EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondents**
Ms C Kashyap	and	R1 – Inmind Children's Services Limited ~~R2 – Mr A Faquir~~ R3 – Mr A Sheikh

Hearing held at Reading on: 3-12 July 2017, 18-19 September 2017
19-25 January 2018
26 & 29 January 2018 (In chambers)

Appearances:
For the Claimant: Mr C Milsom, counsel
For the Respondent: Mr K Sonaike, counsel

Employment Judge: Mr SG Vowles
Members: Ms A Brown
Ms H Edwards

RESERVED UNANIMOUS JUDGMENT

Evidence

1. The Tribunal heard evidence on oath and read documents provided by the parties and determined as follows.

Protected Disclosure Detriment – section 47B Employment Rights Act 1996

2. The Claimant was not subjected to detriments on the grounds that she had made protected disclosures. This complaint fails and is dismissed.

Victimisation – section 27 Equality Act 2010

3. The Claimant was not subjected to detriments on the grounds that she had done protected acts. This complaint fails and is dismissed.

Automatically Unfair Dismissal - section 103A Employment Rights Act 1996

4. The Claimant was summarily dismissed on 30 October 2015 and that was the effective date of termination. The reason for the dismissal was not that she had made protected disclosures. The dismissal was not automatically unfair. This complaint fails and is dismissed.

Unauthorised Deduction from Wages - section 13 Employment Rights Act 1996

5. An unauthorised deduction was made from the Claimant's wages. She is awarded the sum of £ 5,867.50 in compensation.

Holiday Pay / Travel Expenses

6. These claims will be considered at the remedy hearing listed on 26 September 2018.

Reasons

7. This judgment was reserved and written reasons are attached.

REASONS

BACKGROUND TO THE PROCEEDINGS

1. On 30 October 2015 the Claimant was summarily dismissed from her employment as the 1st Respondent's Chief Operating Officer.

2. On 21 January 2016 the Claimant presented a claim to the Tribunal containing the following complaints:

3. Direct Disability Discrimination – section 13 Equality Act 2010

   3.1 Protected Disclosure Detriment – Section 47B Employment Rights Act 1996;

   3.2 Victimisation – Section 27 Equality Act 2010;

   3.3 Automatically Unfair Dismissal – Section 103A Employment Rights Act 1996;

   3.4 Breach of Contract – Unlawful Deduction from Wages;

   3.5 Outstanding Holiday Pay and Travel Expenses.

4. The Claimant stated that she did not pursue a complaint of wrongful dismissal before the Employment Tribunal and reserved her right to bring this claim in the courts.

5. On 29 February 2016 the Respondent presented a response to the claim and all complaints were resisted.

6. On 29 March 2016 a preliminary hearing was held and the case was listed for an 8 day full merits hearing commencing on 26 October 2016. Unfortunately, that hearing was postponed because there was no Employment Judge available to sit on the case.

7. On 31 October 2016 a telephone preliminary hearing was held at which the case was relisted for a full merits hearing on 3-12 July 2017.

8. At the start of the hearing on 3 July 2017, the Respondent made an application for postponement of the hearing because the 2nd Respondent, Mr Faquir, was unable to attend the hearing due to ill health. In order to avoid a second postponement of the hearing, the Claimant withdrew her claim against the 2nd Respondent and he was discharged from the proceedings. The Tribunal then refused the application for a postponement and decided to proceed with the hearing in the absence of Mr Faquir on the basis that, after hearing from the other witnesses, the hearing could be reconvened at a later date to hear Mr Faquir's evidence.

9. At the start of the hearing the Claimant made an application to amend the claim by adding a further alleged protected disclosure dated 7 July 2015. The Respondent objected to the application. The Tribunal refused the application and the decision was announced orally at the hearing with reasons.

10. During the course of the hearing, on 10 July 2017, the Respondent made an application to admit in evidence audio recordings which had not previously been disclosed. Mr Faquir, although not in attendance, had been alerted to certain parts of the Claimant's evidence put before the Tribunal. He had thereupon informed his legal advisers that he had made covert recordings of certain meetings and telephone conversations, the content of which was material to the matters being considered by the Tribunal. The existence of these recordings had not been disclosed previously, even to the Respondent's legal advisers. The Tribunal took the view that in order to properly consider the application to admit this late disclosed evidence, it would be necessary to hear evidence on oath from Mr Faquir regarding the circumstances in which the recordings were made, the reason why they were not disclosed earlier in compliance with the Tribunal's order of 29 March 2016 and the reason why they had only now been disclosed on Day 6 of this 8 day hearing. The hearing was thereupon listed to resume on 18-19 September 2017 to consider the late disclosed evidence and to hear evidence on oath from Mr Faquir.

11. On 18 and 19 September 2017, at the resumed hearing, the Claimant made an application for the Respondent's response to be struck out on the grounds of unreasonable conduct by the Respondent in failing to disclose relevant evidence and failure to comply with the Tribunal's orders on disclosure of relevant materials. The Tribunal refused the application for strike out of the response and granted the application to admit the late disclosed transcripts of meetings and telephone conversations. The case was then listed for a further 5 day hearing before the same full tribunal on 19-25 January 2018.

12. At the hearing on 19-25 January 2018 Mr Faquir gave evidence on oath and the disclosed transcripts were admitted in evidence. In addition, the

Claimant, Mr Cooper, Mr Brooks, and Mr Sheik were recalled to deal with the evidence contained in the late disclosed material.

13. On 26 and 29 January 2018 the Tribunal sat in chambers, in the absence of the parties, to deliberate and consider the evidence it had heard and read during the course of these protracted proceedings.

EVIDENCE

14. The Tribunal heard evidence on oath from the Claimant, Ms Charulata Kashyap (Chief Operating Office), Ms Julie Ball (Referrals Manager), Mr Simon Reynolds (Service Manager, Doulton House) and Ms Joy Chambers (Head of Business Development) on behalf of the Claimant.

15. The Tribunal also heard evidence on oath on behalf of the Respondents from Mr Amjid Faquir (Director of the 1st Respondent), Mr Assad Sheikh (3rd Respondent and Director of the 1st Respondent), Mr Carl Brooks (responsible individual) and Mr Alan Cooper (Assistant to Mr Faquir). The Tribunal also read a statement from Ms Joanne Laughton (Operations Manager) who did not attend the hearing.

16. The Tribunal also read documents provided by the parties. The documentation, including the transcripts of meetings and telephone conversations, was extensive. The main bundles (three lever arch files) ran to over 1,800 pages and the transcripts (two lever arch files) ran to 616 pages.

FINDINGS OF FACT

17. The Claimant was employed by the 1st Respondent as the Chief Operating Officer from 11 March 2014 to 30 October 2015 when she was dismissed. Mr Faquir and Mr Sheikh were the two sole Directors of the 1st Respondent. Mr Faquir was responsible for operational and procurement aspects of the business and Mr Sheikh for accounting and financial aspects.

18. The 1st Respondent was a provider of care services for children. Its remit was the creation of solutions and care pathways for looked-after children, in particular those who had suffered emotional and psychological trauma through abuse, exploitation, neglect or violence. It was a start-up organisation and the Claimant was appointed because of her recognised expertise in providing care services to children. She held a Masters degree in Clinical Psychology and Law, an NVQ4 in Social Care and Management and an NPQH in Education. She had obtained considerable experience in this field at Sussex Healthcare and at Advanced Childcare Ltd.

19. The Claimant commenced employment on a salary of £135,000 per annum, inclusive of car allowance. This was increased to £200,000 per annum on 21 April 2015. She was the “Responsible Individual” under the Care Standards Act 2000 for supervising care provision to vulnerable

service users on behalf of the 1st Respondent. She was also responsible for registering new homes with the relevant local authorities.

