EMPLOYMENT TRIBUNALS
BETWEEN

Claimant		*Respondent*
Mrs Ailsa Lough	**AND**	**Parkdean Resorts UK Limited**

JUDGMENT OF THE TRIBUNAL

Heard at: **North Shields** **On: 2,3,4 and 5 April 2019**
Deliberations 26th April 2019

Before: **Employment Judge A M Buchanan**

Non Legal Members: Mr S Hunter and Mr D Morgan

Appearances

For the Claimant: **In person**
For the Respondent: **Ms C Millns of Counsel**

JUDGMENT

It is the unanimous Judgment of the Tribunal that:

1. The claim of detriment on the grounds of protected disclosure advanced pursuant to section 47B of the Employment Rights Act 1996 ("the 1996 Act") is well-founded in part and the claimant is entitled to a remedy.

2. The claim of ordinary unfair constructive dismissal advanced pursuant to the provisions of sections 94-98 of the 1996 Act is well-founded and the claimant is entitled to a remedy.

3. The claim of automatic unfair constructive dismissal advanced pursuant to section 103A of the 1996 Act fails and is dismissed.

4. A Remedy Hearing will take place on Monday 12 August 2019 at North Shields at 10:00am.

REASONS

Preliminary matters

1. By a claim form filed on 4 September 2018 supported by an early conciliation certificate on which Day A was shown as 16 July 2018 and Day B as 16 August 2018 the claimant advanced three claims to the Tribunal namely:
1.1 A claim of automatic unfair constructive dismissal pursuant to section 103A Employment Rights Act 1996 ("the 1996 Act").
1.2 In the alternative, a claim of ordinary unfair constructive dismissal pursuant to sections 94/98 of the 1996 Act.
1.3 A claim of detriment on the grounds of having made a protected disclosure pursuant to section 47B of the 1996 Act.

2. By a response filed on 25 October 2018 the respondent denied all liability to the claimant.

3. At a Private Preliminary Hearing on 22 November 2019 the issues in the claims were identified and case management orders given. The issues identified (as modified as the hearing progressed) are set out in the following paragraph. The claimant was ordered to file further information in respect of the detriments alleged on the grounds of having made a protected disclosure. The document filed by the claimant is set out in the Appendix ("the Appendix") to this Judgment followed by a further document filed by the claimant setting out the alleged protected disclosures made by her at various times. These documents were referred to during the hearing as setting out the details of those matters referred to by the claimant.

4. An amended response was filed by the respondent on 10 January 2019. It was accepted that one of the alleged disclosures of information by the claimant amounted to a protected disclosure as is referred to below. No other protected disclosures were accepted. It was not accepted that the claimant had suffered any detriment on the grounds of having made a protected disclosure. It was not accepted that the claimant had been dismissed.

The Issues

Protected Disclosures

5.1 Did the claimant make a qualifying disclosure of information in any of the ways set out below and as further detailed in part one of the Appendix:
5.1.1 An email sent to the respondent by the claimant on 4 October 2017
5.1.2 An email sent by the claimant to the respondent on 7 March 2018.
5.1.3 Matters discussed by the claimant with Matt Brown and Barrie Robinson in a meeting on 11 April 2018.
5.1.4 An email sent by the claimant to the HR department of the respondent on 20 June 2018.

5.2 What information was disclosed?

5.3 Which of the paragraphs (a)-(f) of section 43B(1) of the 1996 Act does the claimant rely on in respect of each disclosure? Did the claimant have a reasonable belief that the information disclosed showed or tended to show one or more of the relevant failures? In particular that the health and safety of individuals was likely to be endangered/ or that the respondent was in breach of a legal obligation or that a criminal offence was being committed.

5.4 Did the claimant have a reasonable belief that any such disclosure was in the public interest?

5.5 Did the claimant disclose the information in accordance with sections 43C - 43 H of the 1996 Act and so render the disclosure a protected disclosure?

