# EMPLOYMENT TRIBUNALS

**Claimant:** **Mrs T Jukic**

**Respondent:** **Holmes Care (Group) Ltd**

**Heard at:** **East London Hearing Centre**

**On:** **17 January, 23 January, 25-26 January, 29 January & 19 April 2018. Reconsideration on 28 June 2018**

**Before:** **Employment Judge Jones**

**Members:** **Ms P Alford**
**Ms L Conwell-Tillotson**

**Representation**

Claimant: In person

Respondent: Mr Humphrey (Counsel)

## RESERVED JUDGMENT
## AND JUDGMENT ON RECONSIDERATION

**The unanimous judgment of the Employment Tribunal is that:-**

**(1) The Claimant made protected disclosures.**

**(2) The Claimant suffered detriment for making public interest disclosures.**

**(3) The Claimant's complaint of automatic constructive unfair dismissal under Section 103A Employment Rights Act and her complaint of wrongful dismissal fail and are dismissed.**

**(4) The Claimant is entitled to a remedy for her successful complaint.**

**(5) The Claimant is to prepare and serve on the Respondent a revised Schedule of Loss within 14 days of receiving this judgment. The Respondent is to serve a response within the following 7 days.**

**(6) The date of a remedy hearing will be set as soon as the parties write to the Tribunal giving their dates to avoid over the next 3 months.**

## REASONS

1 The Claimant brought complaints of detriment following making protected public disclosures, constructive unfair dismissal pursuant to section 103A Employment Rights Act 1996, wrongful dismissal and unlawful deduction of wages/breach of contract.

2 The parties agreed a list of issues at a preliminary hearing conducted by EJ Ferris on 28 November 2016. The list runs into some 30 paragraphs and sub-paragraphs and are referred to in detail in the decision part of these Reasons.

***Evidence***

3 For the Claimant the Tribunal heard from her and from Ms Rivera who was another care worker at Cranham Court. For the Respondent we heard from the following: Doris Yamoah, Deputy Manager; Mary Moran former Unit Manager at Woodlands, now retired; Agnes Njoku, Nurse; Margaret Denga, Registered nurse, Nana Frimpong, Carer and Joanna Rychilk, former Head of HR. All the witnesses presented the Tribunal with signed witness statements. The Tribunal had a bundle of documents provided by the parties. The Claimant also produced a witness statement from the daughter of one of the residents in the Woodlands and another from a carer who worked at the Respondent between 2012-2015, which was before the events in the case occurred. We discussed the relevance of their evidence to the issues that the Tribunal had to determine and in the light of those discussions, the Claimant decided not to call them as witnesses in the Hearing.

4 A few days before the Hearing began the Claimant made written applications for disclosure which she repeated on the second day of the Hearing. She also made an application to amend her claim. The applications were resisted by the Respondent. The Respondent's position was that it had disclosed all the documents that it had on the issues that were before the Tribunal. After due consideration the Tribunal refused the Claimant's applications. Full reasons were given in the Hearing.

5 After considering all the evidence, the Tribunal made the following findings of fact.

***Findings of Fact***

6 The Claimant was employed as a carer at the Cranham Court nursing home which is a residential home of elderly people with dementia. The home had two parts. One part, where the Claimant worked was referred to in the Hearing as 'the Woodlands'. The other part referred to as 'the extension' was actually the main part of the home as that is where there was an office and where matron - Mrs I Lakhani and her deputy, Doris Yamoah were based.

7 The most senior manager of the home was Mrs Lakhani who was matron and the service manager. The Tribunal did not hear from Ms Lakhani in evidence and there was no statement from her. Doris Yamoah was her deputy and the unit manager for the extension. At the beginning of the Claimant's employment, Mary Moran was the unit manager at Woodlands. Ms Moran retired on 30 October 2015.

8 The Claimant's initial period of employment began on 27 October 2014 and ended on 10 December 2015. This was because the Claimant's right to work in the UK expired. Once her immigration situation regularised, the Claimant began her second period of employment with the Respondent on 15 January 2016. The Claimant resigned from her post and her last day of employment with the Respondent was 2 July 2016. The Claimant told us that she had previously worked as a carer in other residential homes before she began her employment with the Respondent.

9 We find that the residents in Woodlands had dementia whereas not all the residents in the extension had dementia as some had other illnesses. They were all elderly and needed help to do most daily functions such as eating, conducting personal care and taking medication. Most also had mobility issues. Those residents who were discussed in the Hearing are referred to in these Reasons by their initials to protect their privacy. This will also enable the parties to identify the residents referred to.

10 As a carer the Claimant was responsible with another, for bathing residents. There was supposed to be two carers performing that function for each resident. However, it was not always possible for two workers to do a bath as the Home was frequently understaffed. She would also be responsible for carrying out personal care and the other functions described above. The Claimant worked 5 days a week from Monday to Friday on a rotational shift basis. She usually worked approx. 60 hours per week. She was paid at the rate of £7.00 per hour.

11 We find that the Respondent had employees but also relied heavily on agency staff to cover the shifts. We find that there were regular staff shortages, especially on a weekend and on the night shift. We heard evidence of occasions when one carer would have been responsible for 13 residents on one floor during the night shift. That carer would have been able to call for help from staff in the extension or on another floor, if necessary but it would mean them having to leave the floor to do so.

12 Carers were meant to write a daily record of their activities in daily progress sheets for each resident. They were to record in writing every single activity that they did with that resident. The nurses were to also keep a record of their activities. Both Ms Yamoah and Ms Moran stated in their evidence that they occasionally looked at the carers' notes. They did not do so on every shift.

13 The Respondent had to keep a register of all falls experienced by residents.

14 The Respondent's accident/incident/falls/injuries policy and procedure states that all accidents, incidents, falls and injuries must be reported, recorded and followed. If a resident has a fall and is discovered by a carer, that person is supposed to inform the person in charge of the shift who would usually be a nurse, about the fall. The carer should not move the resident until the nurse said to do so. The nurse-in-charge would be the person responsible for making the decision whether to call the doctor or emergency services. That person should also examine the resident and record any injuries noted in the falls register. All other incidents and injuries should be recorded in the incident book. Carers should record falls in their daily progress sheets/records and nurses should record falls in their daily record. It does not appear that the nurses complied with this policy in relation to TK or BP's falls.

15 There was an undated notice in the bundle of documents entitled 'notice for person in charge', which stated:

> *that "the person in charge of the shift is responsible to record a fall in the falls register. Do the body map and care plans. The person in charge is also responsible to investigate and take statement from the staff (carers) who were on duty when the fall had taken place. Falls must also be reported to the matron on the next day or ASAP please."*

The notice was signed by Mrs I Lakhani.

*Resident TK*

16 The Claimant and Marissa Rivera both worked as carers at the Respondent and it was likely that they were sometimes scheduled to work the same shift together. They got on well. We find that on a date in November 2014 they arrived at work at 6.30am to start the shift.

17 They found a resident TK on the floor in the lounge and noted that he had fallen over. They called the night carers and the nurse-in-charge of the night shift, Agnes Njoku. There was a dispute of fact between the parties in the Hearing as to whether Ms Njoku was physically abusive to TK when she arrived and whether she was challenged about this by the Claimant and Ms Rivera. The allegation was that she had pushed and pulled him about and ordered the night carers to leave him the way he was. We find that the Claimant and Ms Rivera took TK to his room and Ms Rivera then went downstairs to report the fall to the unit manager. Ms Rivera's evidence in the Hearing was that she told Ms Moran that TK had fallen. She confirmed that this was all she said to Ms Moran. Margaret Denga who was one of the Respondent's nurses, came to TK's room and assisted the Claimant and Ms Rivera in attending to his bruises. Ms Rivera made a body map showing the bruises that she spotted on his body that night.

18 The body map notes that TK had superficial skin tears from the previous day, 12 November. The notation for 13 November 2014 says "skin tear on his left upper arm, left hand and right knee. Caused: fall". The only other entry on the body map states "multiple superficial skin tear(s) right hand" and this second entry is dated 12 December 2014. We find it unlikely that nurse Njoku was physically abusive to TK

that night as it was not noted by Ms Rivera on the body map or the additional notes. In her live evidence at the Hearing she confirmed that she only told Ms Moran about the fall. We therefore find it likely that when she went to speak to Ms Moran to report the fall, she did not inform her that Agnes Njoku had abused or behaved inappropriately to TK. We also find that the Claimant did not report any abuse of TK by Ms Njoku to Ms Moran or to Ms Yamoah.

19 In the register of falls produced to us there is no fall recorded for TK on 13 November but there are three other falls recorded for him on the register. The Respondent accepted that he fell that night. The falls register was therefore not a complete and accurate record.

20 We found it likely that some carers sometimes made drafts of reports before they entered them into the daily progress sheets or elsewhere. Although there was a dispute of fact about this between the parties, the Respondent's witnesses simply stated that they did not know why a carer would need to make a draft or that they had never heard of a draft being done. However, none of the Respondent's witnesses stated that drafts had never been made. It is unlikely that they would be able to say that as the carers were not monitored all the time. Also, most of the entries in the daily progress reports that we saw, had not been amended or altered in any way, there were no crossing out or altered words. It is likely that if an entry is made straight on to the sheets as it is occurring or soon after, the carer may wish to change a word or another detail after it is written. By doing a draft beforehand, they would have the opportunity to get it word perfect before committing it to the daily progress sheets. The Claimant and Ms Rivera stated that drafts were sometimes made because English is not their first language or that of most of the carers, which meant that they wished to make sure that they had expressed themselves correctly before committing it to the daily progress reports.

21 Their evidence was that drafts were kept in a folder in the residents' lounge area. Ms Yamoah's evidence was that since becoming aware of the Claimant's case, she asked someone in reception to check the lounge area to see whether any documents were stored there. That person found a plastic folder which had blank daily progress sheets and rotas in it. We find it likely that some carers kept those blank daily progress sheets there so that they could make drafts and then transfer information to the final progress sheets which would then be put in the formal records.

*Resident BSP*

22 We were told of another resident who we refer to here as BSP. She was an elderly resident with dementia who had a fall on a shift in March 2015. There was no record in her personal falls register or in the general register falls of a fall that night.

23 We find it likely that when Ms Moran left at the end of her shift that afternoon, she informed Marissa that she would have to look after Woodlands as the Respondent had failed to arrange cover for her for the next shift. In her live evidence Ms Moran confirmed that she told Marissa that she was in charge and that she did so because Marissa was a 'senior' carer having worked there for many years. Marissa Rivera was not officially considered a senior carer but in practice, Ms Moran sometimes relied on her as such as she had worked there for 9 years.

24 That evening, Doris Yamoah sent nurse Lynne Gildea from the extension to the Woodlands to make sure everything was alright as she knew that there was no nurse in charge at the Woodlands during that shift. Nurse Gildea was told about BP's fall and went to the extension to get Ms Yamoah. When Ms Yamoah came over to the Woodlands she had a discussion with the Claimant about what the Claimant was going to write in her daily progress report. We find it likely that the Claimant indicated that she was going to write that there had been no nurse in charge during the shift. Ms Yamoah expressed concern that she should put that in her daily progress report as she believed that it could put the Home in trouble.

25 We find it likely that the Claimant and Ms Rivera were asked to alter or temper their reports to leave out the fact that there was no nurse in charge at the Woodlands on that shift at the time that BSP fell. Both the Claimant and Ms Rivera produced statements which they say they made at the time of the fall in March 2015. We find it unlikely that they were written on the day the fall occurred. If they had been, they would have referred to the actual date. They do not. They refer to a 'blank' day in March. It is likely that they were drafts written in the days following the event. This may have been because they had been trying to work out the best way to word it before committing it to their daily progress reports.

26 Ms Yamoah's evidence was that she did not ask the Claimant and Mr Rivera to change the statements about BP's fall. She stated that she told the Claimant that she should not write things as fact when they were only her opinion, especially when she did not know whether they were facts or not. We find it likely that Ms Yamoah did suggest that the Claimant should omit the fact that there was no nurse on duty during that shift even though it was factually correct, as she was worried about the implications for the Respondent's business.

27 There is no explanation as to why there is no record of this fall in the falls register for BSP on that shift. Ms Yamoah told us that in October 2015 she decided that, contrary to the Respondent's written policy, staff should enter falls in the accident book rather than the falls register. This was after Ms Moran retired. It is not clear why that decision was made but that would not have affected the record for BSP's and TK's falls as they occurred before that decision was made. Also, in accordance with the Respondent's falls policy, as she came over from the unit when she was told that BSP had fallen, it would have been Ms Yamoah's responsibility to enter it into the falls record and she failed to do so.

