



EMPLOYMENT TRIBUNALS

Claimant

Ms C Russell

v

Respondent

Unified Care Ltd

Heard at: Watford

**On: 6-10 February 2017
3 to 5 July 2017,
26-29 March 2018**

**Before: Employment Judge Henry
Mr I Bone
Mrs A Brosnan**

Appearances:

**For the Claimant: Mr T Oxton - Counsel
For the Respondent: Mr S Jagpal - Consultant**

RESERVED JUDGMENT

1. It is the unanimous decision of the tribunal that:
 - 1.1 The claimant has not suffered a detriment because she has made protected disclosures.
 - 1.2 The claimant has not been constructively dismissed.
 - 1.3 The claimant's claims are dismissed.

REASONS

1. The claimant by a claim form presented to the tribunal on 21 May 2016, amended on the 4 August 2016, presents complaints for unfair constructive dismissal and detriment on have made protected disclosures.
2. The claimant commenced employment with the respondent on 22 May 2014. The effective date of termination was 31 May 2016; the claimant then having been continuously employed for two years.

The issues

3. The issues for the tribunal's determination were agreed by the parties and presented as follows:

Whistleblowing

Protected Disclosures

- 3.1 Did the claimant make protected disclosures within the meaning of Sections 43A of the Employment Rights Act ("ERA") 1996 as follows:
- 3.1.1 The claimant's refusal to comply with the request of Mr Lawrence Charamba (Operations Manager) on 30/10/15 to reduce staff hours on the grounds that it would place service users at risk (*Para 8 – Amended Grounds of Complaint*).
 - 3.1.2 The claimant's email to Mr Charamba dated 02/11/15 in which she raised further concerns about service users being put at risk as result of the proposed reduction in hours (*Para 8 – Amended Grounds of Complaint*).
 - 3.1.3 The claimant's email to Mr Shamir Islam (Director) dated 03/11/15 in which she raised the issue of the reduction of hours and stated that it would compromise the health and safety and wellbeing of the service users (*Para 9 – Amended Grounds of Complaint*).
 - 3.1.4 The claimant's written statement to Mr Robert Joseph on 11/11/15 concerning the conduct of Mr Charamba including the proposed reduction of staff hours (*Para 10 – Amended Grounds of Complaint*).
 - 3.1.5 The claimant's email to Mr Islam dated 12/11/15 in which she further raised concerns about the reduction in staff hours putting service users at risk (*Para 11 – Amended Grounds of Complaint*).
 - 3.1.6 The claimant's letter to the Care Quality Commission (CQC) and Haringey Council on 14/12/15 (*Para 12 – Amended Grounds of Complaint*).

Detriment

- 3.2 If it is determined that the claimant did make a protected disclosure, as above, was the claimant subject to a detriment contrary to Section 47B of the ERA 1996, namely:
- 3.2.1 That the claimant has been subjected to unfair and unreasonable disciplinary procedures which were conducted in bad faith (*Para's 13-17 and 20 – Amended Grounds of Complaint*).

- 3.2.2 That the claimant was unfairly and unreasonably threatened with disciplinary action (*Para 21 – Amended Grounds of Complaint*).
- 3.2.3 That false statements have been made by Mr Charamba concerning the claimant's performance (*Para 14 – Amended Grounds of Complaint*).
- 3.2.4 That the claimant was subjected to harassment and bullying from Mr Charamba (*Para 18 – Amended Grounds of Complaint*).
- 3.2.5 That there has been a concerted attempt to force the claimant to leave the company (*Para's 3-8, 10 and 11, 13-18, 20-22 of the Amended Grounds of Complaint*).

Constructive Unfair Dismissal

- 3.3 Was there an act or omission or series of acts or omissions by the respondent which caused the claimant's resignation?
- 3.4 The following acts/omissions are relied upon by the claimant:
 - 3.4.1 The misleading and inaccurate statements made by Mr Islam following the quality assurance visit by Haringey Social Services in September 2015 (*Para 3 – Amended Grounds of Complaint*).
 - 3.4.2 The disciplinary proceedings which were unfairly and unreasonably pursued against the claimant in October 2015 (*Para's 4 and 5 – Amended Grounds of Complaint*).
 - 3.4.3 The misleading and inaccurate statements made by Mr Islam in his letter dated 7 October 2015 (*Para 4 – Amended Grounds of Complaint*).
 - 3.4.4 The failure to provide the claimant with a formal outcome to the meeting on 8 October 2015 (*Para 7 – Amended Grounds of Complaint*).
 - 3.4.5 The unreasonable request by Mr Charamba for the claimant to reduce staffing hours which would have the effect of placing service users at risk (*Para 8 – Amended Grounds of Complaint*).
 - 3.4.6 The unreasonable and unfair conduct of Mr Charamba raised by the claimant during the grievance meeting on 11 November 2015 (*Para 10 – Amended Grounds of Complaint*).
 - 3.4.7 The failure of Mr Islam to arrange a meeting following a request by the claimant in her email dated 12 November 2015 to discuss her urgent concerns regarding the reduction of staff hours (*Para 11 – Amended Grounds of Complaint*).

- 3.4.8 The unreasonable and unfair disciplinary proceedings brought against the claimant in December 2015 and the failure to notify the claimant of the outcome of the disciplinary hearing on 23 December 2015 (*Para's 13 to 15 – Amended Grounds of Complaint*).
- 3.4.9 The false allegations contained in the statement of Mr Charamba dated 18 December 2015 (*Para 14 – Amended Grounds of Complaint*).
- 3.4.10 The unreasonable and unfair disciplinary proceedings brought against the claimant in February 2016 (*Para's 16 and 17 – Amended Grounds of Complaint*).
- 3.4.11 The unreasonable request of Mr Charamba for the claimant to complete an action plan containing 21 tasks within 3 days (*Para 18 – Amended Grounds of Complaint*).
- 3.4.12 The unreasonable and unfair disciplinary proceedings brought against the claimant in April 2016 (*Para 20 – Amended Grounds of Complaint*).
- 3.4.13 The threat of disciplinary proceedings by Mr Islam in his email dated 17 May 2016 (*Para 21 – Amended Grounds of Complaint*).
- 3.5 Did the acts/omissions amount to a fundamental breach of contract? The terms of the contract relied upon are:
 - 3.5.1 the implied term of trust and confidence and
 - 3.5.2 the express term as to disciplinary procedure.

Remedy

- 3.6 If any of the claimant's claim is considered to be well-founded, is she entitled to a remedy, namely:
 - 3.6.1 A declaration
 - 3.6.2 Compensation
 - 3.6.3 An uplift
- 3.7 If so, what is the appropriate level of financial compensation in respect of:
 - 3.7.1 Loss of earnings
 - 3.7.2 Injury to feelings

Evidence

4. The tribunal heard evidence from the claimant, and Ms Betty Kintu-Lutala – Senior support worker on her behalf, and from the following on behalf of the respondent: Mr Shamir Islam - Chief executive officer, and Mr Lawrence Charamba - Operations manager.
5. The witnesses gave their evidence by written statements upon which they were then cross-examined. The tribunal had before it a bundle of documents, exhibit R1. From the documents seen and the evidence heard, the tribunal finds the following material facts.

Facts

6. The respondent is a company engaged in the care sector providing services of; residential homes, supported living, domiciliary care as well as outreach, for those living independently in the community. The London Borough of Haringey, places approximately 91% of users within the respondent's homes.
7. The respondent operates four homes, being two residential homes and two supported living facilities in Wood Green. The respondent retains a further residential home in the north of England.
8. The claimant commenced employment with the respondent on 22 May 2014, as the registered manager and responsible person for the service users. It was the claimant's role to deal with the day-to-day running of the homes, including supporting staff, teams and service users.
9. The claimant worked at the respondent's premises at 37 Coleraine Road, and was further responsible for the respondent's further premises at 12 Mannoek Road and 30 Coleraine Road. The claimant worked 40 hours per week. The claimant's duties further included payroll, recruitment, and management of staff and service users.
10. The claimant's job description is at R1 page 52A, which was signed by the claimant on 20 June 2014, which at paragraph 18, the tribunal notes the claimant's role to:

“To recruit team leaders/senior support workers and support workers in accordance with the department recruitment policies and procedures, co-ordinating the induction of new staff and identify ongoing training needs.”

11. And at paragraph 37:

“To ensure that the petty cash/housekeeping record is updated, checked and carried forward to the end of each week.”

12. At paragraph 33, it provides:

“To accept overall responsibility for the safe management and handling of service users' money, petty cash and housekeeping.”

13. The respondent's procedures are provided for by the employee handbook, which is at R1 page 53-96.

14. At R1 page 58, provision is made for the disclosure and barring certificate, which provides:

“... In the event that such certificates are not supplied your employment with us will be terminated.”

15. At R1 page 78, the respondent's 'whistle blowers' procedure is set out, which provides that:

“In the first instance you should report any concerns you may have to the home manager who will treat the matter with complete confidence. If you are not satisfied with the explanation or reason given to you, you should raise the matter with the appropriate official organisation or regulatory body.

If you do not report your concerns to the home manager you should take them direct to the appropriate organisation or body.”

Treatment by others:

“Bullying, harassment or any other detrimental treatment afforded to a colleague who has made a qualifying disclosure is unacceptable. Anyone found to have acted in such a manner will be subject to disciplinary action.”

16. The respondent's disciplinary procedures are set out at R1, page 80, which at paragraph 3, provides:

“3. Every effort will be made to ensure that any action taken under this procedure is fair, with you being given the opportunity to state your case and appeal against any decision that you consider to be unjust.

4. The following rules and procedures should ensure that:

- a The correct procedure is used when requiring you to attend the disciplinary hearing;
- b You are fully aware of the standards of performance, action and behaviour required of you;
- c Disciplinary action, where necessary, is taken speedily and in a fair, uniform and consistent manner;
- d You will only be disciplined after careful investigation of the facts and the opportunity to present your side of the case. On some occasion temporary suspension on contractual pay may be necessary in order that an uninterrupted investigation can take place. This must not be regarded as disciplinary action or a penalty of any kind;
- e Other than for an “off the record” informal reprimand, you have the right to be accompanied by a fellow employee at all stages of the formal disciplinary process;
- f You will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct; and
- g If you are disciplined you will receive an explanation of the penalty imposed and you will have the right to appeal against the finding and penalty.”

17. At Section 'C' of the disciplinary procedure, it sets out provisions defining unsatisfactory conduct and misconduct, and at Section 'D' acts of serious misconduct, and at Section 'E' provisions covering gross misconduct.
18. The respondent's grievance procedure is at R1 page 86, and the respondent's recruitment policy and procedure is at R1 page 91, which at R1 page 95 it is recorded:

"NB – IN NO CIRCUMSTANCES PROCEED BEYOND THIS POINT TO OFFER A POST TO A CANDIDATE UNLESS:

- 1 At least two satisfactory written employer references have been received for that candidate, including one from the last employer.
 - 2 A disclosure form has been completed and dispatched.
 - 3 The ISA check is satisfactory (with no exceptions).
 - 4 If there are any issues with 1. or 2. above, complete an assessment using the forms supplied in the individual application pack, and make an assessment as to the possible implications of employing this person and exposing vulnerable people to them. Discuss the matter with the registration authority if in doubt. Note that no exceptions may be made if a person is listed on the ISA register."
19. With regards the claimant's employment, there were no recorded incidents of concern, until circa September 2015, when Haringey Council's commissioning team made a quality assurance visit to the respondent's establishment, following concerns raised by a member of staff, Ms Sudish, relating to the claimant's recruitment practices and possible abuse of a service user, for which Haringey Council's Commissioning Team Quality Assurance Unit, provided a report on 10 November 2015; a copy of which report is at R1 page 97-105.
 20. The Haringey – Quality Assurance Audit took place on 1, 2 and 10 September 2015.
 21. On 25 September 2015, Mr Islam (owner and Chief executive officer) together with the claimant, attended the council offices to meet with Richmond Kessie and Sujesh Sundraraj of the Quality Assurance Team, in respect of their audit, Mr Islam being instructed that they would not meet with the claimant for which the claimant was then not allowed into the meeting.
 22. It is Mr Islam's evidence that, at this meeting he was informed that the claimant goes from care provider to care provider recruiting her own preferred staff, and that those staff delivered poor levels of care and covered it up for each other and that they had reason to believe that the company was not safe. Mr Islam was further advised that they had reason to believe the claimant had abused a service user.
 23. It is Mr Islam's further evidence that, he believed that the council were effectively telling him that, should the claimant remain as the registered manager, then they would no longer place service users with his service and remove those that they had already placed, which would have had a significant impact on the company's ability to continue operating, on the premise that 91% of the company's service users were placed by Haringey Council; Mr Islam further stating:

“They said that they would close the service if this matter wasn’t resolved as she was known to the Borough. This may have been evident in that her previous employers refused to give a reference and consequently our regulators, CQC, took an awful long time to grant her registration because of this.”

24. On 7 October 2015, at approximately 9.41am, Mr Islam wrote to Mr Kessie, referencing his meeting of 25 September, stating:

“I refer to our meetings... where you verbally requested me to review the employment of several of my employees and requested I should investigate and potentially remove them from the service or you would be left with no option but to withdraw your service.

I can confirm that I have reviewed the employment of the staff concerned and are meeting with them to discuss the concerns in a formal setting.

We do have a duty to our employees to clarify the exact reasons behind the request so we can investigate this matter further. With this in mind, I would be grateful if you could confirm, in writing, why this request has been made and what your exact concerns are in relation to Claudette Russell and the staff recruited under her management.

I am sure you are aware of the strains this is putting on the organisation and would respectfully request that you give this matter your prompt attention.”

25. Mr Islam subsequently forwarded to the claimant invites for a meeting, to five members of staff excluding the claimant, for the claimant to disseminate to the staff, for which the claimant raised issue that, she had not had a letter in respect of her attending a meeting, requesting that she receive a letter inviting her to a meeting, for which the claimant was furnished with the following:

“As you are aware, our client (Haringey Borough) contacted the company on 25 September 2015, to raise concerns about the recruitment files for employees that you have hired. These concerns relate to insufficient background checks/referencing/giving undue assistance to applicants for the role of support worker, and poor quality of care to service users.

We discussed these issues at the investigatory meeting held on 2 October 2015, where you were invited to make comments on the situation. I then made representations to Haringey Borough on your behalf in order that your employment with the United Care Limited could continue.