Detriment claim

5.6 Did the claimant suffer any of the detriments set out in part two of the Appendix? Did the claimant suffer a detriment on the grounds of having made one or more of the protected disclosures? Was a material reason, not necessarily the principal reason, for the detriments that the claimant had made a protected disclosure?

Unfair Dismissal claims

5.7 Was the claimant constructively dismissed within the meaning of section 95(1)(c) of the 1996 Act?

5.8 Did the respondent commit a fundamental breach of the claimant's contract of employment? The claimant relies on a breach of the implied term of trust and confidence and that the last straw was her inability to defend herself at the disciplinary hearing which was due to take place on 10 July 2018. Thus did the respondent without a reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of mutual confidence and trust between itself and the claimant?

5.9 Did the claimant resign her employment with the respondent at least in part by reason of the fundamental breach committed by the respondent?

5.10 Did the claimant resign promptly and without waiving the breach and without affirming the contract?

5.11 If so, and there was therefore a dismissal, does the respondent show a potentially fair reason for its breach or was the principal reason for it that the claimant had made a protected disclosure?

Jurisdictional defences

5.12 Are there any time issues in respect of any of the claims advanced by the claimant?

Remedy

5.13 If the claimant succeeds, what remedy should be awarded to her?

Witnesses

6. The tribunal heard from the following witnesses during the course of the hearing:

Claimant

6.1 The claimant – Ailsa Lough. The Tribunal found the evidence of the claimant to be plausible and delivered in a coherent and credible way. It is clear that the claimant is a forceful personality and one who was not slow to complain about matters with which she did not agree whilst working for the respondent. There was an element of the claimant's evidence which showed she had overthought matters and various allegations made by her were repetitive. The claimant appeared in person and represented herself competently.

Respondent

6.2 Matt Brown ("MB") – HR Business Partner. We concluded that this witness did not listen to the alarm bells which should have been ringing to any HR manager in relation to the employment of the claimant. His evidence was given in a detached manner and he did not appear to have engaged with the claimant in respect of the concerns she raised with him in any meaningful way. At paragraph 11 of his witness statement it was stated that the claimant's disclosures in October 2017 had been dealt with by HR director Maggie Pavlou and head of HR Phil Richardson. MB corrected this statement at the outset of his oral evidence before the Tribunal to remove any reference to the HR director Maggie Pavlou. MB stated in the same paragraph that a decision was made not to inform AB about the disclosures and that the respondent took whistleblowing allegations very seriously.

6.3 Barrie Robinson ("BR") – Regional Director. This witness struck the Tribunal as high-handed and forceful. He was dictatorial in his approach and in the meeting in April 2018, which he attended with the claimant and Anthony Bate, he blatantly took the side of Anthony Bate.

6.4 Steve Mills ("SM") – General Manager of the Sandy Bay Holiday Park of the respondent and the officer appointed to investigate a grievance raised by the claimant. This witness was a very experienced manager who did not use that experience at all well in dealing with the grievance of the claimant. He alienated the claimant during the interview with her because he stated he would only look at part of the grievance and did so in a perfunctory manner to the extent that the grievance was dismissed in two lines. We consider it no co-incidence that the life partner of this witness took over the claimant's role at Cresswell Towers after she had resigned and he began the grievance interview with her by asking a question as to whether she would leave if he found against her. This witness did find against the claimant in relation to her grievance, the claimant left her role at Cresswell Towers and his partner replaced her.

6.5 Anthony Bate ("AB") – General Manager of Cresswell Towers Caravan Park. We found this witness to be an inexperienced manager who found dealing with the claimant difficult and we conclude he had little support from his managers in doing so. The mother of this witness was the Director of HR for the respondent company and he was considered to be "*untouchable"* by certain employees of the respondent company as a result of his mother's position within the respondent company. We conclude that the inexperience of this witness led to him acting in a manner towards the claimant which contributed very considerably to the repudiatory breach of contract on the part of the respondent which we find existed in July 2018 in respect of the claimant's contract of employment.