*Resident DJ*

28 We heard about another resident, DJ who was suffering from dementia. It was noted on her papers on her admission to the Respondent that she was a physically violent person. It is likely that this was a manifestation of her dementia. We find that she was violent to the Respondent's employees who had regular contact with her when giving her personal care or medication. This was particularly experienced by the carers. This also occurred in March 2015.

29 The carer's daily progress sheets show that in March 2015, DJ was aggressive and responded to personal care from carers by kicking, swearing and shouting at them and trying to bite them. She also refused to eat and was generally aggressive.

30 The Claimant wrote a letter to matron, Ms Moran and Ms Yamoah, which she stated had been signed by 10 other carers. The Respondent was unable to produce the original letter but we find that it was given to matron in March 2015. The Tribunal had a hand-written copy of the letter in the bundle of documents. When preparing this case, the Claimant photocopied it and sent it to her solicitor so it could be disclosed to the Respondent. On the photocopy she added a handwritten note to it which stated *'the original letter had 10 signatures'*.

31 The letter stated that it had become increasingly difficult to deal with DJ and that nothing had been done to try and solve the problem. It stated that every carer who dealt with her was heavily bruised and full of scratches and that her violent behaviour was daunting. The letter acknowledged that the kind of behaviour she displayed was expected given her health condition but asked that something should be done to help to minimise the violence towards carers as they are just trying to do their jobs and did not wish to retaliate. They asked that the problem should be resolved soon.

32 The Respondent denied receiving this letter or that any complaints by the Claimant and her colleagues had any effect on DJ's care. We find it likely that the letter was given to the managers in March and that it had signatures of other carers on it when it was originally handed in. Ms Moran stated that she had not seen a letter. However, later on in her evidence she stated that there was no letter. We did not accept her or Ms Yamoah's evidence on this matter and find that there was a letter and that Ms Moran expressed disappointment to the Claimant for writing it as she assumed that the Claimant had been involved in writing it. The Claimant was able to recall in the Hearing the conversation they had about the letter. She referred to a time when she was in front of the lift talking to Marissa and she asked Ms Moran if she was angry with her. Ms Moran answered '*yes, it's in your writing'* – which was a reference to the letter. Ms Moran stated to the Claimant that she knew the Claimant had been behind it as it was in her handwriting.

33 Although Mary Moran was the unit manager at Woodlands, we find from Ms Rychlik's evidence that Ms Yamoah was more senior to her in the running of Cranham Court Nursing Home. Ms Moran also confirmed that she did not make financial decisions and it is likely that there were other matters that she had to refer to Ms Yamoah for a final decision.

34 On balance it made sense for the Claimant's letter about DJ to be addressed to both matron and Ms Yamoah as she knew that they would be the people who could initiate changes to DJ's care, even if a doctor needed to make the formal decision. We find that it is likely that DJ was sometimes left alone for periods of time when she was behaving aggressively, in an attempt to get her to calm down. Ms Yamoah and the nurses agreed in their live evidence that they sanctioned carers leaving her alone for periods of time. They stated that this was a strategy that they used with violent or otherwise difficult residents. The Claimant did not say to us how long she was left but she felt that she was left for too long. It was part of her case that DJ was left 'lying in a pool of urine'. The Respondent disputed this. They did not agree that she was left

soiled for hours. However, we find that it is unlikely that the managers would have known what state DJ was in when the carers returned to care for her after she had calmed down and it is likely that she was soiled on some occasions. We find that sometime after the Respondent received the letter from the carers; the GP visited DJ and assessed the situation. The Respondent did not disclose the nurses' notes made about DJ, which may have confirmed that it had been necessary to refer DJ to a GP and the mental health team because of her condition. The GP confirmed in his report dated 14 September 2015 that she had been verbally and physically aggressive towards staff since she moved into the Home, especially at the time of receiving personal care in the mornings. This would be towards the carers rather than towards the managers. He recommended that her antidepressant medication should be increased to attempt to control her consistent and physically aggressive challenging behaviour.

35 The carers did not receive any response to the letter and the Claimant did not see the GP's letter until disclosure in these proceedings.

*Other events in 2015*

36 We find that it is likely that the Claimant met with matron and Ms Yamoah on 16 July and told them about the following matters: a carer putting too much sugar into AS's porridge by pouring it in and not measuring it with a spoon; another carer not washing cutlery properly as she had not sterilised the spoons; some carers not changing gloves and instead, using the same pair of gloves to give a wash to different residents. The Claimant was particularly concerned about this as some residents had a rash that appeared to spread to other users and be contagious. The Claimant believed that all of this occurred because Ms Moran's shifts were regularly not covered as the Respondent failed to get agency staff to cover her shifts since she retired. We find from the minutes of the July meeting that by this time, Ms Moran had retired but was working a few shifts a week and taking some annual leave until the end of her employment in October 2015. In the interim, her shifts were not usually covered and when they were covered, the Claimant's belief was that the agency staff who did so, usually only administered medication and completed the book but did not really manage the Home and the carers. This allowed some carers to cut corners in their work.

37 The Claimant's reports were not welcomed. Matron and Ms Yamoah considered her to be someone who was trying to act above her position within the Home. Ms Yamoah referred to the Claimant in her evidence as a domineering person and that she was trying to assume leadership. As a carer, the Claimant would have been at the most junior level of staff, in terms of hierarchy in the Home. We find that she made herself unpopular with management by pointing out all the things that she believed were being done wrongly in the Home.

38 On the following day, Ms Lakhani produced a note on a staff supervision record sheet of their conversation. She had completed it as minutes of the discussion of the previous day. The Claimant was not given the opportunity to amend the minutes or to note down the matters she raised. She had not been told that the Respondent considered it to be a supervision session but was told that she had to sign the record

and accordingly did so. The note records that the Claimant although a very good carer, is:

> *"a very strong personality and comes across as a boss. This causes problem with her work colleagues and tension among other staff. Thandi is aware of her strong personality…… She takes upon herself to tell staff if she sees any bad practices which are good but it is how she tells them and treats them. She undertakes some of the responsibilities without informing the person in charge who should be informed and respected. However, she acknowledged and accepted that she needs to work as a team and allow the person in charge to deal with some of the issues that she takes upon herself."*

As a future work target, it was noted *that:*

> *"Thandi should improve the working relationship with her colleagues by being aware of Not What she says but how she says it comes across like a boss and gives orders".*

39 We find that the Respondent did not appreciate the Claimant's diligence in pointing out matters that she considered were being done incorrectly, especially to staff more senior in the organisation than her. The note above does not say that the Claimant was incorrect in the matters that she raised with her managers. It also does not state that she was not doing her job. At this point, the Respondent does not refer to any other carers who complained about her actions. It also does not state that the Claimant was rude or insulting for example, in the way that she spoke to managers or colleagues, although it referred to her *'coming across like a boss'*. We find that the Claimant made herself unpopular with management because of her habit of continuing to raise what she saw as bad practice and failings by the Respondent and the nurses-in-charge and this is reflected in this document as although it records that the Claimant is a good carer, knows her responsibilities, has a good standard of care and enjoys her work; it also indicates to her that her habit of pointing out bad practices is unwelcome.

40 Soon after the Claimant's approach to her managers; matron and Ms Yamoah held a meeting with carers and nurses on 21 July 2015. Minutes of that meeting was in the bundle of documents. It is likely that the minutes were prepared by matron. The minutes record that carers were instructed that it was not necessary to get residents up in their rooms or dining rooms for breakfast and that they did not need to rush to get all residents downstairs ready for breakfast, every morning. Staffs were advised that they should always work in pairs and that on no account should members of staff use a hoist single-handedly for moving residents.

41 The issue of correcting colleagues on their practice was raised in the meeting. Staff were encouraged to do so but to be aware of how they did it. In particular, staff were advised not to "back-bite" each other. It is likely that the discussion noted on members of staff referring to others as bossy and thinking that they are a supervisor, is a reference to the Claimant. It is likely that it was the Claimant who is noted in the minutes as having owned up to say that she has a very strong personality. The minutes show that the person who did so, acknowledged that some of her colleagues referred to her as bossy but stated that whatever she says is only the best interests of residents. The managers took the opportunity to advise her to change her approach

and make it more acceptable so that staff would not feel intimidated or feel like they were being bossed.

42 We find that on 21 October 2015, Agnes Njoku asked the Claimant to put JK to bed early. This was in keeping with her intention to have the frailer residents put to bed early to ease the workload of those working on the night shift (see below). The Claimant refused. She considered that it was too early to do so. They had an argument about it and it is likely that Ms Njoku was unhappy about the Claimant's stance on the matter. Ms Njoku was the nurse in charge. However, the Claimant considered it unacceptable to put residents to bed early as it was not good for their wellbeing. We find that the Claimant was scheduled to work on 21 October and 23 October. Once she finished her shift and went home on 21 October, she telephoned the Respondent and spoke to Ms Njoku. Ms Njoku did not deny that she was the nurse in charge of the shift. The Claimant asked her to inform the day nurse that she had an appointment with her GP on the following day and would not be in. We find that Ms Njoku caused the time sheet to be altered to show the Claimant taking two days holiday; on Thursday 22 October and Friday 23 October. This meant that the Respondent did not expect the Claimant to attend work on Friday and she was turned away when she attended work. As a result, we find that the Claimant lost a day's pay.

43 In November 2015 the Claimant wrote another letter to matron and Ms Yamoah. We find it likely that the letter was given to Lee, the maintenance man to pass to Ms Yamoah. The letter was headed*, 'the following needs discussion'.* It was signed by three carers in addition to the Claimant; Ms Rivera, Ms Amoako and Ms Omoyola. It is likely that the Claimant and her colleagues were concerned about the reaction they might get by personally handing the letter to Ms Lakhani and Ms Yamoah and that is why they used Lee to pass it to them.

44 In that letter they stated that the carers were without a standing hoist to mobilise residents and this had been the position for more than three weeks. The letter stated that the carers needed equipment to carry out their job effectively. It pointed out that it had not yet been established whether the two 'oxfords' needed replacement or service. In the letter the Claimant pointed out that residents' wardrobes were in a big mess and needed to be put in order and residents needed to have toiletries. In relation to laundry bags, she informed her managers that yellow, green and red bags were needed to sort out the laundry as the laundry gets mixed. She referred to carers escorting residents to hospital and needing to incur taxi fares to return to work and that it had taken some time for the Respondent to reimburse those taxi fares to the carers. She stated that carers should not have to pay taxi fares. She stated that handover was very poor and that this was not acceptable and asked that carers are informed whenever residents are unwell or have a particular disease especially, if it is infectious as they needed to know what to do to avoid carrying the disease home to their families.

45 We find that the carers intended for the information supplied in the letter to be discussed further with Ms Lakhani and Ms Yamoah but they received no response to this letter. Ms Yamoah denied seeing this letter in November 2015.

46 We find that the reference to the laundry bags highlighted the Claimant's concerns that mixing of the laundry for different residents caused or contributed to the spread of a skin infection from one resident to others. In her email of 17 July 2015 to

Havering Borough Council, matron confirmed that the residents' clothes and beddings would be washed separately in red dissolvable bags because of the concern about an outbreak of scabies. She also confirmed that all staff would follow normal good practice of using the aprons, gloves, hand hygiene and disposable gloves and aprons appropriately. We find from the correspondence between matron, the relevant Health Protection Team, Havering Council and the Care Quality Commission there was at least one resident at Cranham Court with a confirmed infection of scabies. In the middle of 2015 there was a concern that this might spread to other resident in Woodlands. Four residents were treated for suspected scabies in May 2015 and a further patient had a rash in July 2015 that was treated as scabies. This was therefore a serious matter concerning the residents and the public health; whether or not it was clinically diagnosed as scabies or something else.

47 The Tribunal observed that there was little concern expressed by Ms Yamoah in the Hearing when discussing the spread of the rash/scabies among the residents in Woodlands. She concentrated on whether it was definitely scabies or another skin infection. We were also surprised that she was unable to tell us which coloured bags should be used for what type of laundry when sorting the residents' laundry. Although she was not a carer for the Respondent, she was responsible for supervising carers either directly or through the nurses-in-charge and needed to be able to ensure that they were doing their jobs properly. This would be difficult if she does not know which bags are to be used in which types of situation.