Unfortunately, they have refused our request to allow you to continue in your role. The company has no alternative but to respect the wishes of Haringey Borough as it is part of the safeguarding obligations/contractual arrangements that they can insist on the removal of any of our employees when they have issues of concern.

You are now required to attend a formal meeting to discuss the situation on Thursday 8 October 2015...

You are entitled, if you wish, to be accompanied by a fellow employee...

I have made arrangements for an impartial “HR face 2 face” consultant from Peninsula Business Services to chair the hearing and conduct any further investigations, before providing recommendations. A note taker will also be in attendance.

It is very important that you attend this meeting as a failure to do so will be regarded as a breach of a reasonable management instruction and the meeting will go ahead in your absence. I feel that it is only fair to point out to you that if no alternative position can be found for you, then the outcome of this meeting could be the termination of your employment for some other substantial reason, namely, third party pressure...”

26. At approximately 12:49pm on 7 October 2015, Mr Kessie responded to Mr Islam stating:

“Contrary to your assertion ... we did not request that you remove any members of your staff from your employment or we would have no option but to withdraw our service.

We discussed at the meeting that following examination the files of your employees by myself and my colleague, Sujesh Sundarraj, we are concerned that your organisation or the current manager, has not followed your recruitment policy which is to request, receive and verify references from all new employees/most recent employer. We did not find this to be the case for a number of your most recently employed staff and requested that you re-verify all references received for these employees. Our own investigation revealed that:

- 1 Some of the references were not verified.
- 2 There was a mis-match of information on application forms and references received at least a couple of references had been written by their colleagues but under the guise of the main organisation and sent on company headed paper, had been received from organisations who are not mentioned on the application forms and no reason given as to why they were contacted for a reference.
- 3 In some instances, the last employer, although mentioned on application form and the applicant’s personal statements, had not been contacted for a reference and no reason on file as to why this was not done.

We did advise that you review all employee’s files paying particular attention to;

References, i.e. ensure that they are from last employers as per your policy and if not record reason why not
Investigate the reasons for the lack of references from the last employers
Investigate some of the reasons given for leaving last employment
Investigate reasons for gaps in employment
Why one of your current staff did not have an application form, no employment history, no references or a valid CRB/DBS on their files

And to take whatever action you deemed necessary following your investigation. If we are not satisfied that you have taken appropriate action following your investigation we will have no option but to take whatever action we deem necessary to safeguard our clients placed in your care including removing them from your service.

I hope this clarifies matters and please do not hesitate to contact me if you require further information.”

27. The tribunal here notes that by 6 October 2015, Mr Islam who had been receiving assistance from HR advisors, Peninsula Business Services, had been furnished with the draft letters to be sent to staff in respect of being invited to an investigatory meeting, and a draft of the correspondence sent to Mr Kessie.
28. Investigation meetings was duly held on 8 October 2015 conducted by Ms McNamee, the investigating officer from HR face-2-face, interviews being had

with the six members of staff to include the claimant, notes of which are at R1 page 107-139. The report of Ms McNamee, is at R1 page 140-145.

29. The tribunal pauses here, as it is the claimant's contention that in respect of this meeting, she had been informed that it was a disciplinary hearing for which her employment was in jeopardy.
30. In evidence to the tribunal, on being cross-examined on this point, the claimant stated that Mr Islam had informed her before the investigatory meeting that the letter was a disciplinary letter but that it was to be an investigatory meeting, and for which he apologised for the letter.
31. The tribunal further here notes that, at the commencement of the investigatory meeting and before the meeting got underway, the claimant was informed by Ms McNamee that the meeting was an investigatory meeting and not a disciplinary meeting, for which she would be investigating concerns about the recruitment files for employees as to insufficient employment checks and references and poor quality of care to service users, and that she would be making recommendations as to whether any further action would be appropriate.
32. It was the finding of Ms McNamee that, the claimant had control over the recruitment of staff and that at some juncture, the staff being interviewed, had previously worked with the claimant and had a pre-existing relationship with her. Ms McNamee further stated that she did not believe proper procedures were followed in relation to the recruitment of those employees, stating:

“Specifically, the references were not sought from the two most recent employers. By her own admission, CR (*claimant*) advised that she thought it would be okay to obtain one official reference from a company and one character reference. In addition, there is evidence to suggest that a colleague reference was accepted by CR as sufficient for recruitment purposes. This would be regarded as a breach of the organisation's policy on recruitment.

In light of the pre-existing relationship and complaint received from another colleague, I can form a reasonable belief that the individuals may have sought and obtained preferential treatment in relation to their employment with Unified Care.

In addition, I can form a reasonable belief that CR has sought to abuse her position as manager in securing employment, predominantly for persons had (sic) a pre-existing relationship with, and as a consequence, there have been breaches of the recruitment policy in terms of references obtained and lack of advertising.

Furthermore, I would submit that these actions would move to affirm the position of Haringey, who indicated from the outset that the individuals identified, move from company to company, recruiting their own members of staff and that they practise poor quality care and cover for each other on various aspects of the operations.

...

I am instructed that none of these support worker roles have ever been advertised, and applicants have purely been recommended by CR.

The CEO of the organisation, SI, has indicated that there have been employees recruited by CR without his knowledge or authorisation.

This too, would be regarded as a breach of the organisation's policy on recruitment. However, on the balance of probabilities, I would have expected the CEO of an organisation to be aware of any recruitment processes going on.

Taking this into consideration, I would refer to the statement of complaint by Haringey, that there has been a breach of procedures and their suggestion that unless this is investigated appropriately, and they are satisfied with the outcome of the investigation, they may have to consider taking whatever action they deem necessary to safeguard their clients placed in Unified Care Ltd including removing them from the service.

As highlighted from the outset, such an action by Haringey could result in the closure of the organisation.

Procedurally this matter presents some issue in the sense that CR was not removed from her position when the original complaint was made on 25 September 2015.

In addition, the parties were invited to formal SOSR hearings, which then had to be dealt with in an investigatory manner, given Haringey's unambiguous denial that they would withdraw services unless, these people were removed from their position. Nonetheless, given that CR has less than two years' service, procedural flaws on their own would not be sufficient grounds to mount a successful Unfair Dismissal claim.

...

In addition, all parties have the right to know the case against them. The allegations made by Haringey are generic in nature and do not specifically point to anyone other than CR. My understanding, however, is that the group referred to is, in essence, those people who have been interviewed as all have a history of going from organisation to organisation with CR, and are those, "most recently employed".

...

I respectfully find that there is cause to believe that there have been breaches in the procedures utilised within the recruitment process by CR.

As per page 31 of the Employee Handbook, the organisation retains discretion in respect of the disciplinary procedures to take account of an employees' length of service and vary the procedures accordingly.

Should the organisation wish to proceed to dismissal in respect of CR, they could do so, given the fact that CR has less than two years' service.

I have identified some risks, as set out above and would strongly suggest that these are given due consideration in the event the organisation wishes to proceed to dismissal."

33. Following the investigatory meeting, on 8 October 2015, the claimant presented a grievance, stating:

"I am writing with regard to the disciplinary meeting I had today. I want to make it clear that I received a letter from your on 7 September (sic) 2015 just after 5pm to attend a disciplinary meeting on 8 September (sic) at 4.30pm."

34. The claimant then set out that she expected to be called to a disciplinary meeting, that the respondent's disciplinary procedures should have been followed in that she had not receive a formal letter from the company outlining the concerns raised by Haringey Council, and that she was informed on arrival

that the meeting was an investigation meeting but that the letter of invite stated otherwise.

35. The claimant then set out that, she challenged whether Haringey Council had authority to dismiss her and her colleagues from the respondent's employ, and that they had not been given the right to representation, further stating that, on the letter stating that it could result in the termination of her employment she found the letters to be intimidating and threatening and was unacceptable, adding:

"I find it unacceptable for Peninsula to target five members of staff and invite them to a disciplinary meeting without following procedures. This appears to be discrimination and unacceptable which is very bad for Unified Care Ltd. If Haringey raised concerns regarding poor care in our service it is only fair [sic] for all the staff team to be investigated, given the same treatment as the ones that were singled out.

The staff were given a few hours' notice to attend a disciplinary meeting, one member of staff received the letter ten minutes before the meeting.

I am very unhappy with the manner in which this meeting was arranged and the way in which certain members of staff were singled out."

36. Mr Islam acknowledged the claimant's letter on 20 October 2015, arranging a meeting to hear her grievance for 29 October 2015, which after setting out the claimant's concerns, identified that "these matters will be discussed and considered at the hearing, therefore it is important that you contact me in advance of the hearing if you deem the above information to be incorrect in any way, or if you wish to add anything further to the above points."
37. Mr Islam thereon furnished a copy of the grievance procedures for the claimant's reference. The claimant was also advised of her right to be accompanied by a fellow employee.
38. The meeting duly took place on 29 October 2015, notes of which are at R1 page 149-155.
39. Mr Islam's outcome to the grievance was furnished by correspondence of 30 October 2015. Mr Islam finding the following:
40. Mr Islam found with regards the claimant being invited to a disciplinary hearing on 7 October, for a meeting on 8 October, the claimant expecting the company disciplinary procedures to be followed, that:

"In relation to this concern I can confirm that a letter was issued to you on 7th September (sic) 2015, to invite you to a formal SOSR meeting, this was not a disciplinary hearing and as such the disciplinary procedure wouldn't have been followed. It is also noted that on 8th it was agreed that sufficient notice of the meeting had not been given and as you had highlighted that you wished to be accompanied this meeting was not held. Instead a meeting was held with you to investigate some concerns that had been brought to the attention of the home. Please note as this was then an informal meeting there was no requirement for notice nor did you have the right to be accompanied."

41. With regards the claimant not receiving a formal letter setting out the concerns from Haringey, Mr Islam identified that the meeting was an investigation meeting and not otherwise, and that the claimant had agreed for the meeting to go forward at the material time.
42. With regards Haringey having authority in respect of terminating the claimant's employment, Mr Islam agreed with the claimant, although advising that Haringey were their clients and concerns raised therefore needed to be investigated, and that as the claimant's employer, Unified Care Ltd, had to deal with them accordingly, for which they had employed external HR consultants who had not been familiar with the claimant and therefore reviewed the concerns with "fresh eyes".
43. With regards the claimant not having the right to be accompanied, this was clarified that, the claimant nevertheless wished to proceed in their absence.
44. With regards the claimant alleging that the letter, in advising her that her employment may be terminated, which she found intimidating, threatening and unacceptable, Mr Islam stated: "to reiterate the disciplinary did not go ahead and it was an investigation meeting. However, if that meeting had gone ahead, then we are obliged to inform you of a potential outcome of that meeting. This is in line with guidance on disciplinary hearings."
45. And with regard the incident targeting five employees, and its appearance as to discrimination, Mr Islam advised that Haringey being concerned with the recruitment process in respect of certain members of staff, the investigation was then focused on the employees connected therewith, and that other staff had not been pursued because they had not known the full extent of how many employees were employed and connected to the claimant, submitting that he therefore did not think that the instigation of the investigation was discriminatory. The claimant was thereon offered a right of appeal.
46. The claimant here submits that, she did not receive the correspondence from Mr Islam. However, in evidence before the tribunal, when shown the document, the claimant stated that she had received that correspondence, but on subsequent cross-examination, the claimant then stated she was not sure whether she had received that document; the claimant stating that she received a phone call from Mr Islam stating that he had not upheld her grievance.
47. On a balance of probabilities, it is the tribunal's view that the letter had been received by the claimant as the claimant initially stated in her evidence before the tribunal. The tribunal is particularly conscious that on Mr Islam taking advice from Peninsula, for which advice was given, the tribunal finds it inconceivable that Mr Islam would not then furnish that correspondence to the claimant where the correspondence sets out in some detail Mr Islam's findings (as recorded by Peninsula's "Actions by job" record at R2, page 261).
48. With regards the report of Ms McNamee, the tribunal was presented a copy evincing the report date as 12 October 2015. On a perusal of correspondence between Ms McNamee, Mr Islam and Peninsula, it appears that on 12 October

2015, a draft was furnished, which draft had not been finalised as of 23 October 2015. Exactly when thereafter Ms McNamee's report was finalised, the tribunal has not been able to determine from the evidence presented to it.

49. The tribunal pauses here, as it is the evidence of Mr Islam that, on the claimant presenting her grievance the process in respect of the Haringey matter and Ms McNamee's investigation, was held in abeyance pending the outcome of the grievance. The tribunal accepts Mr Islam's evidence on this point.
50. In mid-October 2015 the respondent employed a Mr Charamba as operations manager. It was the object of that role to support the business in devising a strategic plan to run the business in view of quality assurance shortcomings that had been identified by the Care Quality Commission (CQC) and Haringey Council's clinical commissioning group (CCG).
51. Mr Charamba's primary role was to run the operation with the claimant reporting to him, and to manage risks in the organisation. In this respect, Mr Charamba was tasked to conduct quality assurance audits, business developments activities, ensuring compliance with regulatory requirements set by the CQC, liaising with the multi-disciplinary team and also implementing improvement plans in the respondent's homes, Mr Charamba stating: "My responsibility was to lead, guide, direct and to support" the claimant in fulfilling her role and the company's objectives.
52. The tribunal here notes that, as a consequence of Mr Charamba's appointment, the claimant was then subject to close scrutiny which she had not previously been subject to as the registered manager, and to which there was resistance from the claimant.
53. As part of Mr Charamba's brief, Mr Charamba gave consideration to rationalising staffing hours to maximise efficiency whilst saving costs. In respect hereof, on 30 October 2015, Mr Charamba had an ad hoc meeting with the claimant at which Mr Premnath Radhakisson, a consultant, was present. The meeting had been held to address concerns that, the claimant was not responding to actions that Mr Charamba had requested her to complete, and to consult her on the exercise he had undertaken in reviewing the staffing hours and how to use staff more effectively in the services; a note of which meeting is at R1 page 156.
54. It is the claimant's case, challenging this evidence that, she had not had a meeting with Mr Charamba, but that on Mr Charamba meeting with Mr Radhakisson in her room, following their meeting, Mr Charamba then told her that they were looking at reducing the staffing hours, to which she raised concerns that such reductions would place service users at risk, the claimant stating: "I asked Mr Charamba to put his proposal in writing and he confirmed that he would send me details of the staffing hours that I would be working with," for which she then received notes referring to an "ad hoc supervision" meeting which she was asked to sign and return, but which she refused.
55. The meeting notes was a formally presented document setting out the issues addressed and an action plan, which by the issues addressed, identified 3 issues, that of; staffing hours; outstanding on audit from CQC; and outstanding

audit for Lawrence. The action plan then set out a record of discussions had, and actions agreed.