6.6 Stacey Savory ("SS") – Employee Relations Specialist – HR. This witness was an HR officer who did not see anything in relation to the employment of the claimant which needed careful handling. This witness missed opportunities which were available to defuse a potentially difficult situation with which she was presented in relation to the employment situation of the claimant. We found her evidence to be given in a truthful way but she did nothing to remove the perception of the claimant that she was being targeted by the respondent.

Documents

7. We had an agreed bundle before us running to 453 pages. Some pages were added during the hearing. Any reference to a page number in this Judgment is a reference to the corresponding page in the agreed trial bundle.

Findings of Fact

8. Having considered all the evidence placed before us and the way in which that evidence was given and having considered the documents to which we were referred, we make the following findings of fact on the balance of probabilities:

8.1 The claimant was born on 1 August 1977. She worked for the respondent from 10 February 2015 until 6 July 2018. At the time of her resignation the claimant was Holiday Sales Manager at Cresswell Towers Caravan Park ("the Park"). The claimant had a written contract of employment (pages 65-75).

8.2. The respondent is a large company with many employees. It has many caravan sites around the UK. It has a central HR department. It has large administrative resources. In December 2015 Park Resorts and Parkdean Holidays merged to become the respondent company.

8.3. The claimant worked first at Sandy Bay Caravan Park and then moved to Crimdon Dene Caravan Park. She began work as a Holiday Sales Assistant with Park Resorts Limited and became a Holiday Sales Manager on 7 April 2016 (page 76) at Crimdon Dene and then moved in that same capacity to the Park with effect from 28 January 2017 (page 77). When doing so and by agreement, she took a decrease in salary of almost £3000 per annum although initially she had been led to believe the reduction would be only £1200 per annum. The role at the Park was more convenient for her domestic arrangements. All the places at which the claimant worked are located in the region of the respondent company known as Scotland and Northern England. At all times material to this claim, BR was the

regional manager. The claimant had been put onto a programme known as "Rising Stars" whilst working at Sandy Bay by her then manager Dominic Devine and as a result found herself promoted rapidly.

8.4. Anthony Bate ("AB") became the general manager at the Park on 22 May 2017. This was his first managerial post. He had been recruited into the respondent company under its *"Graduate (Inspiring Our Next Leaders) Future Leader Programme".* The claimant initially enjoyed a good relationship with AB but that relationship soured from August 2017. The stepmother of AB is the HR Director of the respondent.

8.5 The respondent has a disciplinary procedure (pages 78-85). The procedure is said to follow the guidelines in the ACAS Code of Practice on Disciplinary and Grievance Procedures (2013) ("the Code") and the aim of the policy is said to be *"to bring about improvements in work and conduct – not to punish employees. It is not simply a mechanism to dismiss employees, although in some cases this may be an outcome of the procedure"* (page 79). The disciplinary stages are first written warning, final written warning and dismissal (page 80). Certain matters are described as gross misconduct including "*serious negligence that could or does result in unacceptable loss damage or injury"* (page 82). Paragraph 5 of the Code requires matters to be investigated "*without unreasonable delay to establish the facts of the case".*

8.6 The respondent has a grievance policy (pages 86 – 89) of which the purpose is said to be "*to ensure that questions and problems arising during the course of employment can be aired and, where possible, resolved quickly and to the satisfaction of all concerned".* That policy also refers to the Code which again requires matters to be dealt with without unreasonable delay.

8.7 The respondent has a policy entitled "*Movement and siting of caravans"* (pages 90 – 105). That policy requires a general manager to sign a form authorising the move of a caravan within a caravan site and that the caravan is moved using *"a suitable towing vehicle"* (page 91).

