledge before the event. The appointment was with the GP at 11.15am, where the claimant's shift was due to start at 1.00pm. The claimant accepts that she did not phone the office when she reached the GP's surgery and accepts that she should have done that.

32. On 12 May, Ms Nugent was appointed to carry out an investigation into the claimant's conduct. The claimant raises issues now before me about Ms Nugent carrying out that role, but it is clear from the disciplinary policy that her appointment as investigating officer was in line with what that says as follows:-

> *"11.6 the investigation should be used solely to establish the facts of the case. It will usually be conducted by the employee's line manager (investigating manager) and where necessary with the assistance from Human Resources.*
>
> *11.7 where it is not appropriate for the employer's line manager to investigate the allegation of misconduct, then another manager or team leader will conduct this investigation."*

33. The claimant did not raise any concerns about this aspect at the time, although she did later. It appears to me that Ms Nugent was an appropriate person to deal with the investigation.

34. The claimant was on sick leave between 12 and 19 May. This is the point at which the next set of alleged public interest disclosures began to be made.

35. On 16 May the claimant sent an email with the subject heading "*Silvija's letter to management 15/05/2016"*. This deals with the allegations against her and further details of the incident of 6 May and is the fifth alleged pubic interest disclosure. Her purpose in writing this email was, she told me, so that she could have some evidence as otherwise it would be other people's word against hers. It was prepared in relation to the investigation of her conduct.

36. On 20 May, in a meeting between Ms Thomas-Corker and the claimant, the claimant was suspended for failing to follow management instructions on 6 May.

37. On 24 May the claimant sent Ms Thomas-Corker, Ms Nugent and Ms Primus a letter which was her version of 6 May events and is the sixth alleged public interest disclosure. The claimant said of this document that it was not at the time intended to be a disclosure, but to give her version of events. She recorded in that document that Ms Nugent had said to her on 6 May that *"But Silvie, you do not have your DBS and can't go."*

38. A stage one investigation meeting was held with Ms Nugent, also on 24 May. The claimant admitted at that meeting that she did not have permission to go to the appointment on 6 May, but she said that she had had permission on previous occasions. Ms Primus provided two witness statements as part of the investigation, as did Ms Shepherd who was the worker who relieved the claimant at the hospital on 6 May.

39. The claimant remained on suspension. She had pre-booked one week's leave in June, but she gave evidence that she had not taken that holiday, because she understood she had to be available. I entirely accept that the claimant did not take that holiday and some holiday pay therefore needs to be calculated. On 20 June an investigation report was completed by Ms Nugent. It is a clear and detailed report; it was sent to the claimant and it recommended disciplinary action. The claimant was then invited to a disciplinary hearing. There were three allegations; two in relation to her actions on 6 May and one on 11 May.

40. On 18 July, the claimant sent an email which she says is her seventh alleged protected interest disclosure. In this document she made allegations about Ms Nugent and alleged failures with respect to customers. She also commented in this document on Ms Nugent's investigation.

41. A disciplinary hearing was held on 20 July. The claimant has been much concerned before me about the version of the minutes, which she got rather late in the process. She later amended them and I have seen her

amended minutes. So that we did not spend too long trying to work which was the more correct record of the meeting, for most of the necessary evidence, we have been able to use the claimant's own version of what was said at that disciplinary hearing. In large part, there is not that much of significance in dispute.