56. The tribunal on the evidence before it, prefers the evidence of Mr Charamba that, he had held an ad hoc supervision meeting with the claimant and that the claimant had fully partaken therein, and that it was not as the claimant states, that a meeting had been held in her office after which Mr Charamba then addressed the single issue of the staffing hours with her.
57. By the action plan the following record is here noted in detail, to the extent that it addresses issues of safety, as it forms the basis of the claimant's first disclosure. The action plan provides:

"Staffing Hours:

It has been discussed with Claudette regarding the exercise on the staffing level on shift. She was informed that due to business reasons the hours must be looked at to make the services more cost effective.

Before she was using 216 hrs at No.37, 273 hrs for No.30 and 98 hrs at No.12.
The total hours for 3 homes are currently 587.
Proposed 483 total plus 20 hours floating.

LC informed CR that she's to work with no.30-231.
No.37 – 154. It was highlighted that these hours would be standard 20 hours will be allocated between the services for floating support.

LC tasked CR to provide information on contracted hours for all staff including bank.

LD suggested a review of the hours after trial in 4 weeks and will follow up additional 1:1 funding for ST.

CR expressed her concerns regarding staffing shortage and Haringey. LC explained that the hours will be reviewed whilst consideration will be given to safe working levels.

....

Action Plan

1. To review staffing hours and rota so as to make them more cost effective and in line with fees paid. Current hours must be reduced from 587 to 483 per week within 4 weeks.
2. To ensure that all outstanding CQC actions are completed within 8 weeks – 30 and 37 Coleraine Road to be full compliant.
3. To complete actions for all non conformities in the QA audit within 4 weeks.
4. To meet LC on a weekly basis for the Operation Review Meeting."

58. On 2 November 2015, the claimant responded to Mr Charamba, copy to Mr Islam, the second disclosure on which the claimant relies, that:

"... I did not have a supervision with you on Friday and will not be signing this document. Being the registered manager and responsible person for Unified Care I don't think you should reduce care hours for the services without first having a meeting

with Shamir and me. You have been employed as the operations manager for a few weeks and I don't believe you know the needs of our service users just yet 154 hours weekly is not enough for #37 due to the needs of the service users. The minimum hours needed for 37 is 185 and this is to have two staff on each shifts 231 hours for #30 is not enough. Minimum hours needed is 266.

What about floating hours?

98 hours for #12 is fine as am currently using 91

I have no problem with cutting hours where necessary but I am not prepared to cut hours in a way that jeopardise the care service users receive and place them at risk.

Shamir could you send me an email with the hours am [sic] entitled to use weekly for each service please. Also let me know how many staff will be on shift at #37 in the morning."

59. On 3 November 2015, the claimant presented a complaint against Mr Charamba which the tribunal here sets out in full, and by which the claimant states she had presented her third protected disclosure.

"Formal Complaint
03/11/2015

Dear Mr Islam,

This letter is a formal complaint against Mr Lawrence Charamba Operations manager. On 30th October 2015 Mr Charamba had a discussion with me regarding reducing the number of staff on shift in 30 and 37 Coleraine Road and to reduce the amount of care hours in both services. I asked Mr Charamba to put this in writing.

On 31st October 2015 I received an email from Mr Charamba with an attachment of an ad hoc supervision which I was asked to sign and return. This document outlined the number of hours Mr Charamba wanted me to use per week in each home. I emailed Mr Charamba to let him know that I did not have supervision with him and therefore would not be signing this document. The document indicated that I was using 216 hours weekly at #37 and this would now be reduced to 154.

I believe that the reduction would compromise the health safety and wellbeing of the service users and place them at considerable risk of poor care and for this reason I informed Mr Charamba that I would not be signing this document.

Mr Charamba has been employed for less than a month to improve standards in the service and I do not believe he knows the needs of the service users well enough to be making such a decision. I fail to see how cutting care hours and placing the service users we support at risk can raise standards.

Mr Charamba came to the office on Tuesday 03rd November where he confronted me regarding my refusal to sign the document and implement the reduction in care hours. I tried to explain to Mr. Charamba that any reduction in care hours needs to be discussed with the director, Prem and the manager. The needs of the service users would have to be taken into account along with the care package agreed by Haringey. Mr Charamba insisted that I sign the document and comply with the reduction in care hours.

Following my refusal for about the seventh time Mr Charamba became very angry started shouting at me bullying and intimidating me. He said "if you don't work with me you must step aside"

I was very shocked by Mr Charamba's behaviour. I told him that it is unacceptable to bully and harass me and threaten my job.

If Mr Charamba can bully and harass me in the workplace I have grave concern for the service users in our care.

I am requesting that Mr Charamba not have any contact with me except by email."

60. The claimant's grievance was acknowledged by letter of 4 November 2015, scheduling a meeting for 3pm on Friday 6 November, the claimant being informed that:

"During this meeting I will listen carefully to what you have to say and ensure that if any further investigations seem necessary, a note is made for these to be undertaken afterwards. It is therefore important that you bring with you any paperwork or other evidence you would like me to consider as I will only be able to base my decision on the information available to me."

61. The claimant was thereon advised of her right to be accompanied by a fellow employee, and further asked to advise should she be unable to attend the scheduled meeting.

62. On 4 November at 8.36am the claimant wrote to Mr Islam stating:

"Please ensure that Mr Laurence Charamba does not have any contact with me except by email.

I find him to be a big bully, intimidating and threatening. His behaviour is quite reprehensible and his instructions on how to provide care for our service users will put the service users at risk, jeopardise my position and bring the company into disrepute.

If Mr Charamba comes anywhere near me I will be calling the police for my safety."

63. The tribunal pauses here and notes the evidence of Mr Charamba that, by the reduction in hours, he was hoping to achieve a better allocation of hours to meet the service needs more efficiently, Mr Charamba stating: *"I was proposing a reduction from 587 to 503 hours with 20 of those hours being floating. It was not just the claimant's hours I was looking at but all staff, however, this would not have prejudiced any staff of their contractual hours but rather a system where we would utilise staff where they are needed most"*, which Mr Charamba states he had advised the claimant of and that the hours would further be reviewed, Mr Charamba further adding:

"What we proposed was to cut down unnecessary use of hours in the evenings as at times there were three staff on duty and there were no activities taking place. Instead, I proposed a system where we would pool those hours to introduce a floating support staff on some days to enable the people we support to participate in therapeutic activities. In the regulatory inspection dated July 2015, CQC had identified a catalogue of failures and breaches of regulations under her leadership and one was her failure to ensure that the care needs of a physically disabled gentleman were met, as she did not devise a system for him to access community based activities. These concerns were also flagged by Haringey Learning Disability Partnership in audits conducted between July and September 2015."

64. It was Mr Charamba's evidence to the tribunal that he had not insisted that the claimant sign the document that she did not agree with, nor had he behaved as the claimant alleged. Mr Charamba further informed the tribunal that, on the claimant refusing to sign the ad hoc supervision notes, he was instructed to ask her to cite her reasons why, as too had Mr Radhakisson requested her to sign the document as he was present at the ad hoc supervision. Mr Charamba here maintains that he saw the claimant a few days after the ad hoc supervision and had explained the rationale behind the hours restructuring, but that she had resisted it, and to which he advised her that, she would be refusing to complete a reasonable management request if she did not respond to his request, Mr Charamba adamant that at no point did he say, she should step aside if she did not want to do the work.
65. On 5 November the claimant wrote to Mr Islam requesting that an independent person hears her complaint, further advising that the 6 November was not convenient, seeking that an alternative date be arranged.
66. As a consequence, Mr Robert Joseph, an HR advisor, was engaged to hear the claimant's grievance, which grievance was then arranged for 11 November 2015.
67. The meeting duly took place on 11 November 2015, notes of which are at R1 page 163. A note of the claimant's concerns which were furnished to Mr Joseph at the meeting, are at R1 page 167.
68. From the notes of the meeting, as distinct from the document the claimant furnished to the meeting, the claimant there set out her dealings with Mr Charamba and the concerns she had in respect of her treatment by him. There is nothing therein recorded that evidences a qualifying disclosure being made, Mr Joseph restricting the meeting to addressing the claimant's grievance as raised in respect of Mr Charamba's behaviour towards the claimant.
69. By the document furnished to Mr Joseph by the claimant at the meeting, being the claimant's concerns, the claimant provided the following:
- "1. LC visited the service three times and spent only a short time on each occasion following which he instructed me to cut the care hours down by over 100 hours per week. See copy of ad hoc supervision.
...
5. When he bullied me to cut the hours down I refused and told him that I did not feel that he was in a position to make such an unwise decision due to the risk involved. This would place the service users at risk of poor care and neglect which is abuse. I pointed out that LC could not know the needs of the service users as he has not worked with them or spent enough time getting to know them, reading their care plans, risk assessments and other important information. LC said my remarks were unacceptable because basically he has been a senior manager for over 10 years and he does not have to work with the service users to know them. I replied I had been working with them for almost two years and I am still getting to know them better. LC laughed. He seemed to find this funny.
...
7. On 3 November LC went to 30. He went into ST room without staff on duty and got ST so anxious she tried to attack SN a member of staff who had been working with ST

for nearly a year. SN is one of the few staff that ST has never attacked. ST is doing well and despite her unpredictable challenging behaviour she had no incidents in the whole of October. I explained to LC that he should get to know ST and should not approach ST without a member of staff present. He completely ignores me which is unprofessional and unacceptable. He should not go into the service users' room without staff. ST has made a complaint that LC came into her room without asking her... I may need to refer this to safeguarding as ST is complaining to all staff and staffs are feeding back to me daily. Refer to incident form and complaint form.

...

8. LC has taken no time to get to know the service users and the staff. On Friday 6th November SM service user asked me who LC was
9. These are the instructions that LC gave me on 3 November
 - Have 1 staff at #37 in the morning and two in the afternoon
 - AW and JI are both independent and don't need 24 hour care, they don't need staff. MF is at the day centre. I asked him who is going to support PF who needs two people for personal care he said use the staff that is working with BW.
 - BW can stay in her room while the staff working with her comes to #37 to help out.
 - The independent and Haringey is not paying 1 – 1 for her so staff will leave her and come to 37 to work
 - SM and RC are independent and doesn't need 24 hour care
10. From what LC is saying here I need to leave BW at the mercy of ST who have attacked her on numerous occasions and bitten her twice. BW is so afraid of ST she can't stay in the home. Haringey is paying 24 hours 1-1 for her. This I will need to report to Haringey, CQC and BW's parents.
11. If LC is claiming that SM RC AW ST JI BW are all independent and don't need 24 care I will need to ask Haringey to send a reviewing officer to review their package.
12. On 30 October 2015 staff came on shift at 8am and as soon as the front door to 30 opened there was a strong smell of gas. CR also came in behind the staff and it was discovered that service user used the cooker but failed to turn it off properly. Two service users in the home smokes and this incident could have been catastrophic. LC said these service users are independent and don't need staff support. Refer to incident report.
13. LC claims to be an operations manager with over 10 years of senior management experience, he was employed by Unified care to improve standards due to concerns raised by Haringey. However, I fail to see how Mr LC is going to improve standards by firstly cutting down cares hours, placing service users at risk and jeopardizing their health safety and welfare. Bullying, intimidating and threatening the manager to promote unsafe practice.
14. I understand that LC was a support worker in 2005 and would like to know what background checks were done by Mr Islam. I find him to be a big bully, very intimidating and unprofessional. I have grave concerns for the service users and will be taking my concerns to Haringey, CQC and the service user's families if this is not dealt with appropriately.
15. The reason I refuse to have Mr Islam hear my complaint is because I felt when I made the complaint he trivialized my complaint and did not take it seriously. He offered to discuss it in a manager's meeting with Prem and LC. This is against the company

policy. I sent an email to Mr Islam on 4th November that I did not wish to have any contact with LC except by email. Refer to email. On 11 Nov. LC came into the office at #37 where I was working on my own. I had to leave the office hurriedly staff on duty can verify this.

16. I have worked with operations manager before and have not had any issues. I find LC to be incompetent, unprofessional, a big bully, instructed me to provide unsafe practice, poor care to service users which is abuse, threatening and arrogant. This could jeopardize the safety and welfare of service users, bring the company into disrepute and jeopardise my registration with CQC.”

70. As part of Mr Joseph’s investigations, he further interviewed Mr Felix Ighalo and took statements from Mr Charamba, these being the only individuals identified by the claimant as having material relevance to her complaint. Mr Joseph furnished his outcome on 10 December 2015, to be addressed herein.

71. On 12 November 2015, the claimant sought the attendance of Mr Islam at the staff’s weekly meeting, stating:

“Please ensure that you attend our staff meeting at 1pm today. Please note that Mr Charamba does not attend the meeting as I do not wish to have any contact with him until my complaint and concerns are addressed.

I will also be discussing some important issues which will involve Mr Charamba.”

72. The claimant further wrote to Mr Islam in respect of her meeting with Mr Joseph, and her grievance, stating:

“Please note that Robert Joseph did not wish to discuss some urgent concerns I have regarding Mr Charamba forcing me to put the service users at risk.

I am therefore requesting an urgent meeting to discuss these issues. Please find a copy of the concerns attached, I did give a copy to Madeline the note taker to pass on to you and to incorporate the concerns in my meeting notes.”

73. Mr Islam responded, advising the claimant that because of other commitments he was unable to attend the staff meeting, further advising:

“However, we will discuss your concerns in a formal setting. No hours are to be cut – continue as usual are my management instructions to all of you. Nothing is to change.”

74. Mr Islam copied Mr Charamba thereinto.

75. Shortly thereafter, Mr Islam again wrote the claimant regarding her concerns raised as to Mr Joseph, stating:

“Thank you for bringing these to my attention. My instructions to all of you are as follows.

Everything – hours and support wise are to stay the same. Nothing is to change.