20. At the start of the Claimant's employment, the Respondent intended to operate nationally and the Claimant presented a business plan setting out how this could be achieved by creating several regional hubs. During the course of the Claimant's employment, the Respondent operated and/or acquired several properties for use as children's care homes. They were as follows.

Doulton Lodge, Sleaford, Lincolnshire

21. This property was already part of the 1st Respondent's portfolio and accommodated girls aged 10-18 who had experienced sexual abuse and exploitation. There were issues concerning absconding, violence and drug abuse at Doulton Lodge. There were a large number of complaints from nearby residents from April 2014 onwards.

Cyprus House, Edmonton, London

22. This property was rented through Mr Faquir and was registered in January 2015. Because of its location, the local authorities were unwilling to place at-risk children at the property and only one child was so placed prior to its closure in April 2015.

Ivy House, Leicester

23. This property was obtained through Mr Faquir. It belonged to his nephew. It accommodated child victims of sexual abuse and was registered in January 2015.

Spring Cottage, Leicester

24. This was a care home which had the prospect of 4 beds for children but ultimately it was never registered and the 1st Respondent rescinded the lease in October 2015.

Y-Graig, Welshpool, Powys

25. This property was known to the Claimant and she considered it suitable for the 1st Respondent's objectives. The Respondents agreed that it was a suitable location and approved its purchase. It was intended to take possession in January 2015, appoint an architect to submit a change of use application to the local planning department, make necessary modifications and commence a registration process with the Welsh regulator Care and Social Services Inspectorate Wales (CSSIW) soon thereafter. The necessary planning permission was not forthcoming and, despite a previous assertion to the contrary, CSSIW confirmed on 10 July 2015 that no further children could be placed at Y-Graig until registration had been completed. In August 2015 the lease was rescinded.

26. By October 2015 only Doulton Lodge and Ivy House were in operation. Ivy House could only accommodate a maximum of 5 children. Doulton Lodge was under-utilised.

27. Mr Faquir's view throughout the period of the Claimant's employment was that the number of children accommodated at Doulton Lodge could be increased and the site could be used for two different types of client groups – children with social, emotional and behavioural difficulties (EBD) and children with learning disabilities and challenging behaviour (SLD).

28. The Claimant fundamentally disagreed with Mr Faquir on the maximum number of children who could be accommodated at Doulton Lodge and the mixing of two different types of client groups. She considered that the proposal to increase the number of children and/or accommodate two distinct client groups in a single set of premises would be unsafe and contrary to the 1st Respondent's legal duties. It became a heated issue between the Claimant and the two Directors. It was also the subject of the majority of the Claimant's alleged protected disclosures which are dealt with below.

29. During July 2015 the 1st Respondent advertised for the position of Responsible Manager at Doulton House. There were two candidates: Carl Brooks and Jo Laughton. The Claimant was involved with discussions with the Directors regarding the suitability of these two prospective employees and eventually Jo Laughton was appointed as the Responsible Manager at Doulton House and Carl Brooks appointed as a Sales and Marketing Consultant. From this point onwards, the working relationship between Mr Faquir and the Claimant began to deteriorate. The Claimant alleged that she was being undermined and that her future in the business was unclear. Mr Faquir took the view that the Claimant was underperforming and had failed to properly register Y-Graig and Spring Cottage. Cyprus House had closed and she had been unable to reach financial targets at Doulton Lodge, at least in part because of her position on the level of occupancy and the groups to be accommodated. Mr Faquir's evidence was that the 1st Respondent suffered losses of £540,000 from March to December 2014 and £873,000 from December 2014 to September 2015.

30. On 18 September 2015 the Claimant sent an email to the Directors complaining about various matters including the following:

"I am dropping you a note further to Amjid's visit to Doulton yesterday. I was contacted by people you spoke with who informed me of how anxious and uncomfortable you made them feel when questioning them about the reasons for the 'failure' of the site.

I had no choice but to cancel my holiday in short and have come to Doulton today. After speaking with the team here this morning, including Carl, it is really clear that:

*You are trying to find a scapegoat to blame this whole situation on with regards to the issues we have been having **in** the business and given your lack of communication with me you have made me feel that I am responsible for the situation. …*

Also, you have kept me out of the loop of tender frameworks that ICS are being entered into and clearly through your actions are excluding me from the daily running of the business. You are encouraging the use of underhanded methods of obtaining referrals which is a real concern as there are very strict guidelines around sharing information on vulnerable children. I have been informed that Carl who is still getting referrals from his previous role is passing the referrals on to Julie at Doulton asking her to directly contact the commissioners for more details on placements referred to another provider and possible placement offers at Doulton. Not only is this unacceptable in all professional ways but also illegal and the risk that you are prepared to take in bringing disrepute to the business is astonishing. …

But it is now clear that you are doing everything you can to sideline me in the business, undermine me with my team and find something that you can get on me to blame me for the issues at Doulton."

31. Also on 18 September 2015 the Claimant's solicitor wrote to the Directors as follows:

"We are instructed by Charu Kashyap in relation to her employment with InMind Children's Services Limited (the Company) and in particular in relation to unlawful acts committed by the Company.

Our client's dismissal (express, by conduct or alternatively, constructive) is automatically unfair pursuant to sections 103A Employment Rights Act 1996 (the ERA).

Our client has and continues to raise serious concerns regarding the safety, environment and protection of children trusted in the Company's care. In particular, our client has on several occasions identified the risks posed by the Company's plans regarding the Doulton and Ivy House sites. She has made it clear that the two sites' location and environment are the main challenges to the safety and well being of children placed there and these have proved to be the main issue in matching and raising occupancy levels at the two sites. Our client continues to raise serious concerns on your part of information sharing and breach of the Data Protection Act as well as under the information sharing guidance on Working together to Safeguard Children 2015.

As our client's role is Chief Operating Officer and she is also a Responsible Individual, the Company's unlawful acts and plans are also a risk to her professional reputation and credibility.

The complaints by our client amount to protected disclosures pursuant to section 43A ERA.

The protected disclosures are qualified pursuant to section 43B(d) as tending to show that the health and safety of any individuals has been, is being or is likely to be endangered.

The Company has not provided any reasonable explanation for dismissing our client and there are no lawful grounds for the Company to have reached that decision. The reason or principal reason for our client's dismissal is therefore that she made a protected disclosure.

For the avoidance of any doubt, any reduction in remuneration paid to our client during her notice period or otherwise is an unlawful deduction from wages pursuant section 13 ERA."

32. There then followed a lengthy meeting between the Claimant and the Directors on 21 September 2015 during which the future of the business and the Claimant's future in the business were discussed in detail.

33. Although the Claimant had received the CSSIW letter regarding Y-Graig on 10 July 2015 (see paragraph 25 above) and had provided a copy of it as an attachment to the Respondent's solicitor, the Tribunal found as a fact that she did not discuss its contents with the Directors, or provide an actual copy directly to them personally, until 28 September 2015. Her earlier assertion that she had done so at the meeting on 30 July 2015 was shown to be incorrect when the transcript of the meeting was disclosed.

34. On 30 September 2015 the Claimant was suspended by Mr Faquir and extracts from the letter of suspension are set out below. The reason was that the Claimant had failed to inform the Directors about the existence and the contents of the CSSIW letter dated 10 July 2015.

35. On 30 September 2015, after the Claimant had been suspended, the Claimant's solicitor wrote to the Directors to confirm that the Claimant was resigning from her employment with six months' notice with effect from 29 March 2016. It was stated that the dismissal was unfair and unlawfully discriminated against her because of her race, religion and/or sex. It also alleged unlawful deduction from wages.

36. On 6 October 2015 the Claimant submitted a grievance which is dealt with below.

37. On 2 October 2015 Mr Faquir wrote to the Claimant's solicitor to accept her resignation with six months' notice.

38. On 14 October 2015 Mr Brooks, who had been tasked with examining the Claimant's email account by way of investigation into the Y-Graig matter, came across an email that the Claimant had sent from her work computer to her personal email address on 15 July 2015 with an attached document

which was a business plan for a business named Kina'Ole and replicated the first Respondent's business plan. Mr Faquir considered that this was evidence that the Claimant was intending to set up a business in competition with the 1st Respondent and was intending to use the 1st Respondent's business plan for that purpose.