42. On 22 August, the claimant was summary dismissed by Ms Pisarri. The outcome letter is a very detailed 8 page letter. It goes through the various allegations and Ms Pisarri's findings. Ms Pisarri gave her conclusions towards the end of that document. It reads:-

"Having been issued on this occasion with 3 Final Written warnings and in consideration of your earlier Final Written Warning you received in July 2015, which was still live at the time of this Disciplinary hearing, my final decision is that you be dismissed. You have been adequately trained and supervised, consequently your failures to act appropriately as a support worker could not be imputed to management. You knowingly went against Look Ahead Lone Working, Code of Conduct and Professional Boundaries Policy and Procedure and specific management instructions. During the investigating process you did not acknowledge your mistakes and actually stated that in the same circumstances you would act in the same way. This behavior is not only highly concerning, but supports my decision to dismiss you from your role of support worker with Look Ahead Care Support and Housing. Ultimately, Debbie Thomas-Corker, Contract Manager, carries full responsibility for this complex mental health service and she is ultimately held accountable for the running of it. It is intolerable to have a Support Worker on site if they disregard management instructions if in their personal opinion they feel it is not in the best interest of customers".

43. The claimant accepted in her cross-examination that Ms Pisarri was unaware of the first four alleged public interest disclosures. She was aware of disclosures 5, 6 and 7. Ms Pisarri told the tribunal that those communications played no part in her decision-making. She took into account matters that the claimant had raised in mitigation, particularly in relation to having been allowed to lone work before the incident on 6 May. She took matters raised in those documents into account in the claimant's favour largely as mitigation. The claimant herself, when asked about this, stated that the public interest disclosures were not the reason for her dismissal, saying that they were only part of the reason.

44. On 7 September 2016, the claimant appealed her dismissal and she sent back the disciplinary notes amended as I have said. She states that those amended notes are her eighth alleged public interest disclosure, particularly including a reference to what she alleges is a delayed SOVA reference.

45. Ms Pisarri prepared a management report for the appeal that does make reference to a document the claimant had sent for the appeal which has been called the "*catalogue of evidence*". This was a document which the claimant expressed much concern about during this hearing and is a document contained in the bundle at pages 285 a-d. In that document the claimant made 51 points, many of which refer to various documents. The

claimant's evidence before me was that she had sent that document and separately and later the documents referred to, possibly in a separate envelope, to the respondent's HR around 6 October. It does seem that it may not have been seen by the appeal chair, Ms Luxton, but given that Ms Pisarri makes reference to it in her management report, it was clearly seen by her. She specifically says that a number of the matters that the claimant raises in that document were not relevant to the issues with relation to the disciplinary action taken by the respondent.

46. The claimant was invited to an appeal hearing on 10 November and was sent an appeal document pack. She attended the hearing with Ms Luxton as chair. Ms Luxton had been substituted for a previous chair. The claimant was notified of the outcome of that appeal on 17 November. The decision was that, in large part, the appeal was dismissed. That is that the decision to dismiss was upheld but Ms Luxton took the view that the conduct did not amount to a gross misconduct and that the claimant should be given notice. Primarily this was because of the mitigation put forward by the claimant with respect to earlier incidents, when she had been given permission to lone work.

47. The claimant presented her ET1 in January and in the ET3 came in February.

The law

48. Public Interest Disclosure - Section 43A Employment Rights Act 96 (ERA) defines a 'Protected Disclosure as a qualifying disclosure (as defined by s43B) which is made by a worker in accordance with any of sections 43C to 43H.

49. Section 43B of ERA 96 provides:

> *[(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—*
>
> *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
>
> *(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
>
> *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*
>
> *(e) that the environment has been, is being or is likely to be damaged, or*
>
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.*

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).]

Pursuant to s43C a qualifying disclosure is made in accordance if the worker makes the disclosure in good faith to their employer.

50. S103A provides that

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

51. When considering whether there has been a 'disclosure' within the meaning of s43(B)(1) I must consider whether the employee disclosed 'information'. It is not sufficient that the employee has made an 'allegation' – (Cavendish Professional Risks Management Ltd v. Mr. M Geduld [2010] IRLR 38). The claimant must show that she reasonably believed the disclosure was in the public interest. To succeed in a claim that the dismissal was automatically unfair, she must show that the disclosures (if any are made out) were the sole or principal reason for her dismissal. The burden of proof rests on the claimant to show the elements of public interest disclosure and that that was the reason for dismissal.