Claudette, you are to follow Laurence’s instructions in relation to compliance and report promptly and on time. Actions MUST be followed. We must be compliant and work towards this.

Laurence – you are not to interact with any service users for now.

Laurence – you are to work with Betty (senior) to assist with the scope of work to be done.”

76. On 12 November 2015, at 1.26pm, the claimant responded to Mr Islam stating:

“Thanks for your response. I will continue as usual and ensure no resources are wasted.

I am currently completing the actions from CQC which will be sent off on Friday.

Will discuss the CQC report with staff to ensure all work together so we can invite CQC back in six months where we must have full compliance.

We are disappointed that you could not attend the staff meeting but will send the minutes to you.”

77. With regards Mr Islam’s instructions of 12 November, regarding the staffing hours, the tribunal here notes the claimant’s evidence to the tribunal that, despite Mr Islam having stated that no further action was to be taken in respect of the staffing hours, Mr Islam nevertheless hounded her verbally in respect of reducing the hours, the claimant stating that, “Mr Islam repeatedly phoned her informing her that they had to reduce staffing hours to pay for Mr Charamba’s employment”.
78. The tribunal does not accept this evidence. The claimant has shown that she has no reluctance in raising complaints in writing and there is no evidence in either of the bundles of documents before the tribunal that she ever raised the issue that Mr Islam had further raised the issue of reducing hours orally, which had this been the case, she would have recorded to written form.
79. On 14 December the claimant wrote to Haringey Council Commissioning Team Quality Assurance, raising issue in respect of Mr Charamba’s proposal to reduce staffing hours, complaining that the matter had been swept under the carpet and that in respect of the incident with ST, above referred, on her making a complaint to Mr Islam, these concerns had been further brushed under the carpet for which she was waiting a meeting. The claimant then addressed issues arising from 24 November, for which the tribunal here records the following:

“On 24 November while on annual leave I emailed Mr Charamba to inform him of the transition plans I arranged for AS who would be moving into the service on 1st December. I informed Mr Charamba that the transition plan was working well and this should continue. AS would visit Mannoek Road on Saturdays between 11am and 3pm. Mr Charamba ignored the transition plan and arranged for AS to have an overnight stay on 25th November. On 26th November I called the home to check on things and was told that AS spent the night and refused to leave the service. He had no medication and was very agitated calling the police, emergency service and social services. He threatened to smash up the place if anyone tried to make him leave. At this time the service user in the home WF was getting very agitated because he wanted to go out for his activity. There was only one staff on duty. Despite being on leave I went to the home (sic) take control of the situation spoke to AS, social services and take AS out in the community so that WF could go out as well. This incident placed the service user at risk from AS who at the time should not have been in the home.

On 12th December Mr Charamba informed FI staff that staff at our homes are not allowed to take breaks when they are doing 13-14 hour shifts.

The only reason I was not forced to implement the reduction in staffing hours is because I threatened to report the company to Haringey, CQC and the service user's parents. Mr Charamba has made no effort to get to know the needs of the service users or to introduce himself to the staff team. I find Mr Charamba to be a big bully, unprofessional, instructed staff and me to provide poor care, unsafe practice to our service users which is abuse. I believe Mr Charamba's sole intention is to make financial gains and not in the best interest of our service users.

I have documents and emails to back up my concerns.

I am requesting an urgent meeting to address these concerns."

80. On 15 December 2015, Mr Kessie, acknowledged the claimant's email advising that he would investigate her concerns and get back to her.
81. Mr Kessie subsequently held a meeting with Mr Islam and Mr Charamba, furnishing his findings to the claimant by correspondence of 29 December addressing the concerns raised by the claimant. Mr Kessie further raised issue that the respondent had become aware, on doing a spot check, that there was an informal agreement between the claimant and some staff members working hours without a break, and then for those staff to leave up to 1.5 hours early, Mr Kessie advising that, the respondent had not sanctioned and would not sanction such an agreement, and that they equally would not sanction staff working 13 to 14 hours without a break, Mr Kessie concluding, advising that he hoped that he had addressed her concerns asking for her to contact him should she have further concerns (R1 page 180B).
82. It is the respondent's case here, that, neither Mr Charamba nor Mr Islam were furnished with a copy of the claimant's correspondence as sent to Haringey, but had the contents of the concerns being raised read out to them in their meeting with Mr Kessie.
83. The tribunal has received no evidence of Mr Kessie's findings being furnished to Mr Islam or Mr Charamba.
84. The tribunal pauses here, to note that following the claimant being presented with Mr Joseph's outcome letter, the claimant informed the respondent that she intended to present an appeal by correspondence of 13 December 2015, for which the respondent then made efforts for the claimant to confirm whether she intended to appeal and for her to furnish grounds of appeal, furnishing the claimant with an appeal template. This situation appears to have endured until 16 December, whereon Mr Islam was advised to further chase grounds of appeal and was further advised to issue a disciplinary invite letter to the claimant; this in respect of Ms McNamee's findings.
85. On 18 December 2015, Mr Charamba presented a complaint against the claimant, a copy of which is at R1 page 190-195. Mr Charamba raised concern that, between 15 and 21 October 2015, having conducted quality assurance audits of the three properties in London, he found that all services had non-

conformities in key regulatory areas, stating: *"I found disturbing especially after adverse CQC inspections in July 2015. I would have expected CR as registered manager to have addressed the non-conformities by the time of the audit but found that this was not the case,"* further advancing that he submitted the report and suggested improvements which the claimant did not take well, stating that: *"CR became defensive and highlighted that I was not factual in pointing out that there were cobwebs at 30 Coleraine Road"* and that having tasked her to carry out tasks, these had not then been done. Mr Charamba further raised complaint that the claimant had been untruthful in her reporting to the director with regards to the CQC action plan having been completed, which had not been the case, further raising issue of the claimant becoming defensive and aggressive on his proposing the change to staffing hours, stating: *"Given our experience we found CR's resistance to be irrational and her threat to report to the local authority quite unprofessional"*.

86. Mr Charamba further raised concern about the claimant's business acumen and that the claimant had refused his instructions to complete tasks and provide him with information, and that she consistently refused to acknowledge or respond to his emails. He also raised issue that reports written by the claimant were below standard for a person in the claimant's position as a service manager.
87. Mr Charamba further raised issue as to the claimant not wanting to be alone with him alleging bullying, and that she had refused supervision with him stating that this was unbecoming of a manager, given that this was the opportunity for them to iron out any differences, offer support and to try and establish a rapport, Mr Charamba here stating:

"Despite my attempt to normalise communication I have concluded that our relationship is beyond repair as it appears CR views me as a rival as opposed to a line manager and has openly displayed that she despises me.

I have found CR difficult to work with as despite being courteous and polite to her when assigning her tasks she has often responded by saying that she had other priorities. She has not met my deadlines to submit updates to the CQC action plan and evidence index required to ensure compliance with regulatory requirements set for 30 November 2015."

88. Mr Charamba then addressed the claimant making false allegations of bullying and harassment against him, and that he found it difficult delegating duties and communicating with her as she had barred him from 37 Coleraine Road twice, on 24 November and 5 December, saying that she would call the police as he had bullied her. Mr Charamba stating:

"I found this to be a well calculated and contorted plan as a way of preventing me from scrutinising her work".

89. Mr Charamba then identified that the claimant was undermining his position within the organisation, that she had questioned his advice to staff on medication procedures, and encouraged staff to make spurious allegations against him, and that the claimant had created an *"unhealthy informal group in the organisation by recruiting staff who had previously worked with her in her previous jobs. There is clear collusion and scheming by the majority of these staff and there is a division*

in the team as the staff who were created prior to CR's appointment are loyal to UCL and her clique is only loyal to her," Mr Charamba concluding:

"In conclusion, it is my view that CR is a risk to the business given her bad management practice, aggressive manner, undermining my leadership, non-compliance with CQC requirement and internal audit standards, her recruitment practice and creation of an unhealthy staff clique in the organisation. In my experience failure to address these issues may result in the business receiving embargos from purchasing authorities given the risk that are in existence."

90. On 21 December 2015, the claimant was invited to attend a disciplinary hearing for 23 December, the matters of concerns raised, being:

" ...

- It is alleged that you have breached the Company's recruitment process by providing positions to your acquaintances without following a recruitment processes in line with Company procedure and failed to obtain adequate references for these individuals in line with Company policy and CQC regulations.
- It is alleged that you have been insubordinate in that you have refused to follow reasonable management requests from your line manager Mr Lawrence Charamba during your annual leave by having members of staff feedback to you and undermining his managerial instructions with staff without following the appropriate management lines of communication.
- It is alleged that on 24 November and 5 December 2015, you barred Mr Lawrence Charamba from 37 Coleraine Road without managerial instructions to do so. If substantiated the Company could potentially view this as an act of gross insubordination.
- It is alleged that over the period 30th October to 15th December 2015 you have persistently have (sic) failed to follow reasonable management request from you your line manger Lawrence Charamba specifically failing to complete weekly Operational Review Meeting reports.
- It is alleged that you have failed to address on several conformities in key regulatory areas. Furthermore, it is alleged you had agreed to complete the actions within a month however had failed to rectify the (sic) all the actions required.
- Alleged that you have created an unhealthy staff clique."

91. The claimant was thereon furnished copies of; Ms McNamee's report, copy of Haringey's Commissioning Team's report provided to the company in November 2015, Mr Charamba's statement of 18 December 2015, copy correspondence from Mr Islam to Mr Charamba and the claimant of 12 November 2015, and copy emails from Mr Charamba to the claimant dated 30 November 2015 to 17 December 2015.

92. The hearing was to be chaired by an impartial HR Face 2 Face consultant, from Peninsula Business Services, Mr Thompson-O'Connor, who would chair the hearing and conduct any further investigations. The claimant was thereon advised that were she unable to provide a satisfactory explanation for the matters of concern, her employment was in jeopardy; the claimant being directed to the respondent's disciplinary rules and procedures, that the respondent would take into account her length of service and sanctions that could range from formal warning up to and including termination for a first breach of the conduct rules. The correspondence concluded, stating:

“The consultant will not be able to give you a decision at the close of the meeting. However, they will provide recommendations as soon as they have completed any investigation and deliberations. And upon receipt of their report we will write to you with an outcome”

93. The claimant was further advised of her right to be accompanied and that were she to fail to attend without giving advance notification or good reason, her non-attendance could be treated as a separate issue of misconduct.
94. The disciplinary hearing duly took place on 23 December 2015.
95. It was the findings of Mr Thompson-O'Connor, that, regarding the recruitment process, on the respondent accepting that the Haringey report contained factual inaccuracies, there was then insufficient evidence to support the allegations.
96. In respect of the second allegation, that of insubordination and refusing to follow reasonable management requests, Mr Thompson-O'Connor found that it was not clear what the specific management instructions were that were alleged to have been undermined, and that in the absence of any evidence to support the same, that allegation failed.
97. Of the third allegation, that of barring Mr Charamba from 37 Coleraine Road, on enquiries being made, the dates in the allegation were found to be incorrect, which date should have been 30 October 2015 and 5 November 2015, which dates had not then been put to the claimant as part of the disciplinary process. Mr Thompson-O'Connor concluded that, as the alternative dates had not formed part of the allegation of misconduct, and given the claimant's denial of the substance of the allegations, the allegation was then ill founded and not upheld.
98. Of the allegation that the claimant had persistently failed to follow reasonable management requests, Mr Thompson-O'Connor determined that whilst there was evidence that the claimant had failed to complete at least two, possibly three, of the required six reports, taking account of her week's holiday and the reduction in the number of reports to file, there was then no evidence to support the allegation of a *persistent* failure to complete them. The allegation was not upheld
99. Of the allegation that the claimant failed to address several conformities in key regulatory areas, Mr Thompson-O'Connor determined that the Haringey report, having been presented as a document relevant to the disciplinary process, having been presented to the respondent in November 2015, and on the claimant having stated that on her being questioned by Mr Charamba over apparently missing documentation from the personnel file, she had emailed a response confirming that most of the documentation was in fact on file, Mr Thompson-O'Connor concluded that in the absence of a list of specific alleged failures, there was no evidence to support the allegation.
100. Of the final allegation, that of creating an unhealthy staff clique, Mr Thompson-O'Connor concluded that there was no evidence in respect of this allegation.

101. Mr Thompson-O'Connor accordingly recommended that there was insufficient evidence to support any of the allegations of misconduct and insufficient evidence to uphold the respondent's case. Further stating:

“Notwithstanding that, it is noted that Mrs Russell has short service and a dismissal would not be unlawful or legally unfair.”

102. On Mr Thompson-O'Connor furnished his report dated 20 January 2016. The report was furnished to Mr Islam and Mr Charamba for their observation, by which the tribunal notes that Mr Charamba in challenging the findings, presented a detailed account challenging the findings, which is at R2 page 154 on 26 January 2016. The report was not furnished to the claimant, and neither was she told of the outcome of the investigation.

103. On 26 December 2015, following the disciplinary meeting, the claimant presented a further complaint against Mr Charamba, stating:

“I attended a disciplinary meeting on Wednesday 23 December and it's quite concerning to see the lies Mr Charamba wrote in a statement. He said on 24 November and 5 December I barred him from #37 along with other false allegations.

It's clear from the statement Mr Charamba wrote he does not want me at Unified Care.

I believe this is an orchestrated plan to get me out of my job...”

104. Mr Islam responded thereto, stating:

“I am sorry that you feel that the disciplinary hearing was in an attempt to remove you from the business. Please rest assured that this is not the case. Some concerns have been raised to my attention which I felt it was appropriate to have dealt with under a disciplinary hearing. Given that it involves a member of senior management, I thought it would be best to have an external consultant come in and undertake this for impartiality purposes. No decisions have been made in this regard and we will receive a report from Mr Thompson-O'Connor with his thoughts and recommendations on the concerns raised.

Again, please rest assured that this is not in an attempt to remove you from the business but to look into the concerns that were raised.

I hope this email helps, if you have any questions then please let me know.”

105. During the month of January 2016, Mr Charamba continued to have concerns regarding the claimant's performance seeking advice thereon from the respondent's HR consultants Peninsula, records of which are at R1 page 154-167, the last of which the tribunal notes, being 26 January 2016, Mr Charamba raising issue that, *“another example of Claudette refusing a reasonable management instruction. She has refused to have a scheduled supervision with me. Please advise on next step.”*

106. On 8 February 2016, Mr Islam invited the claimant to an investigatory meeting to be held with Mr Radhakisson, the letter of invite stating:

“Hi Claudette

Prem will be conducting an investigatory meeting with you tomorrow morning. You will be required to attend.