48 Given the matters raised in the letter, we find that the Claimant and her colleagues raised legitimate concerns that they had about practices at Woodlands. We find it likely that there were no standing hoists available at Woodlands although there may have been full body hoists available in Woodlands and other hoists in the extension. We did not hear evidence as to how easy/quick it would have been to get hoists from the extension into Woodlands and whether it was sufficient for hoists to be shared across Cranham Court Nursing Home, given the number of residents with mobility problems in both parts of the home.

49 Ms Yamoah and Ms Lakhani stated that the Claimant was causing trouble at work. In her witness statement, Ms Yamoah stated that she said this because of the Claimant's bad attitude. No examples of this are given in that part of her witness statement apart from a vague reference to the Claimant being unfriendly to colleagues and needing to 'loosen up'. We find it unlikely that the allegation of causing trouble at work related to those matters but that it is more likely that it related to the Claimant's persistence in raising issues of bad practice, lack of equipment and short-staffing at the Home. The Claimant's complaints, if found to be true and if not rectified, could cause 'trouble' for the Respondent with the relevant regulator, the local authority and other relevant bodies and could affect the future of the Home. We find it likely that this was what Ms Yamoah referred to when she accused the Claimant of causing trouble at work.

50 We find that during the period of time between when Ms Moran stopped working as the manager of the Woodlands and before she officially retired, the Respondent did not appoint someone to take her place as an interim manager at Woodlands. The Woodlands was run by matron and Ms Yamoah from the extension. We find that in practice, this left the nurses in charge of the day-to-day management of Woodlands.

The Claimant alleged that Agnes Njoku drew up a list of residents that she wanted the carers to put to bed early, sometimes after lunch, in order to make the workload easier for the night shift. Ms Njoku was often the nurse-in-charge of the night shift at Woodlands. The Respondent denied that there was such a list. We find from the documents that at least one resident called JK was put to bed early, around 3:00pm 'as usual' as was stated on a daily progress sheet dated 28 June 2016 and again it was noted that he was put to bed at around 3.15pm 'as a daily routine' on 1 July 2016. In her live evidence, Ms Njoku denied writing such a list or that it existed. In her live evidence, Ms Denga said that if there was a list, it was to balance the work of the night staff. Later in her evidence she stated that she was not sure who wrote the list but that it was a team agreement. Ms Yamoah denied knowing about such a list but then went on to give reasons why it was appropriate to put residents to bed early. In her witness statement she stated that they would normally put some residents to bed early but she sought to backtrack from that in her live evidence. She told us that it did not happen or only occasionally happened. Both the Claimant and Ms Rivera gave evidence that there was a list and that they were told that they had to put particular residents to bed early to assist the night shift with its workload. They were unhappy about this. It is likely that they considered that it affected the residents' health and quality of life.

51 We find that it is likely that there was a list of residents that Ms Njoku and the Respondent's managers considered would be acceptable and appropriate to put to bed in the afternoon as it made the workload lighter for the staff on the night shift. It is unlikely that this was in the interests of the residents and it was not the Respondent's evidence that it was.

52 We find that in December 2015 the Claimant's Visa expired. Her right to work in the UK expired on 6 December. On 30 November, the Claimant applied for indefinite leave to remain in the UK. That would also have given her the right to work. Her application had not been processed by the time her visa expired. On 7 December the Respondent suspended the Claimant because her right to work had expired. When the Claimant met with Ms Lakhani on 15 December, her application had still not been addressed by the UK Border Agency and the Respondent was unable to verify her right to continue to work in the UK. In the notes of that meeting it was confirmed that the Claimant was a good worker. The Claimant's employment terminated on 6 December 2015. Once the Claimant's status was regularised, she applied to be re-employed by the Respondent.

53 We find that Ms Yamoah's evidence was that when she was asked whether to have the Claimant back, she agreed to her being re-employed. She confirmed that she knew the Claimant was a hard worker and that she always did extra shifts. The Respondent's Head of HR, Joanna Rychlik confirmed that recruitment was and continues to be an issue for care homes in the UK and it is likely that the Respondent was short-staffed at the time. When the Claimant returned having been re-employed, Ms Yamoah informed her that they should have a new start and that there should be no more problems. We find that this is a reference to the Claimant's practice of raising matters of what she considered to be bad practice in the Home or things which she considered were not being done correctly. It was not a reference to any incompetence on her behalf as it is unlikely that she would have been re-employed if that had been a live issue. It also does not appear to be about conflicts the Claimant had with colleagues as again, it is unlikely that she would have been re-employed if that had

been a live issue for the Respondent. The main issue that Ms Lakhani and Ms Yamoah appeared to have with the Claimant was her habit of putting her concerns to them in writing and of highlighting practices at the Home that she believed were wrong.

*Events in 2016*

54 The Claimant began working with the Respondent again on 5 January 2016.

55 On 3 February, the Claimant argued with a carer called Nana Frimpong. One of the other carers telephoned Ms Yamoah who was in the extension and she came over to talk to try to resolve matters between them. She spoke to both of them together in a room and then left them to sort out their differences. As she was leaving Woodlands she stated that if there was another argument between them, one of them will have to come to work at the extension. She confirmed, in answer to the Claimant's question, that the Claimant would be the carer who would be moved if there was any further altercation. The Claimant was unhappy about this and felt that this was unfair. Later that day, when they were both giving personal care to resident, it is the Claimant's case that Ms Frimpong splashed some of the water that they had just used to clean the resident and which was therefore likely to be dirty, on her. It is the Claimant's case that the water was mixed with faeces. The Claimant wrote to matron and Ms Yamoah to bring this incident to their attention. We had a copy of the letter in the bundle of documents. The Claimant recited the events of 3 February and referred to Ms Frimpong's conduct towards other carers which she described as 'bullying'. We find that when she got the Claimant's letter on 3 February, Ms Yamoah spoke to Ms Rychlik on the telephone about it. She then went on annual leave on 6 February. As the Claimant had no response from the Respondent she forwarded it to the Respondent's HR on 17 February.

56 Ms Rychlik replied to the Claimant's email on the same day and asked whether she wished for it to be treated as a formal grievance against another staff member. She confirmed to the Claimant that a meeting had been organised so that she could detail all her concerns. The Claimant confirmed that she wished for it to be treated as a grievance.

57 We find that the Respondent appointed Dean Gorringe, Operations and Development manager, to investigate the Claimant's grievance. On 3 March, Mr Gorringe, accompanied by Hayley Aldis of HR, attended the Home and held separate meetings with the Claimant and with Ms Yamoah to start his investigation. Mr Gorringe understood that the Claimant also alleged that Ms Frimpong also pushed her. We had a copy of the investigation meeting notes in the bundle of documents. It is likely that in her meeting, the Claimant raised the letter that she had sent to the Home in November and that she had not had a response. The Claimant later forwarded to Ms Aldis a copy of the letter that had been delivered by Lee to matron and Ms Yamoah in November.

58 Mr Gorringe met with Ms Frimpong as part of his investigation. The notes from that interview were also in the bundle. She denied splashing or pushing the Claimant. However, she also stated that the Claimant might have been accidentally splashed with water. On 14 March, he wrote to the Claimant informing her that he needed more time

to investigate the issues she had raised and that he would respond to her as soon as he could. He met with Margaret Denga on 18 March. It is the Respondent's case that Mr Gorringe wrote to the Claimant on 22 March 2016 to inform her of the outcome of her grievance. The Claimant's case was that she had never seen this letter before it became part of the bundle of documents in this Hearing. The Claimant's case is that she did not have any further correspondence from Mr Gorringe on this matter. Emails produced in the bundle show that Mr Gorringe and Ms Aldis were in discussion about the outcome letter on 22 March and that it was finalised on that day. Since the letter was prepared we find that either it was not sent or was sent and was not received. We find that the Claimant did not receive the Respondent's letter notifying her of the outcome of the grievance. She did not chase the Respondent for an outcome to her grievance.

59 The Claimant's grievance was not upheld. She was advised of her right of appeal. Mr Gorringe recommended that there should be an opportunity for mediation provided to the Claimant and Ms Frimpong so that they could work through any issues between them. He also recommended that the Claimant should be offered appropriate supervision to discuss any issues that she had. The Claimant had no recollection of anyone approaching her to offer her mediation or supervision arising out of these recommendations. It was not the Respondent's case that she and Ms Frimpong had ever been offered mediation or that she had been offered supervision arising out of Mr Gorringe's recommendation.

60 We find that on 11 March the Claimant reported to Ms Yamoah that another carer, Joanna Omoyola had verbally abused her and pushed her. We find that Ms Yamoah spoke to Ms Omoyola about it but that nothing further was done. The Claimant did not take this further and did not raise a grievance about it.

61 On 18 March 2016 the Respondent held a meeting at the Woodlands unit in response to the letter which the Claimant had forwarded to Ms Aldis and which we found had previously been given to the managers in November. Mr Gorringe called the meeting to discuss the issues raised within the letter and it was acknowledged in the minutes that the letter had been signed by members of staff of the Woodlands unit. The note of the meeting in the bundle was prepared by matron. Instead of recording the discussion in the meeting and the action points that arose there-from, the minutes read to the Tribunal as a defence by the Respondent to the issues raised in the letter. It includes a complaint that the Claimant had somehow sent a letter with her colleagues' signatures on it but without their approval. It was unclear to the Tribunal how the staff of the Woodlands unit could have signed a letter and at the same time, be unaware of the list of concerns that had been sent with their names and surprised at its contents. It is likely that the minutes were written in this way in an attempt to isolate the Claimant as the person who causes problems - from the rest of the staff. The minutes end by stating that management reassured staff that if they had any issues relating to any services, they should feel comfortable to report to the person in charge, report and record in the maintenance book and report to management if the problem is not resolved. It is unlikely that this statement would have reassured staff as they witnessed how Ms Yamoah and Ms Lakhani responded to the Claimant when she did exactly that. She had written to management about problems within the Woodlands Unit and it is likely that her colleagues signed the letter because they shared her concerns.

*Resident RH*

62 This was a female resident who the Claimant believed had sustained a bruise on her left arm from a fall on 3 April 2016. The records that the Respondent disclosed do not show that a fall was recorded for her on that day but there is a fall recorded for her on 30 March. In the daily progress sheet for 4 April the Claimant noted that when she left the night before, RH had an old bruise on her left hand and that when she attended work that morning, RH seemed to have sustained bruises on the right side of her head and on her left hand. Her live evidence was that RH now had bruises on both arms and on her face and was bleeding profusely from the left arm. The Claimant also wrote that the *'left hand bruise appears to have resulted from mal-handling'*. The Respondent considered that this was an accusation against the person who had worked the night shift.

63 On 6 April Ms Yamoah called the Claimant into her office to discuss the report and challenged her on it. The Claimant secretly recorded her conversation with Ms Yamoah. We had a transcript of the conversation in the bundle. Ms Yamoah is recorded as saying that they should only write facts because once it is written down, it appears as an accusation. She stated that the Claimant had *'already written something that can kill everybody'.* We find that she meant that what the Claimant had written could have serious consequences for the staff in the Home. The Claimant answered that she had not stated definitively that RH had been mal-handled but had written *'it appears to'….* Ms Yamoah stated that the Claimant's report was '*a bit too strong'* and pointed out that she could not prove it. She also stated in their conversation that *'in a court of law, guilty until proven otherwise'.* She accused the Claimant of writing incriminating reports. However, it was not recorded in transcript that Ms Yamoah told her to change the report and we therefore find it unlikely that she did so. She had made it clear that she was unhappy about what had been written.

64 The Claimant concluded that RH had been mal-handled during the night shift because when she worked on RH with the carer, Ngalula Senza the following morning, Ms Senza did not appear to have noticed the bruising even though she had taken RH to the shower and the toilet during the night. Ms Senza had been the carer on the night shift.

65 The Claimant was told that what she had written could get a member of staff into difficulties. The Claimant was adamant that RH had been the victim of abuse as opposed to a fall and refused to change her report. In their discussion, Ms Yamoah indicated that she was going to speak to various individuals about the matter. It is likely that she conducted a short investigation of what had happened to RH. Apart from the notes that they had already discussed, she also spoke to Ms Senza and Rose Otabor who had been the nurse-in-charge on the shift. There was a dispute as to whether the Claimant had spoken to Rose to let her know what she had found. The Claimant stated that she had spoken to Rose and recorded in her contemporaneous note that '*the nurse in charge was called and she attended her*'. On the other hand, Rose's contemporaneous note stated - *'no one tells me anything about it today'.* It is unclear from the transcript of the conversation whether the Claimant went to speak to

Rose herself or whether what she noted was that Ms Senza told her that she had called the nurse-in-charge.