52. 'Ordinary' Unfair Dismissal – the relevant sections of ERA here are those at s98 (2) where the potentially fair reasons for dismissal are set out and one of which is 'conduct'. The burden of proving the reason rests on the respondent. Section 98 (4) ERA reads

"Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-

a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as

a sufficient reason for dismissing the employee, and

b) shall be determined in accordance with equity and the substantial merits of the case"

53. I am also guided in my deliberations, because this is said to be a conduct dismissal, by the leading case of British Home Stores v Burchell [1978] ICR 303 which sets out the issues which I should consider including whether the respondent had a genuine belief in the conduct complained of which was founded on a reasonable investigation and whether a fair process was followed. The investigation should be one which is fair and reasonable and the band of reasonable responses test applies to that part of the process as well as to the overall consideration of the fairness of the sanction (Sainsburys Supermarkets Limited v Hitt [2003] IRLR 23). I must also not substitute my view for that of the respondent, a point emphasised in Iceland Frozen Foods v Jones [1982] IRLR 439 (and re-affirmed in Foley v Post Office and HSBC Bank Ltd v Madden [2000] ICR 1283). Rather, I must consider whether the dismissal fell within a range of reasonable responses.

54. The respondent's representative prepared written submissions which contain reference to the legal tests as set out above. The respondent accepted that the first two disclosures were qualifying disclosures because they may be connected to health and safety and/or a criminal offence. It was not accepted that the third and fourth disclosures were qualifying as they do not contain information relating to anything in s43B(1). The respondent also does not accept that the fifth, sixth, seventh and eighth disclosures are qualifying disclosures because, it is submitted, the claimant could not reasonably have believed they were made in the public interest. In any event, the respondent argues, the disclosures were not the reason for the dismissal. The respondent submits the dismissal was for misconduct and was fair.

55. The claimant made oral submissions, having had the opportunity to read the respondent's. She submitted that the respondent was aware of the hospital appointment on 6 May and that the customer had a number of health issues so that he needed to be accompanied. She believed that the respondent had some responsibility for the DBS certificate being delayed and was most upset at losing the job that she loved.

Conclusions

56. The first public interest disclosure is contained in a detailed contact record attached to an email dated 29 September 2015 to Crown House and Brent Council. It is the concern of a SOVA not having been raised by management about RS's carer not attending Monday to Friday and the six months review not taking place. I am satisfied that the claimant provided information which tended to show a breach of health and safety and that she reasonably believed it was in the public interest. It was a qualifying disclosure.

57. The second alleged protected disclosure is contained in a DCR dated 13 October 2015 sent to Debbie Thomas-Corke, Samaria Primus and Pauline

Nugent and others. In it are allegations of neglect, financial abuse and breaches of conduct. Again, I am satisfied that the claimant provided information which tended to show a breach of health and safety and that she reasonably believed it was in the public interest. It was a qualifying disclosure.

58. Turning to the third alleged public interest disclosure contained in a statement sent by email dated 15 October 2015 to Debbie Thomas-Corke, Samaria Primus and Pauline Nugent. This, again, is about BA's alleged conduct. Although there is some repetition of previously mentioned matters, I accept that there is sufficient information in that document that tended to show a crime and that the claimant reasonably believed it was in the public interest. It was a qualifying disclosure.

59. The alleged fourth public interest disclosure is the concern about potential financial abuse and neglect contained in the DCR sent by email dated 30 October 2015 to Debbie Thomas-Corke, Samaria Primus and Pauline Nugent and separately to others. I accept that contained information which tended to show a breach of a legal obligation and/or health and safety and that the claimant reasonably believed it was in the public interest. It was a qualifying disclosure.