8.8 On 16 June 2017 the claimant sent an email to MB of HR. The email (165A-D) sets out a litany of complaints about her experience of working for the respondent and in particular at Crimdon Dene. The claimant stated that she feared for her job all the time whilst working at the Park and went on: "*I am under the impression that my (regional director) has a very low opinion of me. I have flagged this up on a lot of occasions with you, I could be physically sick when he is on Park, I literally shake, if he stays I will be eager to ensure everything is just right ……".* In that same email the claimant described AB as "*a breath of fresh air, he is supportive, approachable, understanding, good listener and an all-round people focused person".*

8.9 MB sent a reply to managers in which he identified three areas of complaint by the claimant. First, that she feared she was being "*set up"* in respect of outstanding gas checks, secondly, the issue with her salary and thirdly, her general lack of trust in management. MB suggested that AB needed to investigate the gas certificate question and other than that build-up the claimant's confidence through regular one to one meetings. The solution suggested was not actioned by AB.

8.10 In July 2017 the claimant raised an issue orally with AB in respect of the swimming pool lifeguard employed at the Park being at work under the influence of drugs and in early August 2017 raised a further issue orally about two people being in the swimming pool on the Park and engaging in sexual activity.

8.11 On 9 August 2017 (page 169-170) in an email to AB, the claimant raised the difficulties in respect of the swimming pool and how this was provoking complaints from customers which she and her team were being left to field as they worked on reception. AB replied to the effect that the claimant and her team should support the one member of staff who was at that time left dealing with the pool. AB made it clear that it was the role of the claimant and her team to handle complaints and that it was worrying to hear the negative attitude towards having to deal with complaints.

8.12 The claimant replied in a further email at 18:09 on 9 August 2019 (page 167-168) in which she stated more bathers had been allowed into the pool than was permitted and that the hygiene standards in the pool were so bad that infection could be caused to bathers. The claimant made AB aware that the new person in charge of the pool "Casey" was not being allowed to spend time there because she had to take on other duties elsewhere. The claimant continued: "*I feel it necessary now to record a paper trail of everything as I feel as I have been sniped at and criticised for flagging up issues that are extremely relevant. My friend is a lifeguard instructor and I have asked advice simply because I don't want things going wrong".* The claimant indicated that she was upset that AB concentrated on her "*negativity"* and said that she would deal and record all complaints as a result of the pool being understaffed. The claimant said she would think twice in the future about voicing her concerns and that AB had made her feel she had done wrong by seeking his advice and flagging up her concerns. AB thought this message might be a grievance against him and took advice from Phil Richardson of HR. He was told that the message from the claimant should not be treated as a grievance. We infer that AB was already becoming exasperated with the claimant's complaints and general attitude.

8.13 On 10 August 2017 the claimant met with AB. The matters raised by the claimant in the emails of 9 August 20918 were discussed. The claimant confirmed she did not wish to raise a grievance against AB. AB gave the claimant a copy of her job description as she had requested. The job description at page 173-175 was the job description given to the claimant when she accepted the holiday sales manager role in 2016.

8.14 On 31 August 2017 the claimant wrote a letter to the respondent (page 177-178) asking for a larger salary increase than the upcoming 3% which had been announced. The claimant asked for an increase to £20349 per annum and gave details of her commitment to her role and to the respondent company. The claimant asked AB to support her in that application and put her forward for a greater pay increase than 3%. In the event AB did nothing to support the claimant and did not explain to the claimant why he felt he could not support her application. In fact AB said nothing to the claimant about the matter and in October 2017 she received the standard increase and she was disappointed. In evidence AB accepted that on reflection he could have communicated this to the claimant better than he did. Given that the claimant had taken a substantial pay cut when moving to the Park,

pay increases and potential bonuses were of considerable importance to her. The claimant felt unsupported by AB in respect of this matter.