66 Ms Yamoah's live evidence was that she had not taken any action against Ms Senza as she did not know for sure that she had mal-handled RH. She stated that she passed the matter to matron to address. The Claimant was aware that Ms Senza was asked to work in the extension after this, which may have been the Respondent's way of addressing the situation. The Respondent did not report the matter to safeguarding.

*Resident RB*

67 On 4, 7 and 8 May the Claimant made notes in the daily progress sheets about this resident as she was concerned that he appeared to be ill. She noted that he was not eating and had asked her if he could remain in bed instead of transferring to the lounge with the other service users. She was concerned about his skin as she noted that it was dry and cracked and would bleed when he scratched it. RB also had a continual cough. The Claimant wrote all this in her daily progress reports. She asked whether a particular type of ointment could be purchased as it worked to moisturise his skin whereas the one she had been given did not do so. In the Hearing the Respondent submitted that there were various creams that they had been trying out for RB and that the Claimant did not understand that there was a process that had to be gone through to change creams. The Claimant had become frustrated with the time that it was taking to do so.

68 Although the Respondent denied that the copied report pages that are in the bundle of documents are copies of the actual report that the Claimant did on those days, it is likely that they were and that she copied them before they were put into the report bundle so that other carers could fill the balance of the pages with their reports on the following days. The matters raised in those reports were discussed with the Claimant on 10 May, as set out below. We find that those are copies of report that she made at the time.

69 On 10 May Matron and Ms Yamoah met with the Claimant in the office. Once again, their main concern was that contents of the Claimant's daily progress sheets could put the Home in trouble. From the note of the meeting in the bundle we find that the focus of attention in the meeting was on the Claimant and whether she had been angry when writing the daily progress reports or whether she had suggested that nobody cares about the resident and that the treatment given was ineffective. It is apparent from the note that they did not discuss how they could care for RB in his present state, whether he needed urgent medical attention or whether the Home had provided the Claimant with the correct cream for his skin. Ms Lakhani asked the Claimant why she had kept RB in bed for the past few days and she explained his situation and that he had asked to be allowed to stay in bed. No disciplinary action was taken against the Claimant for doing as he asked. Resident RB died about 3 weeks after this meeting.

70 Ms Lakhani's note of the meeting shows that the Claimant was told to restrict her written reports to setting out the care she provided and not to refer to anything else. We find it likely that they did not want her to write comments on her reports. Ms Lakhani noted in the minutes that the Claimant was inferring that she was the only one who cared about the residents. The Claimant was taken to task about working on her own and reminded that she must work as part of a team and to follow company procedures.

71 It was recorded that the Claimant overstepped her boundaries, questioned doctors' practices, underestimated her colleagues and overruled the Home's protocol. Matron recorded in the note that the Claimant gave the impression that she was above all nurses and staff. Ms Lakhani made further notes critical of the Claimant after the meeting and after reporting the content of the meeting to nurse Denga. She recorded that the Claimant often worked on her own, was very overpowering and had no regard for other staff. She then completed the record by stating that the Claimant was very intelligent and hardworking but was unpopular with her colleagues and did not understand the complex medical problems of elderly relatives and the management of end of life care.

72 It was not clear why Ms Lakhani found it necessary to report on the Claimant's meeting to nurse Denga as nurse Denga was not the Claimant's line manager. The Claimant was not told that a report of the meeting would be made to nurse Denga. The Claimant was also not aware that the meeting was written up as a supervision session.

73 On the afternoon of 11 May, the Claimant was in the kitchen with Ms Rivera preparing supper for the residents. A resident, KJ, came into the kitchen and picked up a container with a dissolved tablet that had been placed on top of a microwave in the kitchen. Ms Rivera persuaded him to give her the container as he wanted to drink the dissolved solution. They put the dissolved tablet solution in the cupboard away from his sight and called for the nurse-in-charge, Margaret Denga. Sometime later that afternoon, the Claimant and Ms Rivera spoke to nurse Denga and told her that KJ had almost taken the medication that was not meant for him. We find that she made no response and did not ask for the medication.

74 We find that on 12 May, just before the start of an unplanned staff meeting, the Claimant noted that there was another solution of a dissolved tablet on top of the microwave and a capsule on the sink. In the meeting the Claimant raised a concern that nurses had been seen to leave medication lying around that could be accessed by residents. She stated that service users had taken medication that had not been meant for them due to carelessness by some of the nurses. Ms Yamoah's evidence was that the Claimant stated that she was going to upset her and then proceeded to tell her about the medication that nurse Denga had left on the microwave in the kitchen the day before, which KJ had tried to pick up. She informed Ms Yamoah that she had kept the medication and she was asked to bring it to her. The Claimant's case is that she then went into the kitchen and got the medication that had been left out earlier that day with the capsule and took those to Ms Yamoah and Ms Lakhani in the meeting. The Respondent's case is that she went and got the medication from the previous day and brought it to them.

75 The managers were concerned that the Claimant had not raised with them the incident from the day before and had instead, kept the medication hidden. We find that initially, she put it away so that KJ could not reach it. It was not clear to us which medication the Claimant brought to Ms Yamoah in the meeting. Before the staff meeting, the Claimant had not told the managers about the incident from the day before. Also, the Claimant did not take the medication from the microwave and bring it to the meeting or speak to Margaret Denga about it before the meeting started. We find that, whether the medication she brought into the meeting was from that day or the day before, it is likely, from the dramatic way she brought it to her managers' attention that it was her intention to create difficulties for nurse Denga. That may be because she thought that nurse Denga was not a good nurse but this was not her responsibility. We find that nurse Denga admitted the medication error.

76 We find that the Claimant took many photographs of medication that she stated she had found lying around the Home. She also took photographs of mouse droppings. We find that she did not raise these issues with the Home while in employment. We find that her confidence in their ability or willingness to take seriously any issues that she raised may have been diminished by the way in which they had approached the matters she had already raised.

77 Ms Yamoah stated that the Claimant was not supposed to use her phone while at work. She also stated in her witness statement that there were notices up all over the Home that reminded staff about this. She acknowledged that some staff do use their phones at work but that they were not meant to. It was likely that the Claimant had used her phone to record the conversation that she had with Ms Yamoah about RH and her note about mal-handling.

78 After the staff meeting on 12 May, it appears that members of staff came forward to complain about the Claimant. It was possible that the Claimant's managers let it be known that they were open to complaints about the Claimant. The Claimant went on annual leave from 16 May. She was due to return from holiday on 23 May 2016.

79 While the Claimant was away, the Respondent apparently received 3 anonymous letters – two pushed under Ms Yamoah's office door and another given to the Respondent in another way - which complained about the Claimant's alleged habits of putting residents to bed early, taking pictures of residents and filming them on her phone and putting those pictures on Facebook without their consent. In Ms Yamoah's witness statement she refers to the Claimant putting a photograph of herself on Facebook in which a resident can be seen in the background. It is not known when she found out about this or whether this is one of the allegations that caused the Claimant to be suspended.

80 Elizabeth Omozuafo also went to see Ms Yamoah to make a complaint about the Claimant and she was asked to put her complaint in writing. Lastly, Margaret Denga wrote complaints on 19 May in which she complained about the Claimant spending time upstairs talking to a friend, keeping residents in bed during the shift, operating a hoist on her own and carrying out other duties on her own. It is likely that the friend referred to was Ms Rivera.

81 On 20 May, Jennifer Fleming the receptionist at the extension, telephoned the Claimant to invite her to a meeting. She was not told what the meeting was about. On 22 May, the Claimant called Rose, the nurse-in-charge and informed that she could not attend the meeting in the day on 23 May as she was not on duty. On 23 May, Ms Lakhani called the Claimant but she missed the call. The Claimant then received a text message from Jennifer Fleming advising her that she should not come to work for her shift until she had spoken to matron. The Claimant telephoned matron and was advised that she had been suspended from work pending further investigation on safeguarding allegations against her.

82 The Claimant asked what the allegations were but was informed that as it was a safeguarding matter, Ms Fleming was not allowed to provide any further details about the allegations. The Claimant was advised that she should contact head office for further details. The Claimant called head office and spoke to Hayley Aldis and was told that she could not be given any details about the allegations. Her suspension was confirmed.

83 On 24 May, Ms Fleming telephoned the Claimant again and invited her to a meeting at 2pm on 25 May. The Claimant agreed to attend the meeting. On 25 May, the Claimant went to the Home for the meeting but left because she was not called into a meeting after waiting for a short while. The Claimant had a personal appointment which she wished to keep and as no-one had informed her when the meeting was going to take place, she considered that she ought to keep her appointment. At around the same time, the police attended the home to see the Claimant and we find that she saw them before she left. We find that it unlikely that she knew that they were there for her or that she left because of them.

84 We find that it was the Respondent's policy, not to inform employees of the reason for their suspension if the issue was one of safeguarding. This was in line with the Respondent's safeguarding policy and guidance documents. We had a copy of the documents in the bundle and we also had copies of letters sent to another employee which confirmed that they had been suspended for safeguarding matters and that they would not be told the details of the allegations.

85 In her witness statement, Ms Yamoah confirmed that she had suspended employees in similar situations before and had not informed them of the details of the allegations against them. She confirmed that the decision to suspend the Claimant had been matron's decision but that the Claimant had not been treated differently in the way in which her suspension occurred.

86 The Claimant's suspension letter was dated 23 May 2016 and was from matron. However, the Claimant did not receive this letter until after she raised a grievance through her solicitors on 31 May. The suspension letter informed her that the allegations had been brought to the attention of the local safeguarding team which meant that the Respondent could not share more information with her about the allegations. The Respondent stated that it was going to wait until the Local Authority's safeguarding team decided that they could conduct internal investigations into the matter. She was informed that once they were told that they can conduct the investigation, they would do so as quickly as possible. She was also informed that she would be given the opportunity to respond to the allegations. The Respondent

reserved the right to add any further allegations, if any came out of the investigation. The Claimant was informed that her suspension was confidential and that she was not allowed to visit the Home, contact any member of staff, resident and their family members without prior permission of the Respondent.

87 On 27 May, the Respondent invited the Claimant in writing to an investigation meeting on 3 June at the Home. In keeping with its policy, the Claimant was not given details of the allegations against her. She was told that she would be invited to a disciplinary hearing if after the investigation, the Respondent believed that there was a case to answer. The letter stated that she would be informed in writing of the outcome of the investigation once it was completed.

88 The Claimant's second grievance was set out in her solicitor's letter of 31 May. In it she alleged that the Respondent had failed to follow the correct disciplinary procedure as it had suspended the Claimant without conducting a suspension interview, that she had not been given an opportunity to respond to the allegations made against her before she was suspended and that she had not been clearly informed of the reasons for the meeting. Her solicitors stated that she was entitled to know the allegations before the matter was proceeded any further. The Respondent was reminded of the ACAS code of practice on grievance and discipline procedures and asked for a response to the grievance to be given within a reasonable time. The Claimant asked to be given the right to be accompanied to the grievance meeting.

89 The Respondent wrote to the Claimant's solicitor on 1 June. The Respondent provided the solicitor with the employee handbook. The Respondent also addressed another letter to the Claimant, which it sent to her solicitor, which reiterated the intention to conduct the investigation meeting on 3 June at the Home. The Respondent proposed to hear the Claimant's grievance first and then conduct the investigation meeting into the safeguarding allegations against her. The meeting was going to be conducted by Mandy Lee, service manager of the Respondent's Sycamore Court Care Home. The Claimant was advised that she had a right to be accompanied to that meeting.

90 The Claimant confirmed in an email dated 2 June 2016 that she had every intention of attending the investigation meeting. However, she requested information about the allegations against her before she attended the meeting. It was not apparent that the Claimant or her solicitors had read the Employee Handbook or the policies which the Respondent sent. The Claimant continued to believe that she should get details of the allegations before she attended any meeting with the Respondent on them. The Respondent did not get that email before the scheduled meeting as it was sent to the general office email address. Ms Rychlik's evidence was that it was not seen by the Respondent until 13 June 2016.