60. The alleged fifth disclosure is contained in an email dated 16 May to Debbie Thomas-Corke, Samaria Primus and Pauline Nugent. This is primarily about the claimant and the incident on 6 May. However, I accept that the claimant is there providing information which tended to show breach of a legal obligation with respect to what the claimant alleged were previous breaches of the Lone Working Policy. She also raised issues about health and safety of customers. However I find that the claimant did not reasonably believe it was made in the public interest. The email is almost exclusively about the claimant's disciplinary matter and her concerns. It was not a qualifying disclosure.

61. As far as the sixth alleged protected interest disclosure is concerned, contained in letter dated 21 May 2016 to Debbie Thomas-Corke, Samaria Primus and Pauline Nugent, that is further information around the events of 6 May. Whilst much of is repetition, I am satisfied, on balance, there is sufficient to amount to information which tended to show breach of a legal obligation around SD's care. Again, however, I cannot find that the claimant reasonably believed that what she said largley about her own position, was in the public interest. It was not a qualifying disclosure.

62. I turn then to the seventh alleged protected disclosure, contained in an email dated 18 July to Marta Pisarri, Debbie Thomas-Corke, Samaria Primus, Pauline Nugent and Denise Ifield. This is an allegation that the respondent breached its duty of care concerning a vulnerable customer. Although I accept that it appears the claimant may be raising issues to deflect from her own difficulties, I accept that this contains information which tended to show breach of a legal obligation. However, I do not accept that the claimant reasonably believed that the disclosure was in the public interest. This is a concern raised because the claimant because she was about to attend a disciplinary hearing. This was not a qualifying disclosure.

63. Finally, with respect to the alleged protected disclosure eight contained in the document sent to Debbie Thomas-Corke, Samaria Primus, Pauline Nugent and Sue Wray and Chris Hampson on 7 September 2016, this is the allegation that the respondent ignored the claimant's documents of evidence and failed to acknowledge at any stage of its investigation that a customer was suicidal. Although this document contains many references, they are a mixture of matters and mostly are, again, in connection with her own case. There does not appear to be any new information there and, if there is, I do not accept that the claimant reasonably believed it was in the public interest.

64. I have found that the first four disclosures did amount to qualifying disclosures. With respect to them, I therefore move to the next question (at issue 6), which is whether the reason or principal reason for the dismissal was because she had made public interest disclosures. The claimant cannot hope to show that the sole or principal reason for her dismissal was those first four disclosures, as she acknowledged, the decision maker, Ms Pisarri, had no knowledge of them.

65. Even if I am wrong about my finding that fifth, sixth and seventh disclosures were not qualifying disclosures, I find that they also were not the sole or principal reason for the dismissal. Indeed, the claimant herself stated that she believed they were only partly connected to her dismissal. Ms Pisarri did not have them in mind as something which caused her to dismiss the claimant but considered them as containing mitigating factors. For that, they were used in the claimant's favour. Similarly, of course the eighth public interest disclosure was made after dismissal, something Ms Pisarri could not possibly have been aware. The claimant has failed to show that the making of public interest disclosures was the sole or principal reason for her dismissal.

66. I turn then to the complaint of unfair dismissal. The first question is why the claimant was dismissed and whether it was for a conduct reason. This is for the respondent to show and I am satisfied the respondent has shown sufficient evidence that the investigation of the claimant, the disciplinary action and the dismissal all related to her conduct at work specifically on 6 and 11 May. That was the reason for dismissal and the claimant has not really put forward any alternatives to that, save for referring to the disclosures.

67. I therefore turn to the more neutral question of whether the dismissal was reasonable in the circumstances. I start with questions of whether the respondent believed the claimant was guilty of that misconduct and whether it had reasonable grounds for believing that. I take that together with the next question of whether they carried out as much investigation as was reasonable.

68. From the outset on 6 May, the respondent had clear evidence, which is not really in dispute, that the claimant had accompanied SD to the hospital having been told not to. It also had similar evidence that the claimant had accompanied a customer to an appointment before her shift started on 11 May. Again, that is not in dispute.