Many thanks”

107. It was Mr Islam’s evidence to the tribunal that a number of matters had come to light which needed to be dealt with, for which he then arranged the investigatory meeting, the issues being premised on concerns being raised by Mr Charamba. Mr Charamba raised some 41 issues, a list of which is at R2 page 476-479 covering the period of 21 October 2015 through to 5 February 2016.
108. On meeting with the claimant Mr Radhakisson, addressed the 41 issues being raised by Mr Charamba, to include the following:
- allegations against the claimant of failing to follow specific reasonable management instructions.
 - Monitoring inspection of 37 Coleraine Road on 14 October 2015, actions not fully completed within set time frames, audit status database not being updated.
 - Objectives sent on 21 October 2015 not completed, despite being offered support. ORM reporting was sporadic being expected every Wednesday and changed to Friday upon the claimant’s request, never sent on time. Weekly hours usage were sent only on 21 October 2015 and never sent again. Medication audits closed. Team meetings schedule had not been sent for which management still don’t know the structure of meetings.
 - Failure to complete outstanding CQC action plan despite being offered guidance.
 - ORM report sent 3 November 2015 was incomplete lacking required detail, which looked like a half-hearted approach to tick the boxes, for which Mr Charamba responded by email on 5/11/15 requesting for more details and asked for an update report on 7/11/15 which was never sent.
109. Following the investigatory meeting with Mr Radhakisson, notes of which are at R1 page 209-216, the claimant was requested to furnish supporting evidence in respect of her defence to the allegations. The claimant duly provided her response, a copy of which is at R1 page 218A-C.
110. The tribunal pauses here, as on 9 February 2016, the claimant was furnished with an ORM action plan tracker, setting out tasks for completion, asking that the claimant input her comments and send it together with the previous week’s ORM report for Wednesday 10 February, the correspondence stating: *“As you will see it’s a joint action plan so feel free to let me know in advance if you require support?”*
111. The action plan tracker is at R1, page 203-206, by which, of the 32 tasks recorded, 21 of them were identified as the claimant’s responsibility.
112. On 10 February 2016, the claimant responded thereto attaching the ORM report for the week ending 7 February, stating:

“Please note that the amount of work you have set me to complete by 12 February is very unfair and unjustified. I have to complete support plan behaviour guidelines, risk assessments along with other paperwork for Nahum who will be moving in on 16 February, along with day-to-day managing of three homes, taking into account dealing with staff, service users, social workers, meetings, supervisions, care co-ordinator, service users’ families, rotas, service user finances, service users’ refuse, medication and other issues that arise daily. All this with the support of one only (sic) senior staff I have who has to work on the floor most days.”

113. It is the respondent’s case and that of Mr Charamba, that the tasks set for the claimant were not all for the claimant to complete, and that Mr Charamba had offered assistance. The claimant does not dispute that assistance was offered, but maintains that when she requested assistance she was informed to merely complete those identified as against her name.
114. The tribunal here notes that, it is the claimant’s claim that she does not complain about the action plan and the tasks being asked of her, merely of the volume of tasks being asked of her to undertake and the time within which she was to complete them.
115. The tribunal further pauses here, to note that circa 17 February 2016, on Mr Charamba sending the claimant monthly quality audit report for 12 Mannock Road, asking for the claimant to respond on any factual inaccuracies or errors in the report, the claimant responded seeking clarification of the areas of concerns, stating that, she had not been furnished with the updated report as promised by Mr Charamba, for which Mr Charamba replied:

“I am sorry I can’t accept that you don’t know the actions for the audit.

I sent you all completed audit when they were done which you acknowledge and I have sent you an audit database of all shortcomings twice and you’ve still chosen not to respond.

I will re-send all audits and the responses you sent me.

This isn’t acceptable as it puts the company at risk if you are not prioritising on quality audits.”

116. On 18 February 2016, Mr Abdallah, raised concerns about a service user’s bank account showing a withdrawal of some £5,000 by his mother. On the claimant being informed thereof, she informed Mr Islam, advising that this could amount to financial abuse, stating that it needed to be reported to safeguarding at Haringey council, for which the claimant states Mr Islam told her to leave it with him. The claimant’s evidence is that Mr Islam subsequently phoned her to inform her that the service user’s mother, who had taken the money from his account, would be putting it back.
117. It is the claimant’s further evidence that, on 22 February 2016, she called the service user’s mother to confirm that which she had been told by Mr Islam, the claimant here stating that, the service user’s mother informed her that she had thought her son had too much money in his account and that his benefits would stop, for which the claimant states: *“I informed her that his benefits would only*

stop if he had £16,000 in his account. MF assured me that this was a misunderstanding on her part and the money would be put back into the account.” The claimant states that she subsequently contacted the safeguarding team for which there was a visit of the home on 26 February 2016, for which the claimant states that on Mr Charamba noticing this individual's presence as he left the house, enquired of the claimant as to his attendance which, on the claimant informing Mr Charamba that she had made a disclosure regarding the service user's finance, she states Mr Charamba became furious and told her that she had no right to speak to Haringey and that she was bringing the company into disrepute.

118. The respondent does not accept this account of events.

119. On 23 February 2016, on Mr Islam making enquiries of the service user's mother, the service user's mother prepared a statement dated 23 February 2016, which provided:

“Claudette Russell told me to take the money out *B's* account on 16/1/16 and she told me to take the money out in case *B's* money would be stopped if there was too much money in the bank. I have taken out £5,600 ... I had a phone call from Claudette last night, 22/2/16 and she said just to put the money back into *B's* account. She told me before *B's* money would stop. He was allowed £16,000. I wasn't told how much to take out of his account. I am shocked now that I have to put the money back into *B's* account because I am the Power of Attorney of his money.”

120. Mr Charamba was subsequently advised of the withdrawal and for which a further statement was provided by the service user's mother, which stated:

“I had a phone call from Claudette Russell at 10:26 asking me why Laurence was coming to see her so I told her Laurence came to see me at the house and I wrote a statement about taking so much money from *B's* account.

She said I shouldn't have wrote nothing down as Laurence is trying to put her out of her job.

I had another call at 11:14 from Claudette but I never answered as this is stressing me out. She said she doesn't want to report it to Haringey Council but she will get a meeting with Kusi to get it all sorted out.”

121. Mr Charamba on 26 February 2016, invited the claimant to attend an investigation meeting which the claimant refused, Mr Charamba writing to the claimant in respect thereof, stating:

“On 26 February 2016 I phoned you and asked you to attend an investigation meeting in relation to approximately £6,000 that was withdrawn from a support individual's (WF) bank account. You refused to attend stating that since the meeting would be minuted, this meant it was a formal meeting and any invitation to such a meeting should be in writing.

This is not true. The meeting is a fact finding investigatory meeting a written invite is not necessary unless there is a contractual policy specifically stating that an invite will be provided. We do not have such a contractual policy. As such, can you please attend a meeting on Monday 29 February 2016...

Failure to attend may result in disciplinary proceedings being instigated due to your failure to follow a reasonable management instruction.”

122. The meeting in the event took place on 1 March 2016, notes of which are at R1 page 222A-C.
123. As a result of the claimant’s answers to the questions at the investigation meeting, Mr Charamba determined not to take further action on the allegation of the claimant instructing the service user’s mother to withdraw money from his account, however, as regards the service user’s mother’s account as to the claimant instructing her not to have given a statement to Mr Charamba, Mr Charamba determined that the claimant’s actions were inappropriate and should be the subject of disciplinary action.
124. The tribunal here notes that, the issue as to the claimant instructing the service user’s mother not to have provided a statement to Mr Charamba had not been put to her during the investigation meeting as a specific question.
125. On 11 March 2016, Mr Islam received correspondence from a recruitment agency concerning a reference that the claimant provided for a former employee, Mr Islam being informed:

“I spoke with Claudette around 4pm yesterday regarding Rashidah’s end date. At first, our compliance officer, Alice, was in touch with Claudette and I believe Claudette told Alice that Rashidah was “dangerous”. Alice was a little concerned and had a word with me, where I decided to speak with Claudette myself.

I can confirm that Claudette mentioned that Rashidah was dangerous and that she had abused service users and had stolen money from her colleagues. I was told that she was mentally unstable and that I should request a mental report from her. Claudette mentioned that Rashidah had spread lies about Claudette and she had threatened to abuse Claudette outside of work...”

126. This raised concerns for Mr Islam, as the claimant had provided a reference for this individual at which time the claimant had given a positive reference, a copy of which is at R1 page 96A.
127. Mr Islam thereon asked Mr Charamba to investigate the issue. A meeting was held with the claimant on 17 March 2016, notes of which are at R1 page 223. The claimant was un-co-operative therewith, challenging whether she had provided a reference and that she was entitled to give the reference she had.
128. On 22 March 2016, the claimant raised a grievance, raising issue as to the treatment “*which I have been subjected to following the protected disclosures made during the course of my employment*”. The claimant thereon set out the issues arising from the Haringey safeguarding team’s investigation through to the claimant being the subject of disciplinary proceedings and the statement of Mr Charamba dated 18 December 2015, the claimant thereafter stating:

“I do not believe the disciplinary was pursued in good faith and was commenced as a direct result of me raising concerns about the health and safety of the service users. If

the disciplinary was conducted in good faith I would have been notified of the outcome by now.”

129. The claimant then set out a chronology of events from 8 February 2016, as to her being invited to attend the investigatory meeting with Mr Radhakisson, the claimant stating that, during that meeting it became clear that most of the issues raised related to matters which were or should have been raised at the disciplinary hearing on 23 December 2015, for which she noted the disciplinary investigation was still ongoing, further stating, *“I do not believe that this disciplinary is being pursued in good faith and is being conducted as a result of me raising concerns about the health and safety of the service users.”*

130. The claimant then addressed the issue of Mr Charamba’s ORM action plan and being given inadequate time to complete those tasks, stating that, that was a further example of adverse treatment being meted out by Mr Charamba as a direct result of her raising concerns about health and safety, the claimant concluding stating:

“As a result of the protected disclosure in October, November and December 2015... I have suffered detriment which is continuing:

I have been subjected to unfair and unreasonable disciplinarys
False statements have been made by Mr Charamba concerning my performance
I have been subjected to harassment and bullying by Mr Charamba
There has been a concerted attempt to force me to leave the company
I would like this grievance to be investigated in accordance with the company’s grievance procedures and the whistle blowing procedure.”

131. As a result of the issues arising in relation to the reference and preceding matters, it was determined that the matters be taken to a disciplinary hearing for which the claimant was notified on 6 April 2016, and invited to a disciplinary meeting for 8 April 2016. The claimant was furnished with a list of the allegations against her, being advised that should she be unable to provide a satisfactory explanation for the matters of concern, her employment may be terminated in accordance with the respondent’s disciplinary procedure, and that management discretion could result in a formal warning up to and including termination for a first breach of conduct.

132. The claimant was further advised that, should she not attend without good reason, non-attendance could then be taken as a separate issue of misconduct. The claimant was thereon advised that her grievance of 22 March 2016, would be addressed at the same time as the disciplinary hearing. The claimant was informed that the hearing would be conducted by Mr Radhakisson.

133. The claimant responded thereto, advising that she could not attend the meeting for 8 April and that the notice was too short for her to arrange representation, further stating that she believed it unacceptable that there should be a disciplinary meeting and a grievance meeting held together on the same day. The claimant requested that the meetings be rescheduled on different days giving her enough time to arrange for representation to attend, and further requested that someone other than Mr Radhakisson or Mr Joseph, conduct the meetings.

134. The hearings were subsequently re-arranged for 15 April 2016 to be chaired by Mrs Marisa Higgins, consultant, which was subsequently rescheduled to the 18 April 2016.

135. The allegations against the claimant were as follows:

“1. Alleged failure to follow a reasonable management instruction, namely that you failed to obey a reasonable management instruction issued to you verbally/in writing by Lawrence Charamba (Operations Manager) to carry out:

- I. You allegedly disregarded instructions provided to you on 26 February 2016 (verbally and in writing) relating to SM (Service User) moving from 30 Coleraine Road to 12 Mannock Road on 7 March 2016. This was despite an agreement with our commissioning authorities (Haringey). You allegedly on communicated your failure to follow the instructions on the 7th of March 2016 when you were prompted whether he had moved. You also allegedly ignored instructions to complete a transition plan to prepare for the move.
- II. Allegedly failing to update the Audit Status database;
- III. Allegedly failing to provide the ORM reports on time – despite being provided with guidance and offered support.
- IV. Alleged failure to complete outstanding CQC action plan (despite being offered guidance).
- V. Allegedly failing to meet your own deadline to send ST’s assessment.
- VI. Allegedly failing to complete the necessary actions for the Autism Accreditation actions set by Shamir in May 2014 and as a result the company lost over £2000 in accreditation fees as you failed to communicate that you were struggling with the task.
- VII. Allegedly failing to complete AS support plans despite guidance being provided;
- VIII. Allegedly failing to provide Lawrence with your managers’ checklist and 5 keyworkers reports by 1 February 2016. You also allegedly failed to communicate this with Lawrence.
- IX. Allegedly failing to complete ST’s key worker report despite being provided with guidance to assist you in completing this document.
- X. It is alleged that you have been insubordinate in that you have refused to follow reasonable management requests from your line manager Mr Lawrence Charamba during your annual leave between 24th to 29th November 2015 by having members of staff feedback to you and undermining his managerial instructions with staff without following the appropriate management lines of communication.
- XI. It is alleged that on 21st January 2016 you were insubordinate towards your line manager Mr Lawrence Charamba by refusing to attend a Supervision meeting.

2. Alleged breakdown in the relationship between yourself and Lawrence Charamba (Operations Manager) in that you refuse to be supervised by Lawrence.

3. Allegedly bringing the Company into disrepute; namely:

- a. On 26 February 2016, you allegedly contacted the mother of a service user and told her that she should have not provided a statement in relation to an investigation as Lawrence was trying to put you out of your job.
- b. On 10 March, you allegedly provided a deliberately detrimental statement/reference when in relation to an ex-employee, Rashidah Sudesh to Winlight Recruitment.”