91 As the Claimant did not get the details of the allegations before 3 June, she did not attend the meeting. Ms Lee wrote to her again on 8 June to invite her to attend a re-convened investigation meeting on 13 June at the Home.

92 On 9 June, the Claimant emailed the Care Quality Commission (CQC) to report some of the matters that had occurred at the Home. She informed the Commission

about the medication being left around where it could be accessed by service users. She raised her belief that the allegations that were now under consideration had been raised as a way to get rid of her. The CQC responded promptly on the following day to inform her that her concerns had been passed to Shahid Islam, the inspector for the Home who would conduct an investigation. She was also informed that she may be required to provide further information. The Commission gave her further information about whistle-blowing.

93 On 13 June, the Respondent received the Claimant's emails that had been sent to the general office email address. Ms Lee wrote again to the Claimant to invite her to another investigation meeting. It was sent to the Claimant and to her solicitor. This meeting was scheduled for 15 June 2016. The letter stated that the Respondent expected her to be able to attend the meeting. It set out that her grievance would be dealt with before moving on to the allegations and that she would get all the details of those at the meetings. The letter also made it clear that if she did not attend the meeting the Respondent would have to make a decision about her grievance and the safeguarding allegations based on the information that it had. It was stressed that this was only an investigatory meeting. The Claimant was reminded of her right to have someone with her at the meeting.

94 The Claimant wrote to the Respondent informing them that she could attend a meeting on 17 June. In the response from Ms Lee, dated 13 June, she informed the Claimant that she was unable to hold a meeting on 17 June but was able to meet on 15 June. The letter repeated the points that had been made in the previous invitation letters and stressed that the meeting was only an investigation or fact-finding meeting at which the Claimant would be informed of the details of the allegations against her. She was advised that this would only be done after a discussion on her grievance. She was informed that she would be given the opportunity to respond to the allegations.

95 We find that the Claimant did not attend an investigation meeting with the Respondent. Ms Lee considered that as this was the third time that the Respondent had arranged the meeting, it was reasonable to continue. She conducted the investigation into the allegations without the Claimant's input. The Respondent did not have the opportunity to hear the Claimant's response to the allegations against her.

96 Ms Lee produced an investigation report. Her recommendation was that the Claimant should be invited to a disciplinary hearing in relation to the allegations.

97 It was proposed that the following allegations would be considered at the disciplinary hearing: inappropriate working practices – which was a reference to her working alone and using a hoist alone; malicious working conduct – this was a reference to hiding the medication that had been left out by nurse Denga in an attempt to discredit her; failure to report a medication error when she discovered that medication was left lying around in the kitchen and lastly, taking photographs of residents' body parts without prior consent and placing them on social media with the aim of discrediting work practices at Cranham Court. We find that in her investigation report Mandy Lee noted that there was a lack of evidence to support the allegation that the Claimant had taken the photographs and used them in the way described but she believed that it should be considered further at a disciplinary hearing.

98 We find that the Respondent wrote to the Claimant on 22 June to invite her to the disciplinary hearing. The hearing was arranged for 28 June at the Respondent's Head Office and would be conducted by Dean Gorringe. She was to be disciplined on the following allegations: unsafe working practices, serious acts of insubordination, failure to report serious medication error in a timely manner and serious breach of trust and confidence. The letter enclosed the investigation report, the anonymous letters and the letter from nurse Denga, statements from Elizabeth Omozuafo, Mrs Lakhani, Ms Yamoah and Jennifer Fleming. The Respondent's safeguarding and adult protection policy and its disciplinary policies were also attached to the letter. The Claimant was advised that she could submit a written statement or additional evidence in advance of the disciplinary hearing or she could bring such evidence with her to the hearing.

99 She was advised that the Respondent deemed the allegations to amount to gross misconduct which meant that one of the possible outcomes of the hearing could be her dismissal from her employment with the Respondent. She was advised to prepare carefully for the meeting. She was also advised in the letter that the purpose of the meeting was to give her an opportunity to put forward her version of events and that no decision would be made until after the hearing. The Claimant was advised of her right to be accompanied at the hearing by a work colleague or trade union official who would be permitted to address the hearing and confer with her.

100 On 23 June the Claimant wrote to the Respondent. She stated that the allegations against her were fabricated by her managers to conceal their bad practices. It was the Claimant's case in the Hearing that one of the anonymous letters was written by Elizabeth Akiyemi under instruction from Ms Yamoah. She stated that the Respondent had encouraged staff to make false allegations against her in writing to get her dismissed. In her email she indicated that she had no intention of attending the disciplinary hearing. Ms Aldis responded to encourage her to attend but in her response dated 24 June the Claimant confirmed that she was not going to, that she considered that she had been treated disrespectfully by the Respondent and that the fact of an invitation to a disciplinary hearing meant that the Respondent had already decided that she was guilty. She stated that in her mind 'disciplinary is a decision'. The Claimant did not attend the disciplinary hearing and the Respondent suspended the process.

101 The Claimant wrote to the Respondent on 2 July 2016 to resign her employment with immediate effect. She stated that the Respondent had not only fundamentally and unlawfully breached the trust and confidence that should exist between employer and employee but had destroyed it. She referred to a hostile work environment and accused the Respondent of lowering her position, failing to properly investigate her grievance and of making false accusations against her. On 4 July Ms Rychlik emailed the Claimant to acknowledge receipt of her resignation.

102 On 2 February 2017, the Claimant reported Margaret Denga to the Nursing and Midwifery Council (NMC) for leaving medication on more than one occasion in a place where it could be accessed by residents. After a short investigation they confirmed that they would take no further action on the matter as they considered that the issue

had been dealt with locally by Matron and by further training in the handling of medication.

103 The Respondent reported the Claimant to the police and to the Local Authority's Safeguarding section because of the anonymous complaints received about her. No further action was taken against the Claimant by either authority.

104 The CQC report in the bundle of documents confirmed that an unannounced inspection into this Home took place on 4 May 2017. The report was produced on 16 June 2017. At the Hearing, the Respondent's witnesses considered that the report and inspection were of no relevance because they took place after the Claimant's resignation. However, we find that the report stated that at the previous inspection in November 2016, the inspectors found the service to be in breach of the regulations relating to having systems in place to ensure equipment was used in a safe way and for the proper and safe management of medicines. The Respondent did not at that time, have effective systems and processes to assess, monitor and mitigate the risks to the health, safety and welfare of people in the service. One of the particular concerns that the inspectors had in the 2016 inspection were the shortfalls relating to medicines management including the ordering delivery and administration of medicines, the inconsistency of recording on relevant charts and a lack of follow-up when there was a delay in medicines been delivered. At the 2017 inspection, the CQC noted that although there had been some improvements to the service, it was appropriate to grade as 'requires improvement' the two areas considered in the inspection. Those were: the safety and leadership of the service. Those were also the two areas that give the inspectors cause for concern at the 2016 inspection.

***Law***

105 The Claimant's claims were that she had made protected disclosures, that she suffered detriment on the ground that she made those protected disclosures; and a complaint of automatic unfair dismissal following her resignation on 2 July 2016. She also made a complaint of wrongful dismissal/notice pay.

*Protected disclosures*

106 The Claimant contends that her disclosures fall within section 43B(1)(b) and (d) of the Employment Rights Act 1996 (ERA) as she reasonably believed that they tended to show a breach of legal obligation and/or that health and safety had been endangered. A legal obligation is something binding in law and is more than a guideline or moral obligation.

107 Qualifying disclosures can only be made to certain classes of person; these include a person's employer (section 43C ERA 1996). In this case the Claimant's alleged disclosures were to her managers – either orally or in writing.

108 The word *'disclosure'* must be given its ordinary meaning which involves the disclosure of information, that is conveying facts; as a result, the mere making of allegations by the Claimant will not be a *'disclosure'* for these purposes (see *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] IRLR 38); similarly, merely expressing an adverse opinion on what the employer is proposing to do does not

qualify (*see Smith v London Metropolitan University* [2011] IRLR 884). That said, asserting that there has been an omission can be 'information' for these purposes (*Millbank Financial Services Ltd v Crawford* [2014] IRLR 18) and care must be taken not to draw false distinctions between allegations and information when often a disclosure may be both (*Kilraine v London Borough of Wandsworth* [2016] *EAT 260*).

109 Where a disclosure is made to an employer it does not need to be true to qualify for protection but the employee must reasonably believe it to be true (*Darnton v University of Surrey* [2003] IRLR 133 and *Babula v Waltham Forest College* [2007] IRLR 346). The test of reasonable belief must take account of what a person with that employee's understanding and experience might reasonably believe (*Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4). Reasonableness depends not only on what is said in the disclosure but the basis for it and the circumstances in which it was made.

110 The EAT gave guidance on the findings a Tribunal should make in *Blackbay Ventures Ltd v Gahir* [2014] 747 where HHJ Serota QC said (paragraph 98):

> *"Save in obvious cases, if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the employment tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a checklist of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the employment tribunal undertake this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered."*

111 The Respondent in this case has conceded that the Claimant made 3 disclosures – which have been numbered 6, 7 and 8. In relation to potential disclosures 1-5, the Tribunal has to determine in each case, whether the Claimant believed that the information disclosed tended to show a breach of a legal obligation or that health and safety were being endangered (her subjective belief) and, if so, whether it was reasonable for her to believe so (an objective assessment by the Tribunal). The Respondent denies that some (1, 2, 3 and 5) of the potential disclosures were made. It made no further submissions on those. Where it accepts that the disclosure was made, (4) it disputes that the Claimant had a reasonable belief that the information provided tended to show one of the categories of failure in section 43B Employment Rights Act.

*Detriment*

112 It is unlawful to subject an employee or worker to a detriment on the ground that she has *made* protected disclosures (sections 47B and 48 Employment Rights Act 1996). The term 'detriment' is not defined in the 1996 Act but it is a concept that is familiar throughout discrimination law and is to be construed in a consistent fashion. A detriment will be established if a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment. An unjustified sense of grievance cannot amount to a detriment but it is not necessary

for the worker to show that there was some physical or economic consequence flowing from the matters complained of in order to establish a detriment (*Shamoon v Chief Constable of the RUC* [2003] IRLR 285). In the same case, Lord Scott held that this is a subjective test and stated *"… if the victim's opinion that the treatment was to his or her detriment was a reasonable one to hold, that ought, in my opinion, to suffice…"*

113 Once an employee or worker has established that she has made a qualifying disclosure and that she has been subjected to a detriment, it is then for the employer to establish on the balance of probabilities the reason for the detriment and to show that the treatment was not on the ground of the protected act (*Fecitt v NHS Manchester* [2011] IRLR 111). An employer will succeed in this if the evidence shows that the protected act was not a material factor in the application of the detriment.

*Unfair dismissal*

114 It is automatically unfair to dismiss an employee for making a protected disclosure (section 103A Employment Rights Act 1996). Unlike a claim of ordinary unfair dismissal where there is a requirement for an employee to have 2 full years' service, there is no qualifying period for claims of automatic unfair dismissal on this ground.

115 If an employee claims that there was an automatically unfair reason for her dismissal, such as making a protected disclosure, she must produce some evidence supporting this positive case. Where the employee has sufficient service to claim ordinary unfair dismissal that does not mean that she has to discharge the burden of proving that the dismissal was for this reason. In that case it is sufficient for the employee to challenge the evidence produced by the employer to show its reason for dismissal; it remains for the employer to establish the reason. Where, however, as in this case, the Claimant does not have sufficient qualifying service to claim ordinary unfair dismissal (as in this case) she must establish the jurisdiction of the Tribunal and therefore show the reason for dismissal (*Kuzel v Roche Products Ltd* [2008] IRLR 530). As the relevant evidence is largely in the Respondent's possession, the Tribunal would need to consider the reasonable inferences which may be drawn from the primary facts in relation to the termination of the Claimant's employment. We have looked at the evidence as a whole in order to make a primary finding of fact on the reason(s) for dismissal.

116 In this case the Claimant resigned and so the question for the Tribunal is whether the Respondent made a repudiatory breach of the Claimant's contract of employment, going to the root of the contract and that the Claimant resigned in response to that breach. The Claimant must not have waived the breach or affirmed the contract in the intervening period. Keeping in mind that this is a section 103A claim – in order for the Claimant to succeed, the reason the Respondent breached her contract or, if more than one, the principal reason must be that she had made protected disclosures.