39. Accordingly, on 30 October 2015, Mr Faquir wrote to the Claimant's solicitor on behalf of the 1st Respondent summarily terminating her contract of employment by reason of gross misconduct.

RELEVANT LAW

40. Employment Rights Act 1996

Section 43A - Meaning of protected disclosure

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

Section 43B - Disclosures qualifying for protection

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

(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 information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

Section 47B - Protected disclosures

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

(1A) A worker (W) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done -

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

Section 48 - Complaints to employment tribunals

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

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

41. In Ministry of Defence v Jeremiah [1980] ICR 13, the Court of Appeal said that "detriment" meant simply "putting under a disadvantage" and that a detriment exists if a reasonable worker would or might take the view that the action of the employer was in all the circumstances to his detriment. What matters is that, compared with other workers (hypothetical or real) the complainant is shown to have suffered a disadvantage of some kind. Someone who is treated no differently than other workers, even if the reason for an employer's treatment is perceived to arise from, or be connected to, the act of making a protected disclosure, will find it difficult to show that he or she has suffered a detriment.

42. Equality Act 2010

Section 136 – Burden of Proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

43. There is guidance from the Court of Appeal in Madarassy v Nomura International plc [2007] IRLR 246. The burden of proof does not shift to the employer simply on the Claimant establishing a difference in status and a difference in treatment. Those bare facts only indicate a possibility of discrimination, they are not without more sufficient material from which a Tribunal could conclude that on the balance of probabilities the Respondent had committed an unlawful act of discrimination. The Claimant must show in support of the allegations of discrimination a difference in status, a difference in treatment and the reason for the differential treatment.

44. If the burden of proof does shift to the Respondent, in Igen v Wong [2005] IRLR 258 the Court of Appeal said that it is then for the Respondent to prove that he did not commit or is not to be treated as having committed the act of discrimination. Since the facts necessary to prove an explanation would normally be in the possession of the Respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof and to prove that the treatment was in no sense whatsoever on the prohibited ground.

45. In Ayodele v Citylink Ltd [2017] the Court of Appeal held that the burden of showing a prima facie case of discrimination under section 136 remains on the Claimant. There is no reason why a Respondent should have to discharge the burden of proof unless and until the Claimant has shown a prima facie case of discrimination that needs to be answered. Accordingly, there is nothing unfair about requiring a Claimant to bear the burden of proof at the first stage.

46. Section 27 - Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act –

(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

DECISION

Protected Disclosures (PD) / Protected Acts (PA)

47. The alleged protected disclosures / protected acts were set out in paragraphs **27, 29** and **45** of the Draft Rider to ET1 as follows:

*"**27** Given the high demands and vulnerabilities of the children accommodated, however, the Claimant made it clear that increasing the number of children in residence and/or accommodating these distinct client groups in a single set of premises would be dangerous, unsafe and contrary to the Defendant's legal duties. This has been her position throughout her employment however it became a more heated issue once the Director's choices of premises had led to*

business failures. She emphasised her concerns on numerous occasions and with increasing urgency including (but not limited to) the following communications (The Disclosures):-"

PD1:
"*A discussion on 23 July 2015 with Mr Faquir."*

48. The Tribunal found that this alleged disclosure was not particularised and there was no evidence of the actual discussion which took place on this date. It did not amount to a protected disclosure.

PD2:
"I have to say the conversations that Amjid and I have had over the last few weeks about the challenges at Doulton resulted in Amjid suggesting that perhaps a different client group could be considered on the site, i.e. ASD, speech and language difficulties, etc he had suggested that he would look into these options further and would explore individuals who had an idea/experience of these services. However, the advert that is out and the candidate who was interviewed today was of the same background as the rest of the current management team at Doulton and this to me suggests that the issue is trying to be worked on is a management issue. I have told Amjid today, that all of the issues I have raised, I have not raised an issue or the management or requested his help in finding a suitable Registered Manager for the site. This is a decision he has made and hence it is clear that I cannot be part of a solution for Doulton moving forward. Not only will this not solve any of the occupancy issues in my view but (this) has left you and the business quite exposed to claims of constructive dismissal from the current Registered Manager at the very least… I request you both to come on some urgent agreement on the course of action you wish to take and inform me accordingly so that I can start the process rolling in terms of ending my RI role with Ofsted. I am disappointed that things have got to this stage and that after the events of today especially I am left with no choice but to rethink my position with the business. I was not privy to the discussions that Amjid had with the valuer from the bank today and can only assume that the information shared was that a change of management would resolve the occupancy problems at Doulton. So all in all my view from this morning remains unchanged that my position is untenable especially as Amjid is taking control of operations from Doulton from hereon… please be advised that I will not hesitate to take any steps that I need to, to safeguard my professional credibility and accountability as RI." - email to the Directors 23 July 2015.

49. The Tribunal found that there was nothing in this email extract, either whether read alone or in context of the full email on 23 July 2015, which could fall within section 43B. The Tribunal found that it did not amount to a protected disclosure.

PD3:
"*Please can I request that any communication we have from hereon is via email so there is no more moving of goal posts on a daily basis and I am allowed to do my job." email to the Directors 8 August 2015.*

50. The Tribunal found that there was no basis for suggesting that there was any disclosure of information which would bring this alleged disclosure within section 43B. The Tribunal found that it did not amount to a protected disclosure.

PD4:
"Now you are suggesting numbers for 20 children and a new client group. I really cannot comment on the staffing numbers you need for 20 children on this site as I'm not sure what your plans are for the 10 additional beds. Clearly, my advice to both of you is and will remain that the site cannot accommodate more than 10 young people safely on the Doulton site. If you have other plans then I have not been party to these discussions so I can't really accommodate on the staffing arrangements for those plans." email to the Directors sent at 16:41 on 10 August 2015.

51. Although the Respondent asserted that this was no more than "advice", the Tribunal found that it was a disclosure of information which the Claimant reasonably believed tended to show that health and safety was likely to be endangered and that the safety of vulnerable children was in the public interest. It amounted to a protected disclosure within section 43B(1)(d).

PD5:
"Having run the site from scratch as a children's service, my view is that it will not be able to accommodate more than 10-12 young people at the very maximum in order for it to operate safely due to the environmental factors of the building layout, the lack of external space, the issues with the neighbours, the local agencies, etc. If the intention is to operate 2 client groups on the same site i.e. SLD with the current client group, again that will be extremely unsafe for both sets of client groups and in a very short period of time there will be significant safeguarding concerns at the site. Obviously, these plans will impact the admission of children to the site now, as we can't promise one service to a local authority today and for them to find out that from Jan next year a different service is being considered or a different client group is being mixed on the site as well as the current Ofsted registration. Whatever the plans for the service. I am mindful that neither of you have even acknowledged the issues I raised with you on Friday by email and hence requesting written clarity around." email to the Directors sent at 20:58 on 10 August.

52. As with **PD4** above, the Tribunal found that this was a protected disclosure within section 43B(1)(d). Both involved disclosures of information relating to health and safety regarding the number of young people who could be safely accommodated on the Doulton site.

PD6:
"I am still waiting to hear from you about my role and what timescales you are looking at informing me of next steps… I need to understand what role you want me to play in the organisation… I am disappointed that despite my advice against this you have planned to go ahead with the idea of 2 separate client groups on the same site. Also, it is worrying that you haven't been upfront with me about

actually recruiting a manager for the service whilst all along Amjid has been saying that all he is doing is gathering market intelligence… I request you to urgently inform me of what your intentions are for the service i.e. the timescales for SLD services being launched as that will have a clear implication on our ability to admit children now and a dialogue will need to be had with Ofsted as well. Please advise who will be leading the process with Ofsted and when you would like me to relinquish my RI responsibilities." email to the Directors sent on 20 August.