136. The claimant was furnished with copies of; The Haringey quality assurance report dated September 2015; Witness statement of the service user's mother dated 23 February 2016 and 26 February 2016; Minutes of the meeting between Mr Islam and the service user's mother dated 18 March 2016; Emails from Unified Care Ltd to the claimant over the period 21 October 2015 to 22 January 2016; Emails from the claimant to Unified Care over the period 9 November 2015 to 22 January 2016; Emails between Mr Charamba and Mr Islam between 17 November 2016 and 10 December 2015; Minutes of the investigation meeting of 9 February 2016, 1 March 2016 and 17 March 2016; Emails of 26 February 2016 and 7 March 2016 from Mr Charamba to the claimant; and email dated 11 March 2016 from the recruitment agency to Mr Islam.
137. On 18 April 2016, the claimant commenced a period of sick leave until 16 May, following which she was then on annual leave.
138. On 12 May 2016, the respondent wrote to the claimant enquiring whether she would be returning to work on Monday 16 May, on her sick note, signing her off sick with "stress at work", due to expire. The claimant did not respond. It was the claimant's evidence to the tribunal that she had not received the text message sent. The tribunal on a balance of evidence is satisfied that the text was sent by Mr Islam. This however, is not to say that the claimant received it or otherwise read the text
139. Not hearing from the claimant, on 17 May 2016, Mr Islam again wrote to the claimant, and after accounting for his having sent correspondence to the claimant of 12 May, advised:

"Since this medical certificate expired on Sunday 15 May 2016, we do not appear to have received further notification from you on your continued absence, or a follow-on certificate. This is required by your terms and conditions of employment. I enclose a copy of the appropriate section of our handbook for your information.

I feel it only fair to advise you that if you fail to provide a follow-on certificate or contact us to discuss the reasons for your absence, or if the reasons for your absence are unacceptable, we may proceed with disciplinary action against you.

I am very keen to avoid this and as such, I hope I will hear from you by Friday 20 May 2016 to prevent Unified Care Ltd having to take this course of action.

If you have any queries regarding the contents of this letter then it is important that you contact me to discuss them."

140. The claimant has not responded thereto, but instead, wrote to her solicitors, Hampton, stating:

"Hi Chris

Please note the email I received from Shamir. I have evidence of my annual leave he confirmed so I will not be acknowledging his email."

141. The tribunal pauses here, to record its concern at the claimant, having received the correspondence of Mr Islam, did not simply phone Mr Islam or otherwise

send him an email stating that she was then on leave as had been approved, instead writing to her solicitors stating that she would not respond to Mr Islam.

142. Mr Islam in evidence to the tribunal, conceded that he had approved leave for the claimant, advising the tribunal that he had forgotten at the material time when he sent the correspondence.
143. The claimant challenges this evidence on the premise that, Mr Islam's contacting her regarding her return to work was out of keeping with his usual practice, in that he would contact her in respect of work, and that he should have contacted her in respect of arranging a return to work meeting as opposed to threatening her with disciplinary action.
144. The tribunal on the evidence presented to it, accepts the evidence of Mr Islam that he had made a genuine mistake and had not recalled that the claimant had pre-arranged annual leave commencing on 16 May 2016.
145. The claimant presented her complaint to the tribunal on 21 May 2016.
146. On 31 May 2016, the claimant submitted a letter of resignation, the letter stating:

“I am writing to inform you that I am resigning from my position as service manager/responsible person for Unified Care Ltd with immediate effect.

The reason for my resignation is due to the treatment which I have received during the course of my employment since October 2015 which amounts to a fundamental breach of my contract of employment...”

147. The claimant then set out the issues as above referred, from; the Haringey Social Services safeguarding team's visit of 1, 2 and 10 September, stating that she had not been provided with a formal outcome of the meeting of 7 October; that she had made protected disclosures, and of Mr Charamba putting service users at risk, and of her receiving unfair treatment; that she had undergone disciplinary action on 23 December 2015, but had not been notified of an outcome and which disciplinary had not been pursued in good faith, being commenced as a direct result of her having raised concerns about health and safety of service users; that she had been called to a disciplinary investigatory meeting on 8 February 2016, of which the issues there raised related to matters which were or should have been raised at the disciplinary hearing of 23 December 2015, which disciplinary investigation was still ongoing and which had not been pursued in good faith, again having been commenced as a result of her raising concerns about the health and safety of service users; and that she received unfair treatment from Mr Charamba as evidenced by the ORM action plan, again being the result of her having raised concerns about the health and safety of service users.
148. The claimant then addressed her grievance of 22 March 2016, having identified that she had been subject to detriment as a result of having made protected disclosures, which grievance remained outstanding. The claimant further complained of unfair treatment in having been invited to a further disciplinary hearing for 18 April 2016, raising allegations relating to matters that had been considered at the 23 December 2015 disciplinary, and that the further disciplinary

proceedings were being pursued in bad faith and conducted as a result of her having raised concerns about health and safety of service users, concluding that, having been signed off sick from 18 April to 15 May 2016, and then from 16 May to 30 May 2016 off on annual leave, which having been agreed with Mr Islam, Mr Islam then wrote his correspondence of 17 May threatening her with disciplinary action for her absence, the claimant stating that, this was a further example of unfair treatment *“as a result of me raising concerns about the health and safety of service users”*.

149. The claimant concluded her letter of resignation stating that she had suffered detriment having made protected disclosures and that:

“It is clear that the treatment/conduct as set out above amounts to a fundamental breach of my contract of employment. Taken together the conduct clearly has the effect of damaging the implied term of mutual trust and confidence and I feel that I have no alternative but to resign.”

150. On 1 June 2016, Mr Islam responded to the claimant’s resignation expressing surprise, asking whether that was what she really wished to do. Mr Islam thereon advised that he would set up a grievance hearing without delay to address the issues of concerns raised by her as the underlying reason for her decision, advising that the meeting would be chaired by an independent person, Mr Michael Roberts, accompanied by Ms Groza to take minutes, asking that should she wish to exercise that right, to confirm that the arrangements were acceptable.

151. Mr Islam further advised:

“If you wish to reconsider your decision, please contact me within the next five days, and by 6 June at the latest.

If you decide not to retract your resignation, then we will respect your wishes and process the termination of the employment and forward any monies which may be outstanding.

If you do decide to retract your resignation and remain an employee of Unified Care Ltd I feel it is only fair to forewarn you that you will continue to be subject to our formal procedures. Therefore, it would still be our intention to address the outstanding disciplinary/capability matters which existed prior to your resignation. At this point we will consider whether these matters should be put on hold until your grievances have been heard and an outcome issued, or whether in fact the two processes can be run alongside each other.

I look forward to hearing from you.”

152. The claimant did not respond.

153. Mr Islam subsequently arranged a meeting for 9 June 2016, to hear the claimant’s concerns. The claimant did not attend and has not responded thereto. It was the claimant’s evidence to the tribunal that, *“I did not wish to speak to Mr Islam or attend any meeting. He never listened to my concerns”*.

154. On the 4 August 2016, the claimant amended her claim to the tribunal to include a claim for unfair dismissal.
155. On the 24 September 2016, the claimant wrote to Mr Islam, restating that she resigned from her position with immediate effect, setting out that she had been the victim of bullying, harassment and victimisation by Mr Charamba, that service user were being placed at risk to health and safety, and that she had been forced out of a job she had carried out successfully for 12 years, the letter concluding “*The detriments I have suffered at Unified Care have left me with no other option but to resign from my position with immediate effect*”.

Submissions

156. The parties presented oral submissions. The submissions have been duly considered.

The Law

157. The law relevant to the protection of public interest disclosures can be found at s.43A to s43H, s47B, s48 and s.103A of the Employment Rights Act 1996.
158. In order to fall within the statutory definition of a protected disclosure for the purposes of s.43A, there must be a disclosure of information. There is a distinction between “information” and an allegation for the purposes of the Act, see Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38. EAT per Mrs Justice Slade,

“20. That the Employment Rights Act recognises a distinction between ‘information’ and an ‘allegation’ is illustrated by the reference to both of these terms in section 43F. Although that section does not apply directly in the context of this case nonetheless it is included in the section of the Act with which we are concerned. It is instructive that those two terms are treated differently and can therefore be regarded as having been intended to have different meanings.....”

.....

24. Further, the ordinary meaning of giving ‘information’ is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating ‘information’ would be ‘The wards have not been cleaned for the past two weeks. Yesterday sharps were left lying around’. Contrasted with that, would be a statement that ‘You are not complying with health and safety requirements’ in our view this would be an allegation not information.”

25. In the employment context, an employee may be dissatisfied, ... with the way he is being treated. He or his solicitor may complain to the employer that if they are not going to be treated better they will resign and claim constructive dismissal. Assume that the employer, having received that outline of the employee’s position from him or from his solicitor, then dismisses the employee. In our judgment, that dismissal does not follow from any disclosure of information. It follows a statement of the employee’s position. In our judgment that situation would not fall within the scope of the Employment Rights Act section 43”

.....

Disclosure

27.....The natural meaning of the word disclosure is to reveal something to someone who does not know it already. However section 43L(3) provides that 'disclosure' for the purpose of section 43 has effect so that 'bringing information to a person's attention' albeit that he is already aware of it is a disclosure of that information. There would be no need for the extended definition of 'disclosure' if it were intended by the legislator that 'disclosure' should mean no more than 'communication'"

159. On there being a disclosure, it is necessary for the protection to attach, that the employee holds the reasonable belief in that which is disclosed, which is a subjective requirement, i.e. what the employee in question believed rather than what anyone else might or might not believe in the same circumstance. This is not, however, a test solely of subjectivity, which had this been the case the requirement would be for the employee to show that they genuinely believed that the disclosure tended to show one of the events set out at s43B(1)(a)-(f). Instead, s.43B(1) requires a "reasonable" belief which introduces an objective element into the relevant test, being some substantial basis for the holding of that belief. It is to be noted that, having a reasonable belief does not mean that it must necessarily be true and accurate, it is only necessary that the disclosure "tends to show" that the relevant failure has occurred, is occurring or is likely to occur. Accordingly, if the employee is wrong but reasonably mistaken in the belief held, this can still amount to a protected disclosure, see Darnton v University of Surrey [2003] ICR 615, as approved by the Court of Appeal in Babula v Waltham Forest College [2007] ICR 1026. The determination of the factual accuracy of the employee's allegation being of relevance in helping to determine whether the belief was reasonably held, showing or tending to show, the relevant failure sought to be disclosed.
160. Once a qualifying disclosure has been found for the purposes of section 43B to H, the tribunal, having regard to section 47B, will be concerned to determine whether the acts of which the claimant maintains to be a detriment were done on the grounds that she had made a protected disclosure. In this respect, the tribunal is aided by authority of Fecitt and Others and Public Concern at Work v NHS Manchester [2012] IRLR 64 CA, per Lord Justice Elias, at paragraph 45, that:
- "In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle blower. If Parliament had intended the test for the standard of proof in section 47B to be the same as for unfair dismissal, it could have used precisely the same language but it did not do so."
- And per Lord Justice Davis, at paragraph 65
- "... the test to be applied under section 47B was not simply an objective 'but for' test: there was required an enquiry into the reasons why the Employer acted as it did ..."
161. With regards to detriment, the tribunal is assisted in its task, by authority from Shamoon v the Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL, per Lord Hope, that:

“As May LJ put it in *Desouza v Automobile Association* [1986] IRLR 103, 107, the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.

162. The law relevant to constructive dismissal was set out by Lord Denning, MR in the case Western Excavating (ECC) Limited v Sharp 1978 ICR page 221, as follows:

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed.”

163. On the contention that there was a fundamental breach of the contract of employment, by breach of the implied term of mutual trust and confidence, this breach has been considered in the case of Post Office v Roberts [1980] IRLR, page 347 at paragraph 45, per Talbot J, referring to Kilner Brown J. in *Robinson v Compton Parkinson Ltd* [1978] IRLR 61, that:

45.“It seems to us although there is no direct authority to which we have been referred, that the law is perfectly plain and needs to be restated so that there shall be no opportunity for confusion in the future. In a contract of employment, and in conditions of employment, there has to be mutual trust and confidence between master and servant. Although most of the reported cases deal with the master seeking remedy against a servant or former servant for acting in breach of confidence or in breach of trust, that action can only be upon the basis that trust and confidence is mutual. Consequently, where a man says to his employer “I claim that you have broken your contract because you have clearly shown you have no confidence in me, and you have behaved in a way which is contrary to that mutual trust which ought to exist between master and servant” he is entitled in those circumstances; it seems to us, to say that there is conduct which amounted to a repudiation of the contract.”

46. In stating that principle, in our view Kilner Brown J does not set out any requirement that there should be deliberation, or intent, or bad faith.

47. Finally, there are very important words in a part of the judgment in Palmanor Ltd v Cedron [1978] IRLR 303, the words appearing in the judgment of Slynn J at page 305. It is a short quotation and reads as follows:

“It seems to us that in a case of this kind the tribunal is required to ask itself the question of whether the conduct was so unreasonable that it really went beyond the limits of the contract. We observe that in the course of the argument on behalf of the employee, it was submitted that the treatment that he was accorded was a repudiation of the contract.”

48.....We would agree that there may be conduct so intolerable that it amounts to a repudiation of contract. There are threads then running through the authorities whether it is the implied obligation of mutual trust and confidence, whether it is that intolerable conduct may terminate a contract, or whether it is that the conduct is so unreasonable that it goes beyond the limits of the contract. But in each case, in our view, you have to look at the conduct of the party whose behaviour is challenged and

determine whether it is such that its effect, judged reasonably and sensibly, is to disable the other party from properly carrying out his or her obligations. If it is so found that that is the result, then it may be that a Tribunal could find a repudiation of contract.