117 The Claimant appeared to be relying in the implied term of mutual trust and confidence in this case. A breach of that term will amount to a repudiatory breach of contract. The test to determine whether there has been such a breach is an objective

one as set out in the case of *Buckland v Bournemouth University Higher Education Corporation* [2010] IRLR 445. In determining this factual question (whether there has been a breach), the Tribunal is not to apply the range of reasonable responses test but must simply consider objectively whether there was a breach of a fundamental term of the contract of employment by the employer.

118 In this case the Claimant was not relying on a single act but on a number of acts culminating in the Respondent's decision to invite her to a disciplinary hearing. The Respondent referred the Tribunal to the case of *Waltham Forest v Omilaju* [2005] IRLR 35 in which Lord Justice Dyson said the following:-

> "*The 'final straw' may not always be unreasonable, still less blameworthy. …the only question is whether the 'final straw' is the last in a series of acts or incidents which cumulatively amount to repudiation of the contract by the employer. The 'last straw' must contribute, however slightly, to the breach of implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the abrogation of trust and confidence that it lacks the essential quality to which I have referred.*
>
> *……*
>
> *Moreover, an entirely innocuous act on the part of the employer cannot be a 'final straw', even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective"*.

119 The Respondent also submitted that where a series of acts are relied on by the Claimant and there is an intervening affirmation of the contract this would also need to be considered by the Tribunal in deciding whether there is a series of acts leading to a final straw. The Claimant relies on the first grievance raised in February/March 2016 as a breach of her contract. The Respondent submitted that if its treatment of the grievance amounted to or contributed to a breach of contract, the Claimant affirmed the contract in the intervening period by continuing to work, accepting wages etc prior to her resignation in July 2016. The Respondent submitted that in such a case the alleged breach is not 'revived' in July 2016 and the Claimant would not be able to rely on a series of breaches culminating in a final straw. (Per HHJ Hand in *Vairea v Reed Business Information UK Ltd* UKEAT/0177/15).

120 After the Hearing concluded, the Respondent wrote to the Tribunal and the Claimant about this case the effect on the judgment of the case of Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978. Those letters were only brought to the Tribunals attention after the Judgment and Reasons had been promulgated. The Tribunal has had the opportunity to consider the Respondent's revised submissions in this aspect of the case. *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978 was relevant. In it the Court of Appeal had disapproved of the law set out in *Vairea* above. In *Kaur* the Court confirmed that the 'last straw doctrine' was only relevant in cases where the repudiation relied on by the employee took the form of a cumulative breach. In such cases, if the tribunal considered the employer's

conduct as a whole to have been repudiatory and the final act to have been part of that conduct, it should not normally matter whether it had crossed the threshold for breach of the implied term of trust and confidence at some earlier stage. Even if it had, and the employee affirmed the contract by not resigning at that point, the effect of the final act was to revive his or her right to do so. The Court restored the situation as it was in the case of *Omilaju* above as well as the case of *Lewis v Motorworld Garages Ltd* [1986] ICR 157.

121 In *Kaur* the Court of Appeal confirmed that an employee who is the victim of a continuing cumulative breach by her employer is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation; provided the later act forms part of the series.

122 In the case of *El-Megrisi v Azan University (IR) in Oxford* UKEAT/0448/08 the EAT held that where an employee alleges that she has been dismissed because she made multiple disclosures, section 103A does not require a tribunal to consider each such disclosure separately and in isolation, as their cumulative impact can constitute the principal reason for the dismissal.

*Wrongful dismissal*

123 The Claimant also brought a claim for notice pay from the Respondent as she submitted that her dismissal was a breach of her employment contract.

***Applying law to facts set out above***

124 The Tribunal will now go through the list of issues and give its judgment on each.

125 Did the Claimant make protected disclosures?

126 In relation to each alleged qualifying disclosure, the Tribunal has to determine whether they took place; whether each disclosure amounted to a disclosure of information; whether the information tended to show that one of the factors under section 43B of Employment Rights Act had taken place, was taking place or was likely to take place. We will now consider each alleged disclosure against those factors.

127 We refer to the disclosures as set out by the Claimant in her ET1, which are on pages 14 to 18 of the bundle of documents.

*Disclosure 1*

128 It is our judgment that the Claimant and Ms Rivera recorded BSP's fall in their daily progress report. They also reported it to Ms Yamoah and particularly pointed out the fact that there had been no nurse in charge during the night shift. They both provided information in their verbal and written reports that could show that there was a breach of legal duty by the Respondent in that the residents at Woodlands, on that shift, had been without a nurse on duty. Although the Respondent stated that there

had been nurses in the extension that evening who could be called on, in an emergency, this would have left the residents at the extension without a nurse for as long as the nurse was at Woodlands.

129 It is this Tribunal's judgment that this was a disclosure of information that tended to show that the health and safety of the residents of either the Woodlands or the extension was being or was likely to be endangered during that shift.

130 It is our judgment that this was a qualifying disclosure.

*Disclosure 2*

131 It is this Tribunal's judgment that the Claimant did write and give this letter to Matron in March 2015. However, it is also our judgment that the letter did not disclose any breach of legal duty by the Respondent. In it the Claimant drew the Respondent's attention to something that the carers were having to deal with and asked for some assistance in dealing with it or for something to be done. The managers were not the ones who give DJ personal care and so would not have direct experience of her violent responses. It was appropriate to raise it with them.

132 Although the Claimant referred in the Hearing to DJ lying in a pool of urine – this was not mentioned in the letter. There is nothing in this letter which tended to show that the health and safety of either the carers or DJ was being or was likely to be endangered or that there was a breach of legal duty taking place.

133 It is our judgment that the contents of this letter did not amount to a qualifying disclosure.

*Disclosure 3*

134 It is our judgment that in July 2015, the Claimant spoke to Matron and Ms Yamoah about a carer putting too much sugar into porridge given to one of the service users, about one of the carers not washing cutlery properly as she failed to sterilise the spoons and that some carers were not changing gloves but using the same pair of gloves to give a wash to different service users. It is unlikely that Ms Lakhani or Ms Yamoah took the Claimant's report seriously.

135 Her complaint was essentially that the carers were not providing proper care for the residents. The Respondent failed to treat her complaint seriously or to address the issues with the carers. In our judgment, the Claimant alleged breach of legal duty and that the actions of the carers were likely to endanger the health and safety of the residents as failure to change gloves could cause contagious skin conditions to spread among the residents and the failure to washing cutlery properly could also endanger health as could failing to measure sugar properly.

136 It is our judgment that this was a qualifying disclosure.

*Disclosure 4*

137 It is our judgment that the Claimant had the letter delivered to the Respondent in November 2015 and forwarded it to the Head Office in March 2016.

138 It is also our judgment that the way in which disclosures are set out in the ET1 on page 15 of the bundle of documents is different from the contents of the actual letter. Matters are raised in the letter with the expectation that there will be further discussion on them. In our judgment, the only potential disclosure in this letter is the statement that the Respondent was without a standing hoist for months and months and that it had been mentioned in meetings with Ms Yamoah and matron.

139 It is our judgment that in that statement, the Claimant is providing information that tends to show that the Respondent has failed to provide the staff at Woodlands with a standing hoist for many months which meant that staff were hampered in doing their job effectively. This tended to show that the health and safety of the residents was being or was likely to be endangered and/or that the Respondent had failed to comply with a legal obligation to the residents and/or staff.

140 It is our judgment that the Claimant made a qualifying disclosure in this letter in relation to the hoists.

141 It is our judgment that the other matters raised in the letter do not provide information that tends to show that the Respondent has failed, it is likely to fail or is failing to comply with any legal obligation to which it is subject. The information about laundry bags simply states that coloured laundry bags were needed. The information in regard to the spread of diseases simply stated that staff needed to know whether the residents' conditions were infectious. The Tribunal's judgment is that those statements do not provide information which tends to show that the Respondent has breached a legal obligation or that health and safety is or has been endangered and are not potential qualifying disclosures.

*Disclosure 5*

142 It is our judgment that it is unlikely that either the Claimant or Ms Rivera informed Matron or Ms Yamoah that Ms Njoku had abused TK. The fact was that they informed Ms Moran that TK had fallen. Marisa drew the body map and they both made the relevant reports. They did not give matron and/or Ms Yamoah information that tended to show that Ms Njoku had abused TK which, if it had occurred, would have been a criminal offence; or that she had failed to comply with her obligations as a nurse or that TK's health and safety had been endangered by her actions.

143 It is therefore our judgment that the Claimant did not make a qualifying disclosure in the conversations that she had with either Ms Moran, Ms Yamoah or Matron about TK's fall in November 2014.

*Disclosures 6, 7 and 8*

144 In its submissions, the Respondent accepted that the Claimant made qualifying disclosures 6, 7 and 8 are set out in her ET1 on pages 17 and 18 of the bundle of documents.

145 It is our judgment that the Claimant made her disclosures to the correct people, either to matron or to Ms Yamoah and on occasion to both managers. This relates to disclosures 1 and 3. She also wrote to head office to raise issues that she considered had not been resolved internally or taken seriously. She sent her November 2015 letter to head office in March 2016. This relates to the information she provided about the standing hoist, which is disclosure 4. Disclosures 6 and 7 were made in her daily progress sheets and therefore to her managers. The Respondent accepted that Disclosure 8 was made to Ms Yamoah in the staff meeting on 12 May 2016 in addition to other occasions when the Claimant raised the issue of medication safety with the Respondent.

***The Claimant's subjective belief***

146 It is our judgment, on the balance of probabilities that the Claimant genuinely believed that the information she provided to the Respondent tended to show the above failures. The Claimant had a genuine belief that the allegation she was raising with the Respondent was serious, that they demonstrated that the Respondent had failed to comply with the health and safety requirements of a care home and with its legal obligation to the residents and to its staff. The Claimant believed that the information she provided tended to show that the Respondent had or was likely to endanger the health and safety of its residents and its staff. She genuinely believed that the disclosure in relation to the standing hoist tended to show that the health and safety of the staff was likely to be endangered as they would need to lift residents without that equipment which could cause injuries to both them and the residents.

147 We based this belief on the Claimant's conduct in raising the issues. The Claimant's contributions as noted in the minutes of the staff meetings of July 2015, March 2016 and 12 May 2016 as well as in her individual meetings with Ms Yamoah and Ms Lakhani, demonstrate that her concerns were for the residents and their care and her welfare and that of other carers. She continued to raise issues even though doing so made her unpopular with management. Even the issue about medication that she raised on 12 May was on balance, made out the Claimant's concern for the residents. It is also the case that the way in which she raised the issue could also have been done to cause trouble for nurse Denga.

***Was her belief objectively reasonable?***

148 We note that this was not an issue at the Hearing as the Respondent did not submit that the Claimant's belief that these were public interest disclosures was not reasonable. Also, we note that the test of reasonableness here is an objective one of us to assess on all the evidence and one which can therefore take account of matters not in the Claimant's head at the time of the disclosure. We start with what the Claimant thought at the time. The Claimant had vast experience of care in other Homes in addition to Cranham Court. She believed that the matters she raised

consistently showed breaches of the Respondent's legal duty towards the vulnerable, elderly residents in its care as well as to her and her colleagues as its employees.

149 As a provider of care to elderly and vulnerable adults, the Respondent is obliged to ensure that their health and safety is paramount in the way that it organises the home and provides that care. Also, it is expected that care is provided in a way that respects the dignity of the residents – especially where there is dementia. In our judgment, from an objective standpoint, even though the Claimant was a junior member of staff, any disclosures that she raised- if they are investigated and found to be true – should have been welcomed and treated appropriately by the Respondent. She was trying to assist the Respondent in providing the best standard of care to its residents. Specifically, the Claimant pointed out to the Respondent in her first disclosure that there had been no nurse in charge on the night shift, in her third disclosure that carers were not taking care to be hygienic in an environment where infections and diseases could spread between vulnerable residents as well as residents not being treated with dignity (the point about sugar). In relation to disclosure 4 she raised with the Respondent that carers did not have the use of a working standing hoist in the Woodlands which could have caused physical injury to residents as well as staff. The Respondent has already accepted that disclosures 6, 7 and 8 were protected disclosures.

150 It is our judgment, that the Claimant believed that her disclosures showed that the Respondent had breached or was likely to breach its legal obligation and/or that the health and safety of the residents and/or the carers was or was likely to be endangered. It is also our judgment that this was a reasonable belief.

151 It is therefore our judgment that the Claimant made 6 protected disclosures of information which she reasonably believed to be in the public interest and which she reasonably believed tended to show breaches of legal obligation and/or that the health and safety in relation to staff and/or residents were being endangered.