8.15 On 17 September 2017 the claimant sent an email (page 182/183) to AB to say things were getting on top of her. The claimant stated that her one-to-one meetings with AB had slipped off and that she felt AB thought she was just a gossip and she felt a bit out on a limb. She stated she felt AB did not care about her and was approachable one minute and aloof the next. The claimant stated that members of staff came to her to complain about things and when she tried to refer them to AB they refused saying that there was no point because he would not do anything about it. The claimant stated she did not need a response but just wanted AB to know how she felt. This e-mail was the first indication of the deterioration of the relationship between the claimant and AB. We conclude that by this point AB was becoming more exasperated with the claimant's attitude and rather than address it with her, he would often ignore the claimant: this was an example of his inexperience as a general manager. We conclude that the one to one meetings which should have taken place between the claimant and AB did not take place as often as they should have done again because AB found the claimant difficult to manage and he lacked the experience to know how properly to deal with her. We conclude AB was wary of the claimant's propensity to raise matters of concern about his running of the Park even if those matters were not in the claimant's remit.

8.16 In September 2017 it came to light as a result of an audit that the electrical certificate for caravan unit DV24 did not have an up to date electrical certificate. It was the responsibility of the claimant to ensure all caravans had up to date electrical certificates for health and safety purposes. On 30 September 2017 the claimant wrote to AB and made the point that this particular caravan had been off-line for use for two seasons and did not require an up to date certificate. The claimant asked that that point be looked into before any disciplinary action was considered against her. The unit was recorded as a staff unit being a caravan where staff members could be housed.

8.17 The claimant prepared evidence in respect of DV24 (pages 198 – 215) and noted that she had requested that the unit be tested by an email of 12 September 2017 (page 202) with the previous certificate having expired on 1 September 2017. The claimant made the point that the unit had been used as a base for maintenance staff and that it had not been used as accommodation for staff other than in that way. On 13 October 2017 AB conducted an investigation meeting with the claimant about this unit (page 216-217). The claimant accepted the importance of ensuring that the safety checks on all units were monitored and kept up-to-date and made the point that the unit should have been taken *"off-line"* on 1 July 2016 and that it had only been used since then as a base for maintenance staff. The investigation resulted in AB issuing a "*letter of concern"* to the claimant (page 219) dated 26 October 2017 in which he wrote: *"I do however need to highlight to you that continuing poor performance and/or negative behaviour may result in the company wishing to pursue the formal route of invoking the disciplinary procedure to bring about an improvement in your performance and behaviour. I really don't want to go down that route Ailsa so while this letter does not form part of the formal disciplinary process, we do however reserve the right to use it as evidence in the future if appropriate".* In his witness statement to the Tribunal AB stated "*On further*

investigation it transpired that this unit was empty, used for storage and not connected to gas or electricity. It did not therefore need a gas or electric certificate. I informed her that no disciplinary action would be taken but that she needed to take better care with her record keeping". The claimant was upset by this letter and felt it was excessive. We have noted references in the letter to the claimant's "*negative behaviour".* The investigation was not into any aspect of the claimant's behaviour and we infer that those references were further evidence of the deteriorating relationship between the claimant and AB and the difficulties AB perceived he had with the claimant in respect of her challenging behaviour.

8.18 On 3 October 2017 the claimant wrote anonymously to the respondent using the whistleblowing facility which was in place. The claimant wrote two letters. The first letter (pages 185 – 189) was critical of AB and then went on to disclose various pieces of information. The claimant disclosed that in July 2017 one of the lifeguards working at the Park had come to work under the influence of drugs and that she had reported the matter to AB and encouraged other staff to do the same but that no action had been taken. The claimant referred to the emails passing between herself and AB in August 2017 and the matters she had raised in those emails. The claimant stated that she did not feel she had overreacted and felt she had a valid point that if someone lost their life in the pool due to it being under-staffed and such staff as were present being tired, the matter would rebound on AB. The claimant complained that AB had simply told her that she and her team should deal with complaints and made the point that she was concerned more about the substance of the complaints from customers rather than the fact she and her team had to field those complaints. The claimant went on to give information in respect of a "*lock in"* by the new Complex Manager of the Park and that he was transferring bottles of vodka out of the bar to certain people who were becoming extremely drunk. She criticised the way in which AB had dismissed these concerns. The claimant went on to report concerns about three caravans DV52 DV14 and DV23 and the fact that they had soft floors. The claimant asserted she had reported these matters to AB who had dismissed her concerns. The claimant reported that she had spoken to Jonny Campbell in his role as mentor of AB and told him she felt the Park had nosedived. She complained that her one-to-one meetings with AB were not productive. The claimant referred to her request for a higher salary increase and the fact that she had asked AB what he had done to support her request and that in fact nothing had been done. The claimant reported that her safe had recently been jammed and a new key had been required. The claimant complained that AB had obtained the new keys but not given her one and so made her feel not to be trustworthy. The claimant then referred to the issue in respect of DV24 and the fact that she was waiting to hear if disciplinary action was to be taken against her. The claimant stated she had provided evidence to AB but still had had "*no reaction no feedback and no reassurance".* The claimant signed the letter "*anonymous".*