53. The Tribunal found there was nothing in this part of the email which could amount to a protected disclosure within section 43B.

PD7:
"But the issue with the police is not a consequence of Welshpool the issue with the police is the consequence of Doulton, that is the issue, you know, the police in Lincolnshire actually contacted the Welsh police to inform them of all the issues that Doulton was presenting and that is where all the anxieties have been so you know I have been telling you both about the issues that multidisciplinary teams have been raising with the police has been raising around the safety issues at Doulton, the police, or CAMHS teams have been raising around the number and the volume of children in Doulton and you know I am suggesting that the site can never have any more than 10 or 12 at the very maximum children on that site";
"(A)nd if you go back to the 3 or 4 months' time frame that is when we are talking about things have started going wrong in our business plan because the issues have been around increased occupancy at Doulton, we have seen that bubble happen twice where we have got to 12 or 13 kids at Doulton and the whole thing has collapsed there and that is why I have been saying look guys this is not going to work this is the evidence and had we got other properties and smaller homes we could have moved these children and filled those deficit beds and you know what, the way I see it Assad from where I am sat is you know that the intention and what you or Amjid are hearing is that okay this is Charu saying we can't have any more than 10 or 12 children, I am going to have to find somebody else who is going to tell me yes I can have 20 or 25 children on that site." In response, Mr Sheikh stated, "Look that is exactly what he is saying…";
"…it's a health and safety issue Assad and you know what that is what I have been trying to say and I suggested this to Amjid yesterday and he brushed this off, you know as part of my RI I am legally obliged you know keep Ofsted informed about all of these issues that we have and if there are any sort of changes then you know what I can't and that's why constantly again I am sure you will agreed, I have constantly said what I will not ever risk and I will do whatever is required of me to make sure that my professional credibility is never at risk because you know we can't be in this position Assad."

54. The Tribunal found that this was again a protected disclosure related to health and safety within section 43B(1)(d) and was effectively a repeat of the disclosures contained in **PD4** and **PD5** above.

PD8:
"Assad and I spoke on 29 August whereby Assad acknowledged that alternative leadership arrangement we're [sic] being sought for Doulton as Amjid was clear that my advice of the site not being able to safely accommodate 25 young people was inaccurate. Amjid is keen to 'try' getting 25 young people on the site which will include a set of 2 different needs of client groups meeting on the site. I reiterated my position on the matter that it was dangerous and would not be in the best outcomes of the children placed there but I was informed that the decision had been made and a revised set of budgets based on this plan had been submitted to the bank… I find it extremely unfair that I am being blamed for the non-delivery of the business plan whilst I have been quite clear on the challenges that face the site at Doulton and Ivy House due to location and environmental factors. Also, this isn't something that I have raised recently for several months now. In fact with regards to Doulton, I was clear with Amjid right at the outset that if he was looking for a solution for Doulton and had no other plans to develop a children's division that I would not have even joined the company. If Amjid would have been honest and transparent right from the beginning, then I would not be finding myself in this position today. The fact that I am being undermined now in my role due to me advising issues of safety and environmental risks of the site and significant developments and changes are being planned for a service where I still hold the Responsible Individual (RI) responsibilities has left me feeling extremely vulnerable and not being able to control or effectively partake my daily duties." email to the Directors 6 September 2015.

55. The Tribunal found that this was again a protected disclosure related to health and safety within section 43B(1)(d) and was effectively a repeat of the disclosures contained in **PD4** and **PD5** above.

PD9:
"*Matters took a turn for the worse when the Claimant discovered the Respondent's proposal for securing further business at Doulton Lodge. She relayed her concerns by email of 18 September: "You are encouraging the use of underhanded methods obtaining referrals which is a real concern as there are very strict guidelines around sharing information on vulnerable children. I have been informed that Carl who is still getting referrals on to Julie at Doulton asking her to directly contact the commissioners for more details on placements referred to another provider and possible placement offers at Doulton. Not only is this unacceptable in all professional ways but also illegal and the risk that you are prepared to take in bringing disrepute to the business is astonishing… you are in direct breach of Data Protection rules of sharing information."*

56. The Respondents asserted that the Claimant had no reasonable basis to conclude there was a breach of the law and that the allegation was contrived. The Tribunal found however that this was a protected disclosure within section 43B(1)(b). It was an allegation of a breach of Data Protection Rules regarding sharing information about referrals of young people. The Claimant had a reasonable belief in the failure to comply with a legal obligation and that the protection of personal information regarding vulnerable children was in the public interest.

PD10:
"The Claimant reiterated these concerns to Ofsted by way of email dated 25 September 2015."

57. The Tribunal found that this was also a protected disclosure regarding the same matter referred to in **PD9** above but the disclosure was made to Ofsted on 25 September 2015.

PD/PA11:
"*Holding a meeting on 21 September 2015… Mr Faquir nevertheless proceeded to shout at the Claimant and make baseless allegations which in turn led to the Claimant's email of objection on 22 September. In that email she alleged that "for the first time in my whole career felt that I was being put in this position because you thought that you could get away by talking in this way to a woman."…*

58. The Tribunal found that this was not a protected disclosure because it referred only to the treatment of the Claimant and there was no reference to, nor any reasonable belief on the part of the Claimant in, any public interest in disclosing the information.

59. The Tribunal found however that it did amount to a protected act under section 27(2)(d) Equality Act 2010 as it contained an allegation of sex discrimination.

PA12:
"By letter of 30 September 2015 sent on her behalf by acting solicitors Messrs Trowers & Hamlins LLP, …The letter alleged that the Claimant had been constructively dismissed in a manner which was "unfair and unlawfully discriminates… because of her race, religion and/or sex…"

60. The Tribunal found that this letter by the Claimant's solicitors amounted to a protected act under section 27 Equality Act 2010 as it contained an allegation of unlawful discrimination.

PD/PA13:
"*Her communications of 22 September, 30 September and 6 October set out at [29(ix)]; [30] and [37] above which are advanced both as protected acts and as protected disclosures.*

61. The Tribunal found that these matters amounted to protected disclosures, being a repeat of **PD4 and PD5** above, and a protected act for the purposes of section 27(2)(d) Equality Act 2010 in that there was an allegation of discrimination.

Detriments

62. These were set out in paragraphs **29** and **44** of the Draft Rider to ET1 as follows:

***"29** In response (at least in part) to the Protected Disclosures the Claimant was subjected to the following acts of detriment (the Pre-termination Detriments) contrary to section 47B ERA 1996."*

Detriment 29(i):
"Advertising the role of Registered Manager (RM) in Doulton Lodge in the middle of July 2015 as a matter of principle and/or without consultation with the Claimant."

63. This allegation was withdrawn by the Claimant during the hearing.

Detriment 29(ii):
"A continued exclusion of the Claimant from discussions and business proposals to the extent that Mr Faquir assumed aspects of the Claimant's responsibilities whilst she was still employed."

64. In an email dated 23 July 2015 the Claimant raised matters with the Directors relating to recruitment and for the Doulton site, the future of the business, the issues at Y Graig and issues at Spring Cottage. She requested urgent agreement on the course of action they wished her to take and inform her accordingly because she wanted to start the process of ending her Responsible Individual role with Ofsted. She said: *"I am left with no choice but to rethink my position with the business"*. Although she said *"… my position is untenable especially as Amjid [Mr Faquir] is taking control of operations at Doulton from here on*", it was clear that she was still fully involved with the business.