*Detriments*

152 The Tribunal then has to consider whether or not the Claimant suffered detriments that she relies on, because of her disclosures.

153 The detriments that the Claimant relied on were set out in paragraphs 18 to 32 of the particulars of her complaint, attached to her ET1 form.

154 Following the law stated above, the Tribunal has to determine whether the protected disclosures materially influenced any detrimental treatment of the Claimant by the Respondent and if so, whether the Respondent can provide an admissible reason for the treatment.

155 In the list below, the alleged detriments from page 19 of the bundle are set out in italics and then the Tribunal has written its judgment on each.

**Detriment 1**

*"Ms Doris Yamoah subjected the Claimant to detriment on the ground that she made protected disclosures. Ms Yamoah forever ridiculed the Claimant and blamed her for one thing or another. The Claimant had been treated unfairly because she had blown the whistle".*

156 We did not find Ms Yamoah to be a credible witness. In our judgment, her evidence was self-serving and unhelpful to the Tribunal.

157 In our judgment, Ms Yamoah considered that the Claimant caused trouble at work. She confirmed this in her witness statement. It is our judgment that the only 'trouble' the Claimant made was to raise issues at work on matters of health and safety and care of residents when she considered that those were being compromised or that the Respondent may be in breach of its legal duties.

158 We were not told what trouble she made apart from the complaints and issues she raised. It is also our judgment that the minutes of meetings held with the Claimant – either on her own or with other staff - were written as though she had caused trouble and difficulty for the Respondent by raising issues of what she considered to be bad practice and failures to comply with legal obligations. The minutes confirmed that the Claimant was a good worker knew her responsibilities. Also, it had not been recorded in the minutes or the supervision notes that the issues the Claimant raised were untrue or of no concern to the Respondent. The Respondent did not acknowledge the Claimant's diligence in raising matters of bad practice, health and safety or issues of care relating to particular residents. Instead, she was considered a nuisance for continuing to bring those issues to her managers' attention.

159 Ms Yamoah's main concern was that the Claimant's actions could put the Home in trouble. She knew that the Home would be subject to regular inspections and regulation by the CQC and local authority. She was concerned that the issues the Claimant raised were matters that could put the Home's registration in jeopardy, if they were found to be true. In our judgment, this is what Ms Yamoah was referring to when she made the comment that the Claimant was causing trouble at work.

160 It is our judgment that Ms Yamoah blamed the Claimant for the argument that she had with Ms Frimpong and threatened that if it continued, the Claimant would be moved to the extension. Also, although Ms Yamoah agreed for the Claimant to be rehired in 2016 once she received her new Visa; she did so on condition that there were no further problems with her. In our judgment, this was not a reference to the Claimant's performance of her role but was a reference to her raising issues and complaints that she had with the way that the Home was being run. Ms Yamoah did not like the Claimant's habit of complaining about issues that she saw in the Home and that she told her so, on more than one occasion. Her main concern was that Home did not get in trouble with its regulators. It is our judgment that she agreed for the Claimant to re-re-employed because the Claimant was a hard worker and because she knew the Claimant was good at her job. This did not contradict with her belief that the Claimant was also a trouble maker and that she could cause trouble for the home with the way that she picked up on things that she considered were going wrong at the Home and made written reports or wrote letters to management about them.

161 Ms Yamoah would question and challenge her on the contents of her daily progress reports. We were not told that she did this with anyone else. It is also our judgment that she would blame the Claimant for the matters that the Claimant raised in her daily progress reports. When the Claimant wrote that she believed that a resident had been *'mal-handled'*, Ms Yamoah's main concern was that what the Claimant had written could '*kill everybody'* by which we judge that she meant that the report could have serious consequences for the Respondent. This appeared to be her main concern rather than the health of the resident. She accused the Claimant of writing incriminating reports. Her response appeared to be placing the blame for the incident on the Claimant. Although Ms Yamoah investigated the incident, she did not make any allegation of misconduct against the Claimant for making false accusations. Instead, the Claimant was aware that the carer involved was moved to work in the extension, which would indicate that there may have been some substance to the report she made.

162 It is not our judgment that Ms Yamoah ridiculed the Claimant as we were not provided with evidence of ridicule. However, it is our judgment that she blamed the Claimant for the issues that the Claimant raised and for trying to cause trouble for the Home and for putting the continued existence of the Home in jeopardy.

163 It is also our judgment, that the complaints about Ms Yamoah span a period of time in 2015 until the Claimant's resignation. The Claimant's ET1 was issued on 28 September 2016. We considered whether the complaints about Ms Yamoah were part of a continuing act in accordance with section 123(3)(a) Equality Act 2010. It is our judgment that the Claimant's working relationship with Ms Yamoah began in 2015, even though at the time, the Claimant was being managed by Ms Moran and continued up to her suspension on 23 May 2016.

164 It is the Claimant's belief that Ms Yamoah told another carer Ms Akiyemi, what to write one of the anonymous allegation letters which resulted in the Claimant's suspension. We were not able to find that as a fact but given how she felt about the Claimant it is likely that she encouraged staff to complain about her or let it be known among staff that the Respondent was open to complaints about her. The complaints were all made to Ms Yamoah and apart from the allegation about photographs, were of matters that were already known to Ms Yamoah and Ms Lakhani such as the Claimant's habit of working alone or the fact that she had put a resident to bed early.

165 It is our judgment, the Claimant was subjected to a detriment by Doris Yamoah in that any issues she raised was treated with derision, even if they were serious matters that ought to be addressed and instead she was considered a trouble maker.

166 It is also our judgment that the detriment was done on the ground that the Claimant made protected disclosures as Ms Yamoah had no other issue with the Claimant that we were told about.

167 This complaint succeeds.

**Detriment 2**

*The Claimant was held accountable for the letter sent in March 2015 and was subjected to a detriment by Mary Moran because of it.*

168 The Claimant wrote the letter to Ms Moran, Ms Lakhani and Ms Yamoah about resident DJ. It is our judgment that Ms Moran did have knowledge of the letter. We did not find her evidence credible and have referred to some of the contradictions in the findings above.

169 It is our judgment that Ms Moran held the Claimant responsible for the letter even though there were signatures of other carers on it. It is likely that she was displeased or disappointed with the Claimant for having been involved in writing the letter and she demonstrated this to the Claimant in the way she spoke to her.

170 It is our judgment, that she treated the Claimant differently as a result of the letter by her telling the Claimant that she was angry with her as the letter was in her handwriting. However, as the letter was not, in our judgment, a protected disclosure, any hostility that Ms Moran showed the Claimant once she guessed that she had written it, was not a detriment done on the ground that she had made protected disclosures. The Claimant was not subjected to a detriment by Mary Moran because of the letter written to her managers in March 2015 about resident DJ.

171 It is therefore our judgment that the Claimant suffered a detriment and that it was done on the ground that she had made a protected disclosure.

172 This complaint fails.

**Detriment 3**

*The Claimant was constantly bullied and abused by one of her colleagues Ms Nana Frimpong who physically push the Claimant on a regular basis, yelled at her and splashed the Claimant with water mixed with faeces on 3 February 2016. The Claimant raised a grievance with matron and Ms Yamoah however no action was taken because the managers were not happy with her because of her protected disclosures. She also raised the issue with head office by letter dated 17 February 2016. The Claimant believes that her grievance was not properly dealt with because of her protected disclosures.*

173 In our judgment, the Respondent did conduct an investigation into the Claimant's grievance concerning Ms Frimpong. Mr Gorringe came to the Home and interviewed the Claimant, Ms Yamoah and Ms Frimpong.

174 It is also our judgment that Mr Gorringe considered the grievance and came to a decision about it. However, the Respondent failed to ensure that the Claimant received the decision. She was never told of the outcome of the grievance. Although an outcome letter was prepared, the Claimant never received it. It is likely that both Hayley Aldis and Mr Gorringe thought that the other had printed the letter off and posted it to her. Although this is unfortunate, it is our judgment that this did not occur because of the Claimant's disclosures but was an administrative error.

175 It is our judgment, that the Respondent did conduct an investigation into the Claimant's grievance.

176 The Claimant did not hear the result of her grievance which was a detriment. However, it is our judgment that the failure to ensure that she received the outcome letter to her grievance was not based on the ground that she had made protected disclosures.

177 This complaint fails.

**Detriment 4**

*In October 2015, when the Claimant came to work to attend her shift she was told to go home because Agnes Njoku who was the nurse-in-charge, had cancelled the Claimant's shift.*

178 It is our judgment that Ms Njoku was annoyed or angry with the Claimant because she considered that the Claimant was refusing to obey the nurses. The particular instruction that she had refused to obey on this occasion was the instruction to put a resident to bed early. It is our judgment that Ms Njoku devised a list of residents that she decided should be put to bed early to assist the night shift. The Claimant refused to do so and this angered Ms Njoku.

179 It is our judgment that the Claimant told Ms Njoku that she was unable to come to work on one day because of a doctor's appointment. It is our judgment that it is likely that Ms Njoku deliberately recorded that the Claimant would not be coming to work for two days. This caused the Claimant to lose two days' pay. Even though the Claimant attended for work on the second day, she was sent away as the Respondent had not been expecting her to come to work. The Claimant intended to work that second day was deprived of the opportunity and the income that she would have earned from doing so.

180 It is also our judgment that Ms Njoku did this because of her annoyance at the Claimant's refusal to obey the nurses without question. She did not do this because of any disclosures. There was no evidence that she was aware of the Claimant's disclosures at the time.

181 It is our judgment that the Claimant did suffer a detriment as she was deprived of a day's pay even though she wanted to work.

182 However, it is also our judgment that the Claimant did not suffer this detriment as a result of making protected disclosures.

183 This complaint fails.

**Detriment 5**

*On 11 March 2016, one of the carers, Ms Joanna Omoyola verbally abused and physically pushed the Claimant. The Claimant reported the incident to Ms Doris Yamoah. Ms Yamoah called Joanna Omoyola to talk to her however nothing was ever done to deter Ms Yamoah's abusive behaviour towards the Claimant. (The Tribunal considered that the reference to Ms Yamoah in the last sentence of this alleged detriment is an error and the reference should be Ms Omoloya.)*

184 It is our judgment that Ms Yamoah did try to sort out matters between the Claimant and Ms Omoyola. It is our judgment that her usual way of trying to resolve disputes between staff was to speak to both of them and leave them to work out their differences. That did not work with the dispute between the Claimant and Ms Frimpong and it also did not work with the dispute between the Claimant and Ms Omoloya. However, it is our judgment that this was Ms Yamoah's way of managing staff.

185 It is our judgment, that she did not deal with the dispute in this way because of the Claimant's disclosures but because that was her way of managing staff. This may not have been the most effective way to manage as it is unlikely that it resolved the dispute but it was her way of managing. It is our judgment that one of the reasons Ms Yamoah did not want to treat matters more formally was because it was likely that she would have had to report the matter to Head Office and that could – in her words – make trouble for the Home.

186 The Claimant may have been unhappy with the way her dispute with Ms Omoloya was handled and this would be a detriment to her. However, it is our judgment that she did not suffer this alleged detriment because of her disclosures.

187 This complaint fails.

**Detriment 6**

*Paragraphs 23 to 34 of the details of complaint complain that the Claimant's suspension was directly linked to her disclosures and therefore form a detriment.*

188 The Respondent has conceded that suspension is a detriment to the Claimant.

189 The Tribunal has to determine whether the act was done on the ground that she had made a protected disclosure. Was she suspended because she made protected disclosures?

190 It is our judgment that the Claimant was suspended by matron possibly after having taken Ms Rychlik's advice. Even if the Claimant is correct and Ms Yamoah had engineered the complaints that were relied on by the Respondent, there was no allegation that matron had been aware of that or that anyone in Head Office had been so aware either.

191 In our judgment, the allegations against the Claimant was serious. The anonymous allegations were that she had taken photographs of residents' body parts and uploaded those on Facebook. Also, that she practised inappropriate working practices such as putting some residents to bed early and working on her own, which

were contrary to the Respondent's written policies. There were serious allegations around the medication error made by nurse Denga including the Claimant's failure to report the medication error as soon as she found it and instead, hide the medication to then reveal it at the staff meeting, in the way she did.

192 It is our judgment that it was appropriate for the Respondent to properly investigate those allegations. The Respondent had a duty to investigate them properly and the Council and the CQC would expect such an investigation and for an employee accused of such conduct to be suspended while the investigation was conducted.