8.19 The claimant sent a further email on 3 October 2017 at 19:15 to the whistleblowing helpline (page 190/191). Reference was again made to the issues in respect of the lifeguard and the swimming pool and to two people having sexual relations in the pool in August 2017 and the dismissive attitude of AB towards that matter when it was reported to him. The claimant made other allegations in respect of AB's conduct and his lack of concern in relation to the allegations about the

Complex Manager. She repeated concerns in relation to the unsafe floors of certain caravans. The claimant described the Park as a "*sinking ship".*

8.20 In seeking to use the whistleblowing facility the claimant was following guidance she had seen on a training video issued by the respondent. The claimant was contacted by the whistleblowing officer and told that her two letters were not perceived to contain disclosures of information but rather amounted to a grievance against AB and that, if she wished to pursue the matters, she should raise a grievance against her line manager AB. The claimant was unwilling to take that step and therefore asked that no further action be taken about the matters she had raised. The claimant was very disappointed by this response and it affected her trust and confidence in the respondent.

8.21 The receipt of these two emails trying to invoke the whistleblowing procedure was spoken about in the HR department. Complaints of that nature using that procedure are rare. The recipient of the claimant's correspondence did not know how to deal with it and took advice from a colleague. it was decided that as the claimant had sent the correspondence through her work email that she could not have anonymity (page 194). We infer that the matter was spoken of openly in the HR department and that Maggie Pavlou as HR Director knew of the matter. It would be surprising if she did not. AB stated in evidence before us that he had not seen the emails until he had seen the trial bundle for this Tribunal. Whilst we can accept his evidence that he was not shown the emails, we infer that AB did know that the claimant had raised issues with the HR Department and, whilst he was not given the details, he was told of the fact of the complaints and told to watch the claimant. This further coloured his attitude towards the claimant over the ensuing months. AB already found the claimant difficult to manage and now became ill-disposed towards her.

8.22 In its amended response to this claim (page 54), the respondent accepted for the first time that the report to AB in respect of the pool lifeguard (which was repeated in the two emails of October 2017) did amount to a protected disclosure. We conclude that the decision of the HR Department not to treat the October emails under the whistleblowing policy was incorrect and that matter did undermine the claimant's trust and confidence in the respondent and its procedures.

8.23 Having considered the evidence of the claimant and AB, we accept that the matters reported to AB by the claimant did occur as she set them out. In his evidence AB stated that he could not recall certain of the matters which the claimant says she reported. We compare that to the claimant's own clear evidence and accept it. In relation to the question of the safe keys, AB accepted that new keys were issued and that "*I just hadn't got round to reissuing them to staff. The claimant was well aware of this, but I accept that I could perhaps have communicated this better at the time".* We accept that that is so but the claimant needed the key to the safe to carry out her day-to-day duties and the fact that she did not have one caused her difficulty and caused her to feel that she was not trusted and undermined further her trust and confidence in the respondent. AB states that disciplinary action was not taken against the claimant in respect of DV24 because a letter of concern does not amount to such action. The claimant perceived the letter of concern to be critical of her and, insofar as it related to her behaviour rather than her capability, we conclude that the claimant's perception of

that letter was correct. The investigation into DV24 was protracted given what was to be investigated.