Conclusions

Disclosures

164. Disclosure 1 - 30 October 2015

- 164.1 The disclosure alleged here to have been made, is in respect of the meeting between Mr Charamba and the claimant, at which Mr Radhakisson was present on the 30 October 2015. It is evident from the ad hoc supervision notes that there was a proposal made, for which there was to be a further discussion and review, in particular, reference being had to the claimant, in respect of which she says evinces her having made the disclosure, the notes recording, "CR expressed her concerns regarding staffing shortage and Haringey. LC explained that the hours will be reviewed whilst consideration will be given to safe working levels".
- 164.2 The tribunal also notes the claimant's contention challenging the meeting of the 30 October taking place that, she had not had a meeting with Mr Charamba, but that on Mr Charamba meeting with Mr Radhakisson in her room, following their meeting, Mr Charamba then told her that they were looking at reducing the staffing hours, to which she raised concerns that such reductions would place service users at risk, and which was thereafter followed up by her correspondence to Mr Charamba on 2 November, which correspondence was reflective of the issues being raised by her, and those likely to have been raised with Mr Charamba on 30 October.
- 164.3 It is evident that the respondent was in discussions with the claimant in terms of reviewing the hours of staffing, however, from the evidence before the tribunal, the tribunal can find no evidence of the claimant disclosing "information" as qualified by Mrs Justice Slade, in Cavendish Munro Professional Risks Management Ltd v Geduld [2010], as to health or safety of any individual having been, is being or is likely to be endangered, apart from a general statement that safety would be compromised. The tribunal does not find the claimant here to have made a disclosure of information.

165. Disclosure 2

- 165.1 The disclosure alleged here to have been made, is that of the claimant's correspondence to Mr Charamba of 2 November, raising objection as to her signing the document evincing the ad hoc supervision, and as more particularly set out at paragraph 58 above

165.2 It is here clear that the claimant is engaged in discussion as to what she considered to be reasonable hours, and whilst it is premised on the basis of service needs, it is not the case that the claimant is here disclosing "Cavendish Munro" information that, health or safety of any individual has been, is being or is likely to be endangered.

165.3 The tribunal does not find the claimant to have made a disclosure of information in this instance.

166. Disclosure 3

166.1 The disclosure alleged here to have been made, is in respect of the correspondence of the claimant of 3 November 2015, to Mr Islam; the claimant there making reference to Mr Charamba's proposal, compromising the *"health, safety and wellbeing of the service users and place them at considerable risk of poor care and for this reason I informed Mr Charamba that I would not be signing this document"*. The tenor of the claimant's document is not that of raising concern as to the health or safety of an individual being or likely to be endangered, but that Mr Charamba was not qualified to make the decision, identifying that the decision was to be discussed with the Director and the Manager (the claimant) and for which the service users would have to be taken into account. The claimant thereon makes reference to Mr Charamba becoming angry and bullying and intimidating her for which she requested that Mr Charamba not have any contact with her otherwise than by email.

166.2 The thrust of the correspondence is not that for the safety of the service users, albeit that reference is therein made by the correspondence. It is also pertinent here to note that, in respect of the concerns being raised by the claimant, the claimant at that time had been informed by Mr Charamba and by Mr Radhakisson that, the matter was for discussion and that there was to be a review of the hours and for them to find a way on how to minimise cost, specifically seeking the claimant's input.

166.3 In these circumstances, the tribunal does not find that when on 3 November the claimant wrote to Mr Islam, she was there "Cavendish Munro" disclosing information that the health or safety of any individual had been, was being or was likely to be endangered. The tribunal does not find the claimant to have made a disclosure of information in this instance

167. Disclosure 4

167.1 By the list of concerns raised by the claimant on the 11 November 2015; the claimant making reference to the incident of 3 November, when Mr Charamba went to no.30 and into ST's room without staff on duty, and got ST so anxious she tried to attack SN, and of her advising Mr Charamba that he should get to know ST and should not approach ST without a member of staff present, and on the claimant further raising issue that Mr Charamba ignores her, the tribunal finds that this is an

instance where the claimant is raising issue as to the health and safety of an individual being or likely to be endangered.

- 167.2 The tribunal further finds by this correspondence that, on the claimant making reference to instructions given to her by Mr Charamba on 3 November at paragraph 9 and 10 of that correspondence, identifying the need for support for the particular service users, and having identified specifically that on 30 October 2015 staff having entered the premises to no.30 was confronted with a strong smell of gas, which after inspection discovered that a service user had used a cooker, but failed to turn it off properly, and that two service users in the home smokes for which a catastrophic incident could have ensued, the claimant here raising that Mr Charamba had felt that the service users were independent and did not need staff support, was again an instance of the claimant raising issue as to the health and safety of service users being, or likely to be, endangered by the instructions of Mr Charamba. The tribunal is satisfied that by this correspondence the claimant had made protected disclosures.

168. Disclosure 5

- 168.1 The disclosure alleged here to have been made, is in respect of the correspondence of the claimant of 12 November 2015, to Mr Islam following her meeting with Mr Joseph on the 11 November, as more particularly set out at paragraphs 71 – 72 above.
- 168.2 The tribunal addresses this issue briefly, in that, on the claimant furnishing Mr Islam with a copy of the concerns presented to Mr Joseph, which the tribunal finds to have been a disclosure, as set out at paragraphs 166.1 and 166.2 above, the tribunal equally finds the claimant to have made a disclosure thereby to Mr Islam.

169. Disclosure 6

- 169.1 The disclosure alleged here to have been made, is in respect of the claimant's correspondence of 14 November 2015, to the Care Quality Commission and Haringey Council in respect of Mr Charamba's proposal to reduce staffing hours, and that the matter had been swept under the carpet and that in respect of the incident with the service user ST, on her making a complaint to Mr Islam, these concerns had been further brushed under the carpet for which she was waiting a meeting.
- 169.2 As above referred at paragraph 166.1, the incident concerning service user ST, and the danger posed is an instance where the claimant is raising issue as to the health and safety of an individual being or likely to be endangered, and is sufficient to amount to a "Cavendish Munro" disclosure of information. The tribunal is satisfied that by this correspondence the claimant had made a protected disclosure.

Acts and/or omissions going to Constructive Dismissal

170. *The misleading and inaccurate statements made by Mr Islam following the quality assurance visit by Haringey Social Services in September 2015.*

170.1 The tribunal on the evidence it has heard, and from a perusal of the correspondence from Haringey Council on 7 October, find that there is evidence to support Mr Islam's understanding that, Haringey Council had cause for concern in respect of the claimant and the further identified staffs' employment, for which they had intimated, and the tribunal stresses highly the term "intimated", that they would withdraw their patronage and remove their clients from the respondent's care, for which the tribunal finds the response of Mr Islam at the material time illuminating, where he responds to Haringey Council seeking confirmation as to the advice given, which had this not been the case, the tribunal does not believe Mr Islam would have responded in the manner in which he did, and the detail in which he sought confirmation.

170.2 The tribunal believes that Haringey Council had made a very strong statement, at the material time, as to the claimant's employment, and it is on those facts and in light of the council stating, which they re-stated in their correspondence of 7 October, albeit somewhat there muted, that, "If we are not satisfied that you have taken appropriate action following your investigation we will have no option but to take whatever action we deem necessary to safeguard our clients placed in your care, including removing them from your service" is evidence of the tenor of the discussions had, whereby the removal of the service users was canvassed.

170.3 The tribunal is satisfied that when Mr Islam informed the claimant as to his discussions with Haringey Council and their instructions, he had been genuine in his account, which account had not unreasonably been given.

171. *The disciplinary proceedings which were unfairly and unreasonably pursued against the claimant in October 2015.*

171.1 The tribunal has much sympathy with the claimant on receiving the letter of Mr Islam on 7 October, in reading that letter as being an invite to a disciplinary hearing and the instigation of disciplinary proceedings. Despite this, on a careful reading of that correspondence, it is there clearly set out that the action being taken by the respondent was predicated on instruction from Haringey Council and not disciplinary action, that:

"The company has no alternative but to respect the wishes of Haringey Borough as it is part of the safeguarding obligations/contractual arrangements that they can insist on removal of any of our employees when they have issues of concern.

...

I feel that it is only fair to point out to you that if no alternative position can be found for you then the outcome of this meeting could be the termination of your employment for some other substantial reason namely, third party pressure."

172. Were the tribunal wrong in its reading of this correspondence, and by the correspondence of 7 October 2015, the respondent was then pursuing disciplinary proceedings, the tribunal has reservations in coming to the conclusion alleged by the claimant, in that, the claimant's evidence to the tribunal being that, when presented with the letter by Mr Islam he had apologised to her for it being a disciplinary letter stating that it was an investigatory meeting. This raises the question as to whether or not at that juncture, the claimant understood it to be a disciplinary matter or otherwise, despite the contents of the letter as Mr Islam believed it to be, referring to the disciplinary process.
173. In addition to this, had the claimant still believed that it was part of the disciplinary process, it is clear that on attending the arranged meeting, it was clarified that it was not part of the disciplinary process but an investigation into concerns raised by Haringey Council.
174. In these circumstances, the tribunal does not find disciplinary proceedings to have been pursued against the claimant in October 2015.

The misleading and inaccurate statements made by Mr Islam in his letter dated 7 October 2015.

175. The tribunal finds that there is evidence to support the claimant's contention, in that the claimant recording by her grievance of 7 October 2015, receipt of the letter of invite for 8 October meeting at 4.30pm on 7 October, and the time stamp of the email to Mr Islam from Haringey Council at 12.49, suggest that Mr Islam was then aware of the position then being taken by Haringey Council, and for which the statement in the letter of invite was incorrect. This however, is not conclusive of the issue, as it does not address the issue as to exactly when the correspondence to the claimant was penned, or when Mr Islam became aware of the content of the email from the Council, namely, was it seen by Mr Islam immediately, or sometime later? The tribunal is also here conscious of Mr Islam at the material time, taking advice from Peninsula's HR service, and had by 6 October, been furnished with draft letters to be sent to the identified individuals to include the claimant; the claimant then receiving the letters on 7 October for her to present to the respective individuals, and that on the claimant raising issue as to her not being furnished therewith, she was thereafter furnished a copy. There is no suggestion that the copy received by the claimant was any different from the copy furnished to the other individuals, which would suggest no further input in the content of the correspondence by Mr Islam. This further suggests that this was then an administrative exercise of merely furnishing the claimant with the correspondence.
176. On these facts, where the burden of proof for breach lies with the claimant, she has failed to establish the requisite knowledge of Mr Islam at the material time of penning the correspondence to her, or otherwise on his sending the correspondence to her (the tribunal is not aware whether it was by email or by hard copy, and if so, the circumstances in which the claimant receive that hard copy) so as to substantiate her contention that, Mr Islam had the requisite knowledge of the Council's position but nevertheless sought to mislead.

177. If Mr Islam had not been aware of the Council's position at the time of penning the correspondence, was Mr Islam then obliged to inform the claimant of the changed position? The claimant advances that he was. The tribunal has much sympathy for the claimant's contention here, in that, the invite to the meeting would not then have fully reflected the circumstance, and of which the claimant was then not aware of, going into the meeting, and for which the tribunal understands the claimant's sense of grievance then felt by the claimant. This, however, is very different from the respondent having breached any express, or the implied term of mutual trust and confidence. What is incumbent here, is that the claimant had been informed of the circumstances on which the respondent was acting, and their conducting a reasonable investigation therein; the claimant having the opportunity to partake therein and a decision made on a consideration of all the then known facts. The tribunal finds this to have been the case on the investigation being undertaken by Ms McNamee, an independent body, who was seized of all the relevant information, to include the correspondence from the Council (there was no attempt by Mr Islam to conceal the correspondence), such that the tribunal is satisfied that there has been no breach in this respect, or otherwise unreasonable conduct on the part of Mr Islam.

The failure of Mr Islam to arrange a meeting following a request by the claimant in her email dated 12 November 2015, to discuss her urgent concerns regarding the reduction of staff hours.

178. On the claimant having sought a meeting with Mr Islam by her email of 12 November, and on Mr Islam's response thereto, it is clear that Mr Islam was then addressing the issues that the claimant was raising and had ostensibly sought a meeting. In respect of this, the tribunal further notes the claimant's further correspondence of 12 November, following the staff meeting, whereby the claimant does not then request a further meeting be held.
179. In these circumstances, the tribunal does not find there to have been a failure of Mr Islam to arrange a meeting, the circumstance having progressed, and following which the claimant does not thereafter pursue her request for a meeting, the matter ostensibly addressed. The tribunal is satisfied that there has been no breach of any term thereby. There equally has been no unreasonable conduct on the part of Mr Islam in this respect.

The unreasonable request by Mr Charamba for the claimant to reduce staffing hours which would have the effect of placing service users at risk.

180. The tribunal accepts Mr Charamba's evidence that, he was putting forward his views as a proposal and asking for the claimant's input, which was to be the subject of further review which, in the event, the reduction in hours were then not pursued, following Mr Islam's directions of 12 November.
181. On these facts, the tribunal is able to find circumstance from which it can find an unreasonable request of Mr Charamba being made, so as to amount to a breach

of any express term, or otherwise unreasonable conduct, so as to support the claimant's contention.

The unreasonable and unfair conduct of Mr Charamba raised by the claimant during the grievance meeting on 11 November 2015.

182. The tribunal has received no direct evidence hereon, save for the statements of the claimant to the grievance meeting on 11 November 2015, which issues were then investigated by Mr Joseph and from which the tribunal observes the following findings of Mr Joseph, being an independent body, that:

“In regards to the points regarding bullying and harassment, I have discussed this matter with Laurence and requested for his version of the events. Although Felix confirmed he could hear a loud voice from the office area, there is no evidence to substantiate that a comment was made as you suggested. On assessing his response, Laurence's version of events differs from yours considerably. Therefore, from what Laurence has confirmed it would appear that you have an issue with Laurence managing you. However, in both cases I cannot find any evidence that would make me believe on [sic] individuals' version of events against the other. Therefore, I cannot substantiate this element of your concern.

In regard to the issues you raise following the meeting, this all appears to resolve [sic] around Laurence's interaction with the service users or alternatively Laurence's proposals to reduce staffing hours. As you are aware, Mr Islam confirmed to both yourself and Laurence on 12 November 2015, that Laurence is not to have interaction with service users and that there would be no reduction in hours. Taking into account the concerns that you did raise I cannot see what other recommendation would be appropriate in this regard. It appears that the proposals were put forward, however, these proposals have been rejected by Mr Islam. Therefore I cannot uphold this element of your grievance.”