193 It is our judgment that matron, Ms Rychlik and Ms Yamoah knew of the issues that the Claimant had raised during her employment. She had been reported most of the issues to matron and Ms Yamoah. Ms Rychlik knew about the complaint the Claimant made about Ms Frimpong as Ms Yamoah spoke to her about it.

194 Upon her suspension, the Claimant was told the nature of the allegations but not told the details. In our judgement, this was because the allegations against the Claimant were safeguarding allegations. It is our judgment that the Respondent's policy in this regard was that it would not reveal the details of allegations to an employee in the Claimant's position. This was not unique to the Claimant but was the position that it usually took with safeguarding allegations.

195 Although the Respondent sent copies of its policies and procedures on safeguarding matters to the Claimant's solicitors, it would appear that they advised her not to attend the investigation meeting because she had not been told the details of the allegation. Her solicitors referred to a breach of the ACAS Code in their correspondence with the Respondent. However, the ACAS code of practice: disciplinary and grievance procedures (2015) does not state under the heading *Keys to handling disciplinary issues in the workplace* that the employee has to be told the details of the allegations before the investigation meeting takes place. The Code does state that if it is decided that there is a disciplinary case to answer, the notification to the employee should contain sufficient information about the alleged misconduct to enable the employee to prepare to answer the case of the disciplinary meeting. Although some employers would do so, the Code does not require an employee to be told the charges or allegations before the investigation meeting or before suspension. In our judgment, the investigation meeting was just that, an opportunity for the employer to investigate the allegations. The ACAS Code does not require the Respondent to have solidified its position on the allegations at the investigation stage.

196 The Claimant's failure to attend the investigation meetings was unfortunate as she lost an opportunity to have some input into the investigation. It was not part of her case that the manager appointed to conduct the investigation was in an alliance with the managers at Cranham Court or that Mandy Lee would have known that the allegations were fabricated – if they were. The investigation meeting would have been her opportunity to point out to Ms Lee that the allegation letters had been written by colleagues or that some of the allegations – such as putting residents to bed early – were things that she had been instructed to do by some nurses-in-charge and that others also did.

197 The Claimant was sent 4 letters inviting her to the investigation meeting – on 27 May, 1 June, 8 June and 13 June. The first letter did not advise her of her right to be accompanied but this was added to the subsequent letters. Each advised her that the investigation would be conducted by someone who was not working at Cranham Court as the matter had been taken up by Head Office who clearly wanted to hear from the Claimant in response to the allegations against her. Whether or not the Claimant's concerns about the authenticity of the anonymous complaints against her were justified, she did not submit to us that Mandy Lee or Head Office were aware of that and were part of any arrangement (if such an arrangement existed) to get rid of her.

198 It is our judgment that the Respondent's decision to suspend the Claimant was because of the seriousness of the allegations against her and not because of her protected disclosures.

199 The Claimant's complaint of detriment with regard to her suspension fails.

200 It is true that in January 2016 the Respondent did re-employ the Claimant after her right to work in the UK was regularised. In our judgment this was because she was a good worker and knew her work and the Respondent acknowledged that there was shortage of good, qualified carers. The fact that Ms Yamoah had a conversation with her on her return that there should be no more trouble from her from now on, confirms to us that there had been issues between them before. In our judgment, those issues were the Claimant's persistence in raising matters that she considered affected the standard of care offered to residents or the state of the equipment that she and her colleagues had to work with. There was no suggestion in the Respondent's case that this was a reference to the Claimant's work and it is unlikely that she would have been re-employed if that had been the case.

201 <u>It is our judgment that the managers, Matron and Ms Yamoah treated the Claimant differently and to her detriment on the grounds of her disclosure and the complaint that relates to one of those managers succeeds.</u>

202 <u>Accordingly, it is this Tribunal's unanimous decision that causation has been established in respect of 1 of the Claimant's detriment claims. Her claim of public interest detriment disclosure succeeds in relation to detriment 1.</u>

*Automatic unfair dismissal*

203 The Claimant makes a complaint of automatic unfair dismissal. She resigned in writing to the Respondent on 2 July 2016.

204 Why did the Claimant resign? Did the Respondent commit a repudiatory breach of contract on the ground of her disclosures?

205 We look first at the Claimant's resignation letter to see what her thoughts were on her reason for resigning at the time. In that letter she stated that the Respondent had destroyed the implied term of mutual trust and confidence in creating a hostile working environment for her by lowering her position, failing to properly and promptly investigate her grievance and making false accusations against her. As there was no allegation in the Hearing about the Claimant being demoted or her position being

lowered it is likely that these all refer to the matters she has complained of in this case including her suspension and the disciplinary proceedings that had commenced against her.

206 We are now going to look at all the potential breaches of contract raised by the Claimant in the Hearing.

207 In relation to the first grievance about Ms Frimpong, it is our decision that the Respondent did conduct an investigation into this grievance. The Claimant's case that this was a breach of contract fails. It was not. On balance it is our judgment that the failure to give her the outcome of her grievance was an administrative error. It was not related to her disclosures and was not a breach of contract.

208 The Claimant appeared to allege that the failure to consider her second grievance was a breach. It is our judgment that the Respondent had indicated to her in its letters of 1 and 8 June that it would consider her second grievance at the start of the investigation meeting and then move on to investigate the allegations against her. The Claimant failed to attend the investigation meeting and the Respondent decided that it would not consider the grievance without her being there. This is not a breach of her contract. The Claimant did not ask the Respondent to consider the grievance in her absence.

209 The Tribunal considered whether the Respondent's actions in suspending the Claimant, conducting an investigation meeting without telling her details of the allegations against her and inviting her to a disciplinary hearing; could be considered to have been done on the ground of her protected disclosures.

210 It was our judgment that the allegations against the Claimant, even though some of them were anonymous; were serious and warranted investigation. It was appropriate, in our judgment for the Claimant to be suspended while the investigation was conducted. The Claimant was invited to the investigation meeting at which it was proposed that she would be told the details of the allegations against her. It is our judgment that none of those actions were breaches of her contract of employment. It was part of the Respondent's policy that it would not divulge the details of safeguarding allegations to employees before the investigation meeting. This was clearly not a breach – repudiatory or otherwise – of the Claimant's contract.

211 Did the Respondent breach the Claimant's contract on the ground of her protected disclosures by inviting her to a disciplinary hearing or overall in instigating these disciplinary proceedings?

212 Did the Respondent breach the Claimant's contract by its decision to invite her to a disciplinary hearing? The Claimant resigned after receiving the invitation to the disciplinary hearing so it is appropriate to consider whether this was a repudiatory breach of contract.

213 We considered the Claimant's case which was that if she had not made her protected disclosures, there would not have been any allegations, particularly the anonymous ones, made against her. There was a possibility, given the strength of

feeling against her at the Home, that the anonymous allegations against the Claimant were instigated by the management at the Cranham Court Nursing Home and that this had been done as a deliberate attempt to get the Claimant dismissed because of her protected disclosures. We note that the Respondent did not appear to have considered either the Claimant's allegations of mishandling of medication by Margaret Denga (at the time it happened) or her report that Ms Senza may have abused a resident as serious, although they equally were. Neither of those incidents appeared to have been reported to safeguarding by the Respondent at the time. These were some of the discussions to be had and matters to be explored at the disciplinary hearing.

214 However, we bear in mind that at the time that the Claimant resigned the Respondent had made no decision on the allegations against the Claimant. They had also not had the Claimant's comments/representations on the allegations.

215 When the Claimant received the invitation to the disciplinary hearing, she was given the evidence, the allegations, the witness statements and the relevant policies. She had the opportunity to prepare a case in defence of the allegations and to have representation at the disciplinary hearing. It is likely that she would have been given every opportunity to put her case forward at the disciplinary hearing. From the investigation Mandy Lee's recommendation was that the Claimant should be invited to a disciplinary hearing to answer the allegations. She made no recommendation on the possible sanction to be applied to the Claimant should Mr Gorringe's decision be that she should be disciplined.

216 In our judgment, the Respondent's decision to invite the Claimant to a disciplinary hearing was not evidence of a foregone conclusion on the allegations against her. Miss Lee had conducted the investigation without the Claimant's cooperation or involvement and therefore did not have her input into her consideration of one the allegations.

217 The Claimant made no allegation that Mandy Lee had been aware of the issues within Cranham Court or the state of her relationship with Ms Yamoah or Matron. The allegations against the Claimant were serious. She worked within secure environment for vulnerable adults and therefore safeguarding was a serious issue for both the Respondent and the regulatory authorities.

218 In our judgment, although the Claimant considered that the decision to refer the allegations against her to a disciplinary hearing meant that the Respondent had already decided to dismiss her; it did not mean that. The disciplinary hearing was going to be conducted by Mr Gorringe who had conducted her grievance hearing previously. She made no allegation in the Hearing that Mr Gorringe was part of a plot to have her dismissed or was biased against her.

219 The Claimant had an opportunity to read the statements and the investigation report that Ms Lee produced. The letter of invitation to the disciplinary hearing informed her of her right to be accompanied and of her right to produce additional information. This was a properly constituted disciplinary hearing which was not going to be conducted by any of the managers at Cranham Court.

220 It may well have been that the written allegations against her were created with the sole purpose of getting her dismissed and there was a possibility that they would have achieved their goal as dismissal was a possible outcome of the disciplinary hearing. However, this had not yet happened and it was not guaranteed to happen. The invitation to the disciplinary hearing was yet another opportunity for the Claimant to attend a meeting with the Respondent and set them straight about the allegations against her.

221 In summary, the Respondent had not breached the Claimant's contract in the way it dealt with both her grievances, in suspending her, inviting her to an investigation meeting which it rearranged on a number of occasions to enable her to attend; or by inviting her to a disciplinary hearing.

222 It is this Tribunal's decision that the Respondent's action in inviting the Claimant to a disciplinary hearing was not a fundamental breach of contract. It is also this Tribunal's decision that there had not been a series of breaches that could cumulatively amount to a repudiatory breach of contract.

223 If the Claimant had considered that the failure to advise her of the outcome of her second grievance was a breach of contract she did not chase the Respondent for a response or complain about it.

224 The Respondent had not lowered that the Claimant's position by investigating the allegations against her and had not breached her contract by doing so or by its decision to investigate her grievance at the start of an investigation meeting and then move on to investigating the allegations with her input.

225 It is this Tribunal judgment that the Claimant resigned from her employment on 2 July 2016. The Respondent had not done a repudiatory breach of the Claimant's employment. There were no breaches of fundamental terms of the Claimant's contract that led to her resignation. The Claimant felt unable to continue to work for the Respondent but she was not dismissed.

226 The complaint of automatic unfair dismissal fails.

*Wrongful dismissal*

227 The Claimant brings a complaint of wrongful dismissal. This is a claim for notice pay. As the Claimant's complaint of automatic unfair dismissal has failed, the Claimant is not entitled to notice pay. The Respondent did not breach the Claimant's contract by inviting her to a disciplinary hearing. The Respondent did not breach the Claimant's contract by conducting an investigation into serious allegations made against her. The Respondent did not breach the Claimant's contract by its decision to investigate her grievance at the same time as it was going to conduct an investigation into the allegations against her.

228 The complaint of wrongful dismissal fails.

229 The Claimant's complaint of unauthorised deductions of wages was withdrawn and dismissed by an order of Employment Judge Russell on 13 January 2017.

*Remedy*

230 The Claimant submitted a schedule of loss which was on pages 52 to 54 of the bundle of documents. The Hearing dealt only with liability; we heard no evidence on the schedule.

231 The Claimant has succeeded in her complaint that she suffered 1 detriment because she made protected interest disclosures.

232 The Tribunal will arrange a remedy hearing which we can determine the remedy due to the Claimant for her successful complaint. The Tribunal is concerned that the Claimant's disclosures were not taken seriously by the Respondent and that she was subject to detriment because of them. This is a nursing home in which vulnerable adults live. A high standard of care is expected by those who live there and their relatives and by society. Those and other relevant matters will be taken into consideration in the decision on remedy to be made at the remedy hearing.

233 The parties are to write in to the Tribunal with dates to avoid covering a period of three months from the date of this judgment so that a date for the remedy hearing can be fixed. The parties will notify the Tribunal if they have resolved this matter between them and a remedy hearing is no longer required.

Employment Judge Jones

9 July 2018