69. The investigation which the respondent undertook was a reasonable one in the all circumstances. There is no real issue about Ms Nugent carrying out the investigation. Ms Nugent had first hand knowledge and she spoke to those involved, including the claimant. An investigation only needs to be one which is within the range of reasonable investigations and I find that in the circumstances this was such a reasonable investigation.

70. I turn then to the question of the procedure which was used by the respondent and I find that taking it overall, on balance, it was one which was fair and reasonable. In my view, the respondent had all the necessary information. I appreciate that the claimant expressed concerns here about what she called the 'catalogue of evidence' and I appreciate that it might be understandable that she was concerned, but it appeared that Ms Luxton on appeal might not have seen that document. The difficulty is that she has not been able to take me to any documents, which she says could have made a difference to any of the decision makers in this case. On the evidence before me, Ms Pisarri and Ms Luxton had all relevant information in front of them when they took the decisions they did. A fair procedure was used.

71. I turn lastly to the question of whether dismissal was within the range of reasonable responses. I find that it was not unreasonable in the circumstances of this case. This employer had clear policies which were in place for good reasons; that is for the protection of customers and staff and for regulatory reasons around the requirement for DBS clearance. There were occasionally problems with adherence to these policies, but that is not a reason for an employee to ignore a clear and an ambiguous instruction. I cannot accept the claimant's evidence that there was any urgency for SD to attend this appointment, nor did she suggest that there was anything particularly urgent about it, except that it was with a specialist. If he was in as poor health as the claimant suggested, there might be even more reason for her not to lone work with him. I fully appreciate the claimant was passionate about the work that she did, but that is not an explanation for ignoring instructions and policies that are designed to protect staff and customers.

72. Given the seriousness of the events particularly on 6 May and the times that the claimant had shown that she had difficulty abiding by instructions given by the respondent, this dismissal cannot be said to be outside the range of reasonable responses and I cannot therefore say that it was unfair. The unfair dismissal claims are therefore dismissed.

73. Turning then briefly to the holiday pay calculation. There has been some confusion about this particularly because the way in which Ms Nugent's evidence was presented, it seems to suggest a different way of calculating then maybe it should be calculated. Having looked at this, it must be that the 29 days to which she was entitled must be pro-rated over the year and although earlier calculations were incorrectly made, that must mean that she is entitled to an outstanding amount for one and a half days in the amount of £112.80. The respondent must now pay that sum to the claimant.

Costs

74. Following me giving oral judgment, the respondent made an application for costs. That application was made on two grounds namely, that the claimant had been unreasonable in not engaging in settlement discussions and secondly that there were no reasonable prospects of success, particularly in relation to the public interest disclosure claim, which it was said should not have been pursued at this hearing. I was handed a number of documents from the respondent which showed them warning the claimant of the costs, outlining the difficulties they perceived with her case, making suggestions about where she might seek advice and making a number of offers between £2,000 and finally £12,000.

75. The respondent said that the public interest disclosure claim had no reasonable prospect of success and significant additional costs had been accumulated because of the claimant pursuing that claim, which it had been very costly to clarify.

76. The claimant was very upset at the application and indeed with my judgment and it found it difficult to make any submissions. However, she did clearly want me to deal with this matter and she spoke about trying to seek advice, but not being successful. She got herself into debt. She told me that she worked at McDonalds and was currently making about £1,000 per month. She lived alone; her private rent was £1,250 per month and she also had bills on top of that, but received around £250-£300 housing benefit. She said she has no savings and supports her father in Sarajevo. It appeared to me that the claimant had very little disposal income.

77. My judgment on the costs application is that the claimant has indeed acted unreasonably in pursuing the public interest disclosure claim and in not considering seriously the offers to settle.

78. However, in a view of the fact that she has lost the job that she was very fond of, coupled with the fact that her income is very limited, I have decided that not to make a costs award in this case.

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Employment Judge Manley

Date: …3 November 2017…….

Judgment sent to the parties on

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For the Tribunal office

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