183. In addressing the issues of Mr Charamba's conduct, on the finding of Mr Joseph that Mr Charamba's conduct was not questionable, the tribunal is not in a position without further evidence to make a determination as to whether Mr Charamba's conduct had been unreasonable or unfair.
184. The tribunal here further notes that, on raising the issues at the grievance meeting before Mr Joseph, the claimant had thereon stated that she did not want those concerns to be dealt with, and that whilst Mr Joseph nevertheless gave consideration thereto, it is illustrative of the claimant's mindset at the time, and how she had perceived the gravity of the events.
185. It appears therefore to the tribunal that, had the claimant, as she now states, been concerned by Mr Charamba's conduct, this would have been a matter that she would have wanted to be addressed, however, this was not the case, which would suggest that at the material time she had not felt as aggrieved with the matter as she now seeks to advance. The tribunal does not find this to be credible. The tribunal does not find the conduct of Mr Charamba as alleged, to have been unreasonable or unfair.

The unreasonable and unfair disciplinary proceedings brought against the claimant in December 2015 and the failure to notify the claimant of the outcome of the disciplinary hearing held on 23 December 2015

186. The tribunal accepts the evidence of Mr Islam that, on the claimant presenting her grievances of 8 October 2015, and further grievance on 3 November 2015, the disciplinary process had been stayed, pending a determination of those grievances, and that on the grievances being determined by Mr Joseph on the 10 December 2015, Mr Islam then determined to act upon Ms McNamee's findings, and for which disciplinary proceedings were then to be pursued. The tribunal finds the actions of Mr Islam, in these circumstances; where the claimant had raised a grievance, reasonable.
187. In addition, the tribunal finds that on Mr Charamba presenting his concerns as particularised in his statement of 18 December 2015, there was information then before the respondent, for which it was reasonable for the claimant to be called to account, and for which disciplinary proceedings were equally then reasonable.
188. The tribunal does not find the respondent to have been unreasonable in bringing disciplinary proceedings.
189. The tribunal further finds that, on the claimant being invited to the disciplinary hearing, by the letter of invite, the claimant had thereon been advised fully of the allegations then against her and had been furnished with all relevant material upon which the respondent relied, such that the claimant was then fully appraised of the case against her and in a position to mount her defence, and indeed, the claimant has not challenged the process.
190. Turning to the outcome of the disciplinary hearing on 23 December, the tribunal finds that the respondent has failed to notify the claimant thereof, which the claimant was entitled to receive; Mr Thomson O'Connor clearing the claimant of all disciplinary charges, his findings being finalised on or around 26 January 2016. Accordingly, as set out at paragraph 18 of the ACAS Code of Practice, on Discipline and Grievance procedures (2015) as to deciding on appropriate action, that *"after the meeting decide whether or not disciplinary or any other action is justified and inform the employee accordingly in writing"*, the tribunal finds that this was a breach of the ACAS Code, a breach of natural justice and unreasonable conduct of the respondent.

The failure to provide the claimant with a formal outcome to the meeting on 8 October 2015

191. On the claimant being furnished with Ms McNamee's report on 21 December 2015, being one of the documents furnished in respect of disciplinary action being taken against her, the tribunal finds that there has not been a failure to furnish the claimant with a formal outcome of the meeting as alleged. Albeit, the tribunal does acknowledge that there was an inordinate delay. However, giving regard to the claimant having raised her grievances, for which the process was then held in abeyance, the tribunal in these circumstances, does not find the delay to have been unreasonable.

The false allegations contained in the statement of Mr Charamba dated 18 December 2015

192. The claimant sets out her case at paragraph 47 to 66 of her witness statement.
193. From the evidence before the tribunal, the tribunal is not in a position to state whether the statement of Mr Charamba was false. There is clearly a difference of opinions and the claimant has presented explanations for the matters complained of by Mr Charamba, but that does not detract from the fact that the incidents had occurred giving rise to Mr Charamba's concerns. The fact that the claimant was able to give an explanation for the events, does not then make a statement raising the events false. The tribunal accordingly, does not find the claimant's claim substantiated.

The unreasonable and unfair disciplinary proceedings brought against the claimant in February 2016

194. The claimant's complaint here raised is more particularly set out at paragraph 71 of the claimant's written statement, for which the tribunal has much sympathy as it would there appear that, the respondent is re-hashing matters which had already been addressed, or which could have been addressed at the earlier disciplinary meetings. Despite this, the tribunal is conscious of the further issues of concerns raised, which are matters that occurred subsequent to the previous disciplinary meeting and of which the respondent had addressed, and as such, these were matters that the respondent was entitled to address with the claimant. The fact that they have been grouped with the earlier matters is unfortunate, but that does not detract from the fact that the respondent at that time, did have concerns for which the investigation of Mr Radhakisson was then reasonable.
195. On the claimant having the matters broached with her, the tribunal is further conscious that the claimant was thereafter given an opportunity to further account for the issues raised, for which she furnished her further explanations and from which no further action was then taken. The tribunal does not find the conduct of the respondent in holding the investigatory meeting with the claimant to have been unreasonable or otherwise unfair at this time.

The unreasonable request of Mr Charamba for the claimant to complete an action plan containing 21 tasks within three days

196. The tasks requested of the claimant to complete, has to be considered in light of the CQC and Haringey council's compliance requirements, which the claimant accepts were functions within her role, such that the tribunal does not thereon find that the request of Mr Charamba in identifying time limits, where time was of the essence, was then unreasonable conduct.
197. The tribunal further observes here that, on setting the tasks, Mr Charamba had offered assistance. Whilst the tribunal acknowledges the claimant's submission that, when she sought assistance Mr Charamba instructed her to complete those tasks identified for her completion, the tribunal without further, cannot say that the claimant was then requested to complete those tasks under sanction as she would allege, within the three days, Mr Charamba's evidence to the tribunal,

which the tribunal accepts, being that this was the timeframe in which he had sought the works to be done, but that these were by way of guidance and that they were not tasked to be specifically undertaken by the claimant, and of which she could have delegated to other staff.

198. In these circumstances, the tribunal does not find Mr Charamba's request to have been unreasonable.

The unreasonable and unfair disciplinary proceedings brought against the claimant in April 2016

199. The allegations here being brought against the claimant, the subject of the disciplinary action complained about, has to be viewed in context at that time, namely, the incidents occurring in respect of the mother of the service user withdrawing money from the service user's account, and the mother's information in respect of the claimant's statement as to her (the mother), providing a written statement to Mr Charamba, in February 2016, and the reported statements of the claimant to the recruitment agency, with regards the job reference for Rashidah, in March 2016, which matters were serious matters potentially bringing the respondent into disrepute, and for which it was appropriate that action be taken, this despite the further allegations against the claimant in respect of her performance and the breakdown in relationship being raised by Mr Charamba, which allegations raised issues ostensibly from January 2016, being new matters which had not then previously been addressed, and were issues warranting an explanation from the claimant.

200. In these circumstances, the tribunal does not find the bringing of disciplinary proceedings at this stage, and on the grounds raised, to be in breach of any term of the employment relationship, or otherwise to have been unreasonable or unfair.

The threat of disciplinary proceedings by Mr Islam in his email dated 17 May 2016

201. The tribunal would accept that the action of Mr Islam in sending the claimant the correspondence of the 17 May 2016, on the expiration of her sick certificate, reminding her that they "*may proceed with disciplinary action*" against her, looked at in isolation, may be considered heavy handed, however, when considered in context, the tribunal does not consider this action to have been unreasonable.
202. The tribunal finds that in the particular circumstances, where Mr Islam had previously furnished a text to the claimant enquiring as to her returning to work on 16 May, on the expiration of her sick certificate, to which there had been no reply, and where the subject correspondence, in making the statement in respect of disciplinary action, premised such action on the claimant's failure to thereafter provide a follow-on certificate or otherwise to get in touch with the respondent to advise of her continued absence, with Mr Islam further identifying that, that was action he wished to avoid, the reference to disciplinary action takes on a different complexion, and one which this tribunal does not find to have been unreasonable. The tribunal further finds that, by the correspondence stating that

the respondent “may proceed” as opposed to “shall proceed” with disciplinary action, was not of such wording to be that of a threat.

Protected disclosure detriments

The claimant has been subjected to unfair and unreasonable disciplinary procedures which were conducted in bad faith.

203. As set out at paragraphs 171-174, 186-189, 194-195 and 199-200 above, the tribunal does not find the claimant to have been subjected to unfair or unreasonable disciplinary procedures.

That the claimant was unfairly and unreasonably threatened with disciplinary action

204. As set out at paragraphs 201 and 202 above, the tribunal has not found the claimant to have been unfairly or otherwise unreasonably threatened or otherwise threatened with disciplinary action.

That false statements have been made by Mr Charamba concerning the claimant's performance

205. As set out at paragraph 193 above, the tribunal does not find Mr Charamba to have made false allegations as alleged by the claimant.

That the claimant was subjected to harassment and bullying from Mr Charamba

206. On the claimant's claim being in respect of the tasks set her by Mr Charamba on the 9 February 2016, as set out at paragraph 18 of the claimant's amended grounds of complaint, as set out at paragraph 196-198 of this judgment, the tribunal does not find the ORM action plan, in circumstances where compliance with the regulatory provisions were required and so acknowledged by the claimant, was unreasonable. The tribunal does not find the actions of Mr Charamba, in setting the tasks to be acts amounting to harassment or otherwise to have bullied the claimant.

That there has been a concerted attempt to force the claimant to leave the company pursuant to paragraph 3-8, 10 and 11, 13-18, 20-22 of the claimant's amended grounds of complaint

207. The tribunal finds that, predicated on the investigation of Haringey Council and the discussions following with Mr Islam, the council had clearly intimated to Mr Islam a requirement for the claimant's employment to be terminated which, although reluctantly, Mr Islam had thereon determined that the termination of the claimant's employment was necessary to placate the council, however, Mr Islam was not prepared to take summary action and had determined to follow fair process; Mr Islam setting out the position clearly to the claimant, as he then understood the situation, engaging an independent body to undertake an investigation and from which action would then be taken, which at the material

time the tribunal is satisfied that Mr Islam was prepared to operate on the findings of that independent investigation.

208. This situation however changed in October 2015, following Mr Charamba's appointment, which on there then being open objection to Mr Charamba's role by the claimant; Mr Charamba's role curtailing the autonomy hitherto enjoyed by the claimant, giving rise to Mr Charamba's authority being challenged in circumstances where Mr Charamba was seeking to address the concerns raised by Haringey Council, there was then such friction existing between the parties that Mr Charamba had thereon determined that the claimant's continued employment was a barrier to improving standards and efficiency.
209. The tribunal finds that by 2 November 2015, matters had escalated to a point where Mr Charamba had determined that the claimant's employment was detrimental to the service, and for which the claimant's employment should be terminated. The tribunal further finds that, by this time, Mr Islam was equally of that view.
210. Despite this, it is evident that while Mr Charamba would have liked to have seen the termination of the claimant's employment sooner rather than later, Mr Islam was only prepared to take action where action was justified. In this respect, the tribunal finds that when disciplinary action was taken against the claimant, these were for justified reasons of conduct of the claimant. In this regard, the tribunal notes that where disciplinary action was proposed for just cause, Mr Islam was at pains to ensure that the claimant was then afforded a fair procedure, enlisting the services of independent bodies to carry out the investigation and disciplinary hearing, which processes the tribunal finds to have been impartial and at arm's length from the respondent.
211. The tribunal further finds that, as from 2 November 2015, a fixed determination to terminate the claimant's employment arose, which determination was premised on the conflict existing between the claimant and Mr Charamba, which situation existed before the claimant had made any protected disclosures, and which situation did not change on the claimant subsequently making qualifying disclosures, such that the tribunal is satisfied that the disclosures had not influenced to any degree the respondent's desire to terminate the claimant's employment.
212. The tribunal finds that whilst there was an initial desire based on the intimations of the Haringey Council, this was then superseded by a desire to terminate the claimant's employment on her failing to co-operate with Mr Charamba, causing further management concern and it is this concern for which the claimant's employment was sought to be terminated and not because the claimant had made any protected disclosure.

Constructive dismissal

Did the acts/omissions above referred amount to a fundamental breach of contract.

213. On the tribunal's findings as above stated at paragraph 190, on the claimant not being provided with the outcome of the disciplinary hearing of 23 December 2015, whilst this is a clear breach of the ACAS Code and Rules of Natural Justice, the tribunal does not find such a failure to be of a fundamental nature going to the root of the contractual relationship.
214. In coming to this conclusion, the tribunal draws a distinction from a case where such failure could amount to a fundamental breach, as would be the case had the claimant been on suspension and following the disciplinary hearing the claimant remained on suspension on the respondent failing to notify her of the outcome of the disciplinary hearing, where the claimant had been exonerated, calling into question the continuing employment relationship. This is not such a case, the employment relationship here fully functioning unhindered.
215. On the claimant advancing that there was a breach of an express term as to disciplinary procedures, the claimant has failed to develop this submission. The tribunal has received no evidence of the express terms that the claimant alleges has been breached, save for the above in respect of the outcome of the disciplinary hearing not being communicated to her. On the tribunal's finding as to the instigation of disciplinary action, and the procedure followed by the respondent to have been reasonable, the tribunal does not find any evidence upon which to support the claimant's contention in this regard.
216. In giving consideration to a breach of the implied term of mutual trust and confidence, the tribunal has considered to what extent the determination of the respondent to terminate the claimant's employment, as stated by the claimant as a "concerted effort", the tribunal has considered to what extent the respondent's holding a desire to terminate the claimant's employment from October 2015 and the actions taken in respect thereof, is evidence of the respondent no longer wishing to be bound by the employment relationship or having done acts likely to destroy the employment relationship.
217. This is not a case of the respondent seeking to terminate the claimant's employment without due cause. The tribunal finds that despite the respondent having the desire to terminate the claimant's employment they were only prepared to do so where there was evidence to support dismissal and on reasonable grounds, following a fair procedure.
218. In these circumstances, the tribunal does not find the mere desire to terminate the claimant's employment sufficient to breach the implied term of mutual trust and confidence, where the respondent was at pains to ensure a fair procedure was carried out by independent persons.

219. The tribunal, for the reasons above stated, finds that the claimant has not suffered detriment because she has made protected disclosures, and the respondent has not committed a fundamental breach of the employment relationship so as to entitle the claimant to treat the employment relationship as at an end when she tendered her resignation on 31 May 2016.

220. The claimant's claims are accordingly dismissed

Employment Judge Henry

Sent to the parties on:

17.5.2018

For the Tribunal:

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