65. On 31 July 2015 the Claimant sent a further email to the Directors arising out of their meeting on 30 July 2015. At that meeting, and in the email, the Claimant discussed many aspects of the business including Doulton House, Welshpool, Spring Cottage, Ivy House and the Claimant's position within the organisation. She said that she wished to "*discuss my role in the business moving forward – with a view for me working to a handover to a suitable candidate to take the leadership role for the business".*

66. On 8 August 2015 there was a further lengthy email from the Claimant to the Directors regarding the operation of the business including the recruitment of Carl and Jo. It was critical of the Directors for interfering in the business in areas where the Claimant alleged that she was not allowed to do her job, but it is clear that she was still very much involved and continuing to perform her duties.

67. On 11 August 2015 the Claimant wrote to the Directors about staff and staff changes and she noted *"We also had a discussion about my role which was a positive one".*

68. On 12 August 2015 the Claimant wrote to the Directors to confirm details of staff redundancies. On 24 August 2015 she wrote to them enclosing a business plan with referral statistics for the period 1 January 2015 to 17 July 2015.

69. On 28 August 2015 the Claimant held a detailed discussion about the business with Mr Sheikh. There followed a detailed discussion of the previous discussion about the business on 6 September 2015. She alleged that she was being undermined in her role by the Directors but continued to be involved in running the business.

70. On 21 September 2015 there were extensive discussions recorded in the transcript of the meeting between the Claimant and the two Directors.

71. The allegation that *"Mr Faquir assumed aspects of the Claimant's responsibilities"* was not specific as to which responsibilities were assumed, or how or when. It is clear that during the period July to September 2015 there were serious disagreements between the Claimant and the two Directors as to how the business should be run but there was also clear evidence that throughout that period the Claimant continued to carry out her full range of duties and conducted lengthy face to face meetings, emails and telephone calls with the two Directors. There was no evidence of any specific aspect of the Claimant's responsibilities being taken over by Mr Faquir.

72. The Tribunal found this allegation not proved.

Detriment 29(iii):
"In early August 2015 inviting candidates for the RM post (Jo and Carl) onto the Doulton site without prior discussion or notification."

73. The Claimant was involved in discussions about interviewing Carl and Jo. During the course of the meeting of 30 July 2015, a transcript of which was included in the late disclosure material, she was asked for, and gave her views on Jo and Carl's experience and suitability for the role of Registered Manager although Carl was later appointed to a different role. Inviting them onto the Doulton site did not amount to a detriment. The Tribunal did not accept the suggestion that the Claimant was being side-lined or excluded from the process. It was part of the interviewing process in the other parts of which the Claimant was closely involved.

74. Additionally, this alleged detriment took place before the first protected disclosure found proved by the Tribunal above, on 10 August 2015. It could not therefore amount to a detriment under section 47B because it pre-dated the first protected disclosure.

75. The Tribunal found this allegation not proved.

Detriment 29(iv):
"Mr Sheikh's attempts to discuss the Claimant's exit during the course of the telephone discussion on 29 August."

76. The telephone discussion was recorded and transcribed and the Tribunal was shown the written record. The relevant part of Mr Sheikh's conversation was as follows:

"If the bank don't take it over and we continue to run it and somehow a miracle happens and there is money to convince them and agree to put more money into the equation, then my view would be that obviously he has got other plans for Doulton but you are not let's say supportive of or a part of going forward so you know you resign as RI, yes your salary is being paid and you spend that time in setting up a new business so that in six months' time, you know when your salary stops from here we have got something happening with the rest of the business to support us all, you understand."

77. The Tribunal found that Mr Sheikh did discuss the potential exit from the business during the course of the telephone call but the Claimant had previously herself indicated that she was intending to leave the business.

78. On 23 July 2015, she said: *"My position with the business in now untenable".*

79. At the meeting on 30 July 2015, she said: *"I'll be a consultant. I'll do whatever you want me to do but you don't, you don't need me as an employee".*

80. On 20 August 2015 in an email, the Claimant said: *"Please advise who will be leading the process with Ofsted and when you would like me to relinquish my RI responsibilities."*

81. During the conversation on 29 August 2015, the Claimant said: *"I will get you somebody but I am not the person for this business".*

82. The Tribunal found that although this event took place, it did not amount to a detriment within the meaning of section 47B or the case of Ministry of Defence v Jeremiah referred to above. It was not a detriment for Mr Sheikh to discuss the Claimant's exit from the business when she herself had previously made clear that she did not intend to stay with the business.

Detriment 29(v):
"The appointment of Carl as a "Consultant" whilst the Claimant was on annual leave without her prior knowledge or participation in the recruitment process. As the Claimant out it in her email of 10 September 2015, "the reality of the situation is that I have given you the reasons for the two sites of Doulton and Ivy not being able to take more young people and as a result you have brought in somebody who you think will increase occupancy regardless of the outcomes for the children or the challenges at the site… I will now be taking the necessary steps I need to safeguard my position with Ofsted." The Claimant was not alone in regarding this course as inappropriate and prays in aid the concerns expressed

by Mr Simon Reynolds by email of 11 September 2015. This appointment caused the Claimant to cut short her period of leave and return to work."

83. The Tribunal found as a fact that Carl was appointed as a Consultant while the Claimant was on annual leave and that his appointment into that particular role was without her prior knowledge. He was appointed between 6–10 September 2015. The Claimant was involved, as found above, in the recruitment process of Carl as the Registered Manager of Doulton but not in the decision to appoint him as a Sales and Marketing Consultant.

84. On 10 September 2015, a "Business Continuity Meeting" was held with all senior management. Although the Claimant was on leave at the time, the minutes of the meeting were copied to her the following day. The rationale for Carl's appointment was set out and, to that extent, the Claimant was involved and included in the arrangements for the appointment. There was no reliable evidence that the Directors sought to exclude the Claimant from the appointment process. She was fully aware that Carl was to be recruited in some capacity into the business.

85. Additionally, the recruitment of Carl commenced before any proven protected disclosure took place and the Claimant was involved in interviewing him and prior to that, in discussions as to his suitability for the role of Responsible Manager at Doulton in general terms. It is correct that the Directors decided that he should be appointed as a Sales and Marketing consultant rather than the Registered Manager, but there was no evidence to link that decision with the fact that the Claimant had made protected disclosures.

86. The Tribunal did not find that, in these circumstances, there was any detriment to the Claimant, or that the decision was because of any protected disclosure.

Detriment 29(vi):
"A failure to respond to the Claimant's grievances presented by way of emails of 5 September, 10 September."

87. There was no email of 5 September 2015 but there was an email dated 6 September 2015 in which the Claimant complained about being undermined in her role and requesting written clarification on her role and the plan for Doulton.

88. The Claimant did send a lengthy email dated 10 September 2015 to the Directors complaining about failure to advise her of plans for the services and her role, the appointment of Carl as a consultant, the future occupancy of Doulton and Ivy House and she finished by saying: *"I am sorry if some of my feelings of frustration and despair are being reflected in this email but I cannot tell you how disappointed and let down I feel by the way that you have treated me in the last few months".*

89. On 11 September 2015 Mr Faquir replied to the Claimant and said:

"Charu
Thank you for your email. Your points have been duly noted. Due to you currently being away on leave again and as your Director and direct line manager I am not prepared to discuss the email, however upon your return from your vacation and during a planned supervision, I am happy to discuss the points you have raised."

90. When the Claimant returned from leave she attended a meeting on 21 September 2015 with the two Directors. The transcript of the meeting ran to 43 pages. It was lengthy and detailed and included discussion about all the matters raised by the Claimant in the grievances of 6 and 10 September 2015. In particular, the Claimant's performance and her future in the organisation were discussed. There were references to her earlier emails.

91. There was no formal written grievance procedure followed but it was not true to say that there was a failure to respond to the grievances. There was a written acknowledgement and the contents were discussed at length during the meeting on 21 September 2015. The Tribunal found this allegation not proved.

92. Additionally, there was no evidence to show that the way in which the Respondents responded to the grievances was motivated by the fact that the Claimant had made protected disclosures.

Detriment 29(vii):
"Covertly surveying the Claimant's emails on or around 18 September 2015."

93. The Respondents accepted, and the Tribunal found proved, that the Respondent was surveying the Claimant's emails from 18 September 2015 onwards.

94. Mr Faquir confirmed that the Claimant had cleared her desk at Doulton House on 18 September 2015 and there was ample evidence to show that there was, by this date, a breakdown in trust and confidence on both sides. There was confusion regarding the Claimant's position in that the Claimant's solicitor had written to the Respondents on 18 September 2015 stating that she had been dismissed either expressly or constructively or automatically unfairly. The Respondents' Human Resources adviser replied to the Claimant's solicitor on 21 September 2015 confirming that the Claimant had not been dismissed and asked them to indicate what the Claimant's intentions were going forward. The evidence indicated that the emils which were surveyed by the Respondents were emails addressed to the Claimant, not from the Claimant. Also, there was no evidence that the Claimant was aware at the time that her incoming emails were being surveyed.

95. The Tribunal found that this did not amount to a detriment. An employer would be fully entitled to ensure that it was aware of incoming emails addressed to a senior manager in these circumstances. By 22 September 2015 the Claimant had said to the Directors: *"Please note that due to this approach that you have taken, I request you to communicate with me only via my solicitor, Tanya Tanden, whose contact details you have, on any employment matters that you wish to discuss from hereon."*

96. The surveillance of the Claimant's incoming emails was due to the prevailing circumstances and the breakdown of the relationship between the parties and there was no evidence that was motivated in any sense by any protected disclosures.

Detriment 29(viii):
"Excluding the Claimant's access from her emails with effect from 18 September 2015."

97. There was documentary evidence to show that the Claimant's access to her emails at this time was prevented by a technical problem. She complained about being unable to log into her emails on 20 September 2015 and on 22 September 2015, the Respondent contacted "Quest Support" to ask them to sort out the technical problem.

98. There was nothing to suggest that this had been done deliberately and the Tribunal found this allegation not proved.

Detriment 29(ix):
"Holding a meeting on 21 September 2015 during which the Directors were confrontational, rude and sarcastic. By way of example only, on the subject of Carl and Jo's attendance at Doulton House Mr Faquir pointed his finger at the Claimant and asked her in a raised voice "What do you think these people were there for, to have cups of tea?" His tone even prompted Mr Sheikh to ask him to calm down. Mr Faquir nevertheless proceeded to shout at the Claimant and make baseless allegations which in turn led to the Claimant's email of objection on 22 September. In that email she alleged that "for the first time in my whole career felt that I was being put in this position because you thought that you could get away by talking in this way because I'm a woman." This constitutes a protected act for the purposes of s27 EqA 2010 and/or a protected disclosure for the purposes of s43B ERA 1996."

99. The Tribunal found that this event occurred. In the transcript of the meeting, the Claimant is recorded as saying to Mr Faquir: *"I have seen this, please do not shout at me – no no no, please – do not point a finger at me either…"*

100. This conduct could amount to a detriment but there was no evidence to support the allegation that it was done on the grounds of having made a protected disclosure or protected act.

101. In the Claimant's email of 22 September 2015 she makes the assertion that: *"You thought you could get away by talking in this way because I am a woman"* and so is focusing on the protected act rather than any protected disclosure. However, there was simply nothing in the transcript of the meeting, or at any other time, to indicate any animosity by either Mr Faquir or Mr Sheikh towards the Claimant's gender. The only reference to the Claimant being *"a woman"* was in the Claimant's email the following day.

102. The tribunal did not find this to be a detriment within the meaning of section 47B or section 27. Emotions were clearly heightened because by this point the relationship between the parties was on the point of irretrievable breakdown, and the Tribunal found that was the reason for the conduct of Mr Faquir, not because of any protected disclosure or act.

Detriment 29(x):
"Unlawfully withholding £2,870,70 from the Claimant's pay on 28 September 2015. By email sent later that day she alleged that this non-payment "is an unlawful deduction and I suggest that it is remedied urgently;" Despite this, a further deduction of £2,996.80 was made from her wages on 30 October 2015."

103. The Tribunal has found below that these sums were withheld from the Claimant's pay. However, the Tribunal could find no evidence on which to base a causal link with the protected disclosures. In an email dated 29 September 2015, Mr Faquir said:

> *"Regards her salary, she was given an increase from £135000 to £200,000 based on budgets being met over the next few months, a review was agreed and subsequently as she had not met the budgets its gone back to the original amount, was discussed in our meeting with her when we met."*

104. Also at the meeting on 29 August 2015, Mr Sheikh said:

> *"…there is no money in the company as you know we have been supporting it with our own funds and/or grant over the last number of months, the salary thing is just becoming a little bit of an issue between us all including Amjid and me to be honest, I just wanted you to please have a think about that along the lines of what I said yesterday that when we agreed here in Ascot I basically said look Charu as long as the business can do it I have no problem, I need you to make that decision when that it and as long as the business is able to afford it please take it… now obviously the business is not able to afford it although you are taking it and that is the bit that I just want you to give some thought to really, I can't say more than that and then it has to be left with you I think…."*

105. The Tribunal found that the pay reduction was solely due to financial and commercial reasons, and there was no evidence on which to base a causal link with the protected disclosures.

Detriment 44(i):
"Being the subject of false representations in the "Dear Colin" letter."

106. This letter was seeking legal advice from a barrister about the Claimant's continued employment. Mr Cooper had assisted Mr Faquir in drafting the document on or about 17 September 2016 and he had used Julie Ball's computer to send it. Julie Ball discovered the letter on her computer, saw that it was critical of the Claimant and decided to forward it to her for information on 28 September 2015.

107. The letter was highly critical of the Claimant's performance and attributed the failure of the business to her. The letter was not intended to be seen by the Claimant or by anyone other than the barrister. It did refer to the Claimant's unwillingness to agree to the accommodation of more than five children at the Doulton site for reasons of safety and of course that was the content of several of the protected disclosures referred to above. The Tribunal found however that it was not a reference to the Claimant having made protected disclosures but to Mr Faquir's view of what he saw as the unreasonableness of her unwavering objection to additional children and to the mixing of different groups of children.

108. An employer is not obliged to agree, nor is he prevented from disagreeing, with the content of an employee's protected disclosure. An employee is protected from detriment and dismissal because of the fact that a protected disclosure was made, not from a mutual breakdown in the employment relationship, in whole or in part, because of any such disagreement. The majority of the Claimant's protected disclosures related to her concerns about safety involved in increasing the number of children at Doulton and mixing EDB and SLD groups. Mr Faquir took a fundamentally different view and he was entitled to do so. The fact that they disagreed, and that this contributed, along with the commercial failure of the 1st Respondent's development plan, did not of itself amount to a detriment within the meaning of section 47B.

109. By this point, the Claimant wished to leave her employment with the 1st Respondent and the Directors also took that view. They considered that her performance was such that it had caused the business to fail and they were requesting advice on whether this could amount to misconduct. The Respondents had invested very large sums of money in the business, the success of which was entrusted to the Claimant and it had failed to achieve any measure of success. That was the reason for the request for legal advice, not the fact of any protected disclosure or act.

110. The Tribunal could find no evidence to suggest that it had anything to do with the fact of the Claimant having made protected disclosures.

Detriment 44(ii):
"Her exclusion from the workplace and precluded from having contact with her former colleagues."

and

Detriment 44(iii):
"Her suspension in principle and/or on a knowingly false basis."

111. On 30 September 2015 the Claimant was suspended. This was confirmed in a letter to her solicitor of that date. The letter included the following:

> *"We refer to our letter dated 21 September 2015 which was sent in response to your rather confusing letter of 18 September 2015.*
>
> *It now appears that, contrary to the suggestion in that letter, your client has not resigned so we do not understand the references to dismissal and constructive dismissal contained therein. …*
>
> *The Directors have today become aware that your client was notified ibn writing on 10 July 2015 by the Care and Social Services Inspectorate for Wales that the children's home, Y-Graig, has been accommodating children prior to registration of those premises being granted.*
>
> *Your client informed the Directors that she had obtained written permission from CSSIW for Inmind Children's Services Limited to accommodate children at these premises for a period of up to three months within any twelve month period. On the basis of her assurance, the Company approved substantial expenditure on the refurbishment of the property and the recruitment of the staff. The information now available to the Company appears to indicate that the assurances she gave were incorrect.*
>
> *This matter requires an urgent investigation and, for that reason, your client is suspended with immediate effect pending that investigation. Your client will be invited to an interview following which the Company will make a decision as to whether or not a disciplinary hearing is required. …*
>
> *If it is established that the home had accommodated children when it was not registered to do so and/or that your Client misled the Company as to whether such children could be accommodated, it is a matter of the utmost seriousness and may amount to gross misconduct, which could justify summary dismissal."*

112. On 10 July 2015 CSSIW sent a letter to Lorraine Easterbrook, Registered Manager of the E-Graig/Welshpool home which included the following:

> *"You had previously applied to register Y-Graig as a children's home with the Care and Social Services Inspectorate Wales (CSSIW). However, the application could not be progressed as you are awaiting the outcome of an application for planning permission. CSSIW has received a concern that children are being accommodated at the home prior to registration being granted, which prompted our visit to your establishment on 2 July 2015. …*

During our visit on 2 July 2015 our inspectors spoke with Lorraine Easterbrook who we understand is intended to be the proposed Responsible Individual and Registered Manager for the service. We were informed that the two children currently accommodated at the home were there for respite and for an assessment of their suitability for placement at another care setting to be carried out.

Children accommodated for respite and assessment do not fall within the exceptions as outlined above. We appreciate that this contradicts advice given previously to Nottingham City Council, which you may have relied upon in accepting the placements. However, following advice from our legal services department we can confirm that the exception applies to children accommodated only for a holiday or a leisure, recreational, sporting, cultural or educational activity. It is our view therefore that you have been carrying on an unregistered children's home. …

CSSIW request that you cease accommodating children at Y-Graig immediately, save for in the circumstances excepted from registration. As with all enforcement matters, CSSIW can exercise their discretion in pursuing a criminal investigation. In light of the circumstances giving rise to this issue CSSIW do not intend to pursue an investigation. However, should further children be accommodated in breach of the exceptions to registration CSSIW will not hesitate to pursue enforcement action."

113. This letter contradicted the advice given previously by CCSIW to the 1st Respondent on 1 May 2015.

114. Ms Easterbrook immediately forwarded a copy of the letter to the Claimant who shared it with other members of the Welshpool team but she did not forward a copy to the Directors. There was a dispute between the parties as to whether she gave them a copy of the letter, or informed them of the contents, before Ms Easterbrook sent a copy to Mr Faquir on 28 September 2015. The Tribunal found as a fact that she did not.

115. The Claimant asserted in her evidence that she had either given a copy of the letter to the Directors at a meeting on 30 July 2015 or, at the very least, informed them of the contents. However, when the transcript of that meeting was disclosed as part of the late disclosure material, there was no reference to the letter directly. The Claimant claimed that the following extract from the meeting indicated that the Directors were aware of the content of the letter:

"Assad: *Because how many children have you got in Wales yet?*

Charu: *We haven't, because we're-*

Assad: *None.*

Charu: *We can only use-, we can only have the kids-,*

Amjid: *(Talking over each other 02.23.00) only there from existing places.*

Charu: *Yeah, from Dalton [sic]. You know so the plan that was there initially-,*

Amjid: *They've come back now, right?*

Charu: *Sorry?*

Amjid: *They've come back, have they?*

Charu: *There's two now, there.*

Amjid: *There's two there?*

Charu: *Yeah. And then the ones from Ivy are going there.*

Amjid: *For a holiday?*

Charu: *Yeah.*

Assad: *So you-, you'd want to-, well obviously there you go then.*

Charu: *Because-,*

Assad: *And again, we've spent £50,000-odd in refurbishing that place."*

116. The Tribunal did not accept that extract supported the Claimant's assertion. It was implausible that if the Claimant had sent a copy of the letter or informed them of the contents that it would not be referred to directly. Having seen the transcript, the Claimant accepted that she was wrong in saying that she had handed over the CSSIW letter during the course of the meeting but asserted that she had informed them of the contents. There was no documentary evidence that the letter had been sent to Mr Faquir before 28 September 2015 and in the extract, although the occupation of Y-Graig/Welshpool was mentioned, there was no direct mention of the contents of the letter. The lack of any documentary evidence was consistent with the Respondents' account. There was however, as stated above, documentary evidence of the Claimant having received it from Ms Easterbrook and then copied it to other staff at Welshpool.

117. Having become aware of this seriously concerning letter alleging the commission of a criminal offence by the 1st Respondent in the context of a highly regulated area of children's services, the Respondents were justified in taking a serious view of the Claimant's failure to inform the Directors directly when she had separately, and immediately sent the letter to her juniors.

118. The Tribunal could find no causal link between the suspension and protected disclosures. Additionally, the Respondents had shown a non-discriminatory ground for suspension which was well documented, namely the Claimant's failure to inform the Directors of the CSSIW letter until 28 September 2015. She was suspended from duty for that failure on 30 September 2015. There was genuine and proper cause for the suspension which was not connected with any protected disclosure.

119. Following suspension, it is neither uncommon nor unreasonable to prohibit an employee from having contact with colleagues while the allegation for which the suspension has been implemented is investigated. This treatment was related to the suspension and not to any protected act or disclosure.

Detriment 44(iv):
"The failure to investigate her grievances of 6 October."

120. The Claimant presented a grievance on 6 October to the Respondents which included the following:

> *"Grievance*
>
> *I write further to my grievance regarding unlawful deduction from my salary and set out a further grievance below.*
>
> *First, it has become clear to me in the last few weeks that the Company is trying to fabricate a disciplinary case against me. I can only assume that it is because I made protected disclosures of a public interest nature, raised complaints about treatment I have received because of my gender and/or religion and/or that the Company, having decided to terminate my employment, wants to do so without paying me due notice entitlements."*

121. The Respondent accepted that it did not formally address this grievance. By the time, the Respondents had already accepted the Claimant's resignation on six months' notice on 2 October 2015. Mr Faquir said that he intended to address the grievance following completion of the investigation into the CSSIW letter. However, on 14 October 2015 Mr Brooks came across an email which the Claimant had sent on 15 July 2015 from her work computer to her personal email address enclosing a business plan for "Kina'Ole".

122. The Respondents took the view that it was a replica of their own business plan showing central hub satellite homes, educational facilities and categories of young people. They regarded it as a plan for a business competing with their own business and based upon their own business plan. The Respondents thereupon decided the Claimant should be dismissed and did not formally address the grievance.

123. There was no evidence to support the assertion that the failure to formally investigate the grievance was because of protected disclosures. The two intervening matters were the CSSIW letter and the discovery of the Kina Ole business plan. The Respondents focussed on these matters and not on the Claimant's grievance. That may have been unfair but it was a non-discriminatory ground, well documented, for the suspension, later dismissal, and failure to formally address the grievance.

Detriment 44(v):
"The failure to follow any aspect of the Respondent's disciplinary procedure including but not limited to the convening of an investigation and/or disciplinary hearing."

and

Detriment 44(vi):
"Shifting the sands of the disciplinary process such that the Claimant had no real opportunity to respond to the charges levelled against her. The failure to follow any aspect of the Respondent's disciplinary procedure including but not limited to the convening of an investigation and/or disciplinary hearing."

124. By this point, the relationship between the parties had broken down irretrievably. There was a complete lack of trust and confidence on both sides. The Claimant had resigned and insisted that the Respondents correspond with her solicitor and not with her directly.

125. It is clear that the Respondents did not comply with their own disciplinary procedure including the failure to complete the investigation and to hold a disciplinary hearing. There is no doubt that these allegations amounted to detriments but there was no causal link with protected disclosures. Additionally, the Respondents had shown reasonable and proper non-discriminatory cause for treating the Claimant as they did.

Dismissal

126. This complaint was set out in paragraphs **47** and **48** of the Draft Rider to ET1 as follows.

> ***"47** The Claimant was dismissed on a basis which was flimsy and knowingly false. It was made in the absence of any procedure despite pledging to adopt a full procedure and assuring her that no decisions would be made without giving her an opportunity to be heard."*

Reason 48(i):
"The reason or principal reason for her dismissal was her making protected disclosures and/or the prospect of further disclosures being made for the purposes of s103A ERA 1996."

and

Reason 48(ii):
"The dismissal was a natural consequence of the Claimant's resignation as pleaded at [45] above and losses flowing are therefore within the scope of s47B ERA 1996."

and

Reason 48(iii):
"The Claimant's protected acts played a more than trivial part in her dismissal for the purposes of s27 EqA 2010."

127. The letter of dismissal, dated 30 October 2015, included the following:

> *"Letter of Dismissal*
>
> *You will be aware that we have been investigating a number of matters concerning your client, including the use of Y-Graig as a children's home when it was unregistered and also failing to notify the board of Directors of the letter that CSSIW sent to the company dated the 10th July 2015 and access to and use of the document which was covered by legal professional privilege and which she knew was not entitled to receive.*
>
> *During the process of the investigation we have discovered that your client has actively engaged in activity that the board considers being harmful to the interests of the company and that was clearly intended to compete with Inmind Children's Services Ltd. The document is entitled CK investment Memorandum v2 and is dated July 2015. A copy is attached.*
>
> *The document was attached to an email sent by your client on 15 July 2015 at 22:23. It was sent from her email account with Inmind Children's services Ltd to her personal email account. A company called Kina'Ole Children's Services Ltd, the name of the Company on the Investment Memorandum, was incorporated on 13 July 2015 and the proposed registered address was your client's home address.*
>
> *The investment memorandum gives details of that Company's intentions and a business plan which demonstrates beyond doubt that it was intending to compete with Inmind Children's Services Ltd.*
>
> *As well as providing details of the business plan and the properties from which the service was to operate, the plans contain proposed site acquisition dates, one of which was July 2015 with an opening date of November 2015.*
>
> *There can be no clearer example of your client's intention to set up in business in competition with Inmind Children's Services Ltd. Your client has therefore made use of confidential information belonging to Inmind Children's Services Ltd with the intention of using it to her own advantage and to the detriment of Inmind Children's Services Ltd.*

On the basis of the information contained in that document and the registration of a Company that was clearly intended to compete with Inmind Children's Services Ltd, there can be no clearer example of a fundamental breach of contract by your client.

No purpose would be served by conducting a disciplinary hearing since, on the basis of the information we have discovered, which is indisputable, your client could provide no possible acceptable explanation for her conduct.

With the benefit of hindsight it is now clear that your client has been trying to construct a case to use against Inmind Children's Services Ltd to justify her resigning in order that she can proceed with her plans to set up a rival business.

In view of your and your client's insistence that all communications take place through you, this letter is formal notification that your client's employment with Inmind Children's Services Ltd is terminated with immediate effect. For the avoidance of doubt, a copy is also being sent directly to your client."

128. The treatment of the Claimant as described above in her allegations of detriments and resignation on 2 October 2015 and her dismissal on 30 October 2015 were not, the Tribunal found, because she had made protected disclosures.

129. The Claimant's resignation was because of the breakdown in trust and confidence on both sides due to commercial and organisational failures in the business. The Claimant had been recruited to construct, build and expand the business and, although both sides blamed each other, the fact is that the business plan failed to achieve what was planned.

130. The failure to pass on the CSSIW letter and the discovery of the Kina Ole business plan provided plausible and well documented reasons for the suspension and ultimate dismissal.

131. During the course of questioning, when asked what was the causal link between the protected disclosures and the detriments, the Claimant said that when she started to raise health and safety and occupancy levels, that is when she "felt" the Directors' attitude towards her changed. It was then a catalogue of things in close succession from the end of July 2015. The causal link was therefore based upon what the Claimant felt and the coincidence of events. There was no firm or direct evidence of a causal link.

132. On the contrary, the Respondents were able to show through oral and documentary evidence, that there were non-discriminatory reasons for their treatment of the Claimant. The Claimant's assertion that she showed the CSSIW letter to the Respondents at the meeting on 30 July 2015 proved to be incorrect. Indeed, during the course of questioning before the

transcripts were disclosed in the late disclosure material, her evidence was only that *"I suspect I did show it to them*".

133. So far as the Kina Ole business plan was concerned, the Claimant said that it was in respect of a partner's business and also asserted that the Respondents had agreed to finance a separate business. None of that was supported by any reliable documentary evidence. It was notable that three days after the Claimant had been told the Y-Graig/Welshpool set up was not lawful, she sent the Kina Ole business plan to her personal account.

134. So far as detriments are concerned, the burden is upon the Respondents under section 48(2) to show the ground on which any act or deliberate failure to act was done. The Tribunal found that, so far as the detriments were concerned, this burden had been discharged by the Respondents.

135. So far as the allegation of unfair dismissal was concerned, it is likely that, if the Claimant had the necessary two years' continuous employment and was entitled to bring a complaint of unfair dismissal, then the dismissal would have been found to be procedurally unfair. However, the Claimant does not have the necessary service for an unfair dismissal claim and, however unfair the procedure, the claim can only succeed if the reason for the treatment amounted to a detriment and because protected disclosures had been made.

136. Because the Claimant had less than two years' qualifying employment, the burden of showing on a balance of probabilities that the reason for her dismissal was an automatically unfair reason, namely the protected disclosures, was upon her. (See Ross v Eddie Stobart Ltd [2013] EAT 0068. The Tribunal found that she had failed to discharge this burden.

Unlawful Deduction of Wages

137. This complaint was set out in paragraph **43** of the Draft Rider to ET1 as follows:

"43 *Further and in the alternative the Claimant alleges that the reduction in her wages on 28 September 2015 of £2,870.70 and 30 October 2015 of £2,996.80 which constituted an unlawful deduction from her wages."*

138. The Claimant was employed from 10 March 2014 on a salary of £135,000 per annum. On 1 April 2015, this was increased to £200,000 per annum.

139. On 1 September 2015, her salary was reduced back to £135,000 per annum and the Claimant therefore suffered a reduction from wages of £2,870.70 in September 2015 and £2,996.80 in October 2015.

140. The increase in pay was documented by a payroll increase notification form dated 1 April 2015. Mr Sheikh had endorsed upon the form in handwriting *"Approved pending review of three month review of financial performance of the business to budget*". He said he had written this in April

2015 before the payroll was allowed to go through. The increase however, having been agreed between the parties, was implemented. It was not expressed to be conditional and there was no record of the Claimant having agreed to any conditions or agreed in writing to any reduction in her pay thereafter as required by section 13(1)(b) Employment Rights Act 1996.

141. The Tribunal concluded that this was a unilateral reduction in pay without the Claimant's agreement. The total deduction was £5,867.50.

Outstanding Holiday Pay / Expenses

142. This complaint was set out in paragraph **49** of the Draft Rider to ET1 as follows:

"49 *The Claimant seeks recovery of her outstanding holiday pay (2 weeks) and travel expenses of £708.25."*

143. The Tribunal heard no evidence or submissions on these matters although they were included in the Claimant's Schedule of Loss [p76f]. These matters will therefore be dealt with at the remedy hearing listed on 26 September 2018.

_____
Employment Judge Vowles

Date: 3 April 2018

Sent to the parties on:

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For the Tribunal Office