8.24 We conclude that the respondent perceived the claimant as a troublemaker and as a serial complainer. The matters raised by the claimant with AB and the matters raised in the two lengthy emails of October 2017 were interspersed with matters which were complaints about AB and matters which can only be described as gossip. We conclude that those matters clouded the view which the respondent took of the disclosures and caused the respondent not to look properly at the potentially serious matters which the claimant was raising particularly in respect of health and safety.

8.25 In November 2017 a staff party was held in the bar on the Park after the end of the season. The claimant attended the party and thought that alcohol was being sold at the party and money was changing hands over the bar. The claimant reported the matter to AB as she thought that the conditions of the respondent's alcohol licence were being breached. We accept the evidence of AB on this point to the effect that the drinks being consumed were being recorded on a till in order that AB could keep an eye on the cost and that in fact money did not change hands. The claimant was mistaken but we accept she believed what she reported.

8.26 In December 2017 Charlotte Emms ("CE") raised a grievance against the claimant in respect of the claimant's action in posting a photograph of CE's wedding on a Facebook account attached to owners of caravans on the Park. AB interviewed CE on 12 January 2018 (page 233A) and then saw the claimant in a meeting on 18 January 2018 (page 234 /5). The claimant accepted she had posted a photograph of CE at her wedding on the owners' page but had taken the photograph down as soon as CD had asked her to. The claimant accepted she did not have permission from CE to post a photograph. No action was taken against the claimant but AB reminded her of the provisions of the respondent's social media policy.

8.27 13 January 2018 (page 220) claimant asked AB to put her forward for finance training. AB did not do so.

8.28 The claimant was away from work during February 2018 for four weeks due to a medical procedure.

8.29 When the claimant returned to work her relationship with AB further deteriorated. On 27 March 2018 the claimant wrote to BR the Regional Director (pages 243-244) and in the course of that e-mail raised serious concerns about the conduct of AB. The claimant made it known that she had tried to blow the whistle in October 2017 and then she had spoken to Jonny Campbell who had been "*massively supportive".* The claimant complained that she and the other staff received little or no support from AB. The claimant complained when she returned from her sick leave that she found the fleet caravans not ready for the season and as a result the maintenance manager had given four weeks' notice. The claimant ended the email: "*Please don't tell him it was me that said anything, I completely have his back, I would lie in the road for him, the park and the business, I don't want to make issues for him, but I feel it is going wrong and we are going under".* The claimant confirmed (page 250) that she was not raising a grievance but simply

seeking the help of BR to improve the working relationship between herself and AB. It was agreed that the claimant would meet BR on 11 April 2018.

8.30 On 11 April 2018 BR, together with MB who took the notes, met with the claimant who expanded on the difficulties which she and other staff – in particular heads of departments – had had with AB. The claimant explained her aspirations to become a general manager. BR met separately with AB who complained that it had been reported to him that the claimant had referred to him in front of other members of staff as "*as much use as a chocolate fireguard".* BR convened a meeting between the claimant and AB and began that meeting by asking the claimant if she had made the chocolate fireguard remark. The claimant confirmed that she had and BR took her to task for that remark and said that it was not acceptable conduct. The claimant was admonished about it in the presence of MB and AB. No disciplinary action was taken against the claimant in respect of the remark. BR encouraged the claimant and AB to cooperate and move forward and stressed that all operational decisions in relation to the Park lay with AB. The claimant was told to stop undermining AB's authority and also to stop protecting him by taking on duties which properly fell to be carried out by AB. That meeting, which was meant to improve the relationship between the claimant and AB, only served to create further difficulties which ultimately led to the claimant's resignation some three months later.

8.31 On 24 April 2018 the claimant reported to AB (page 258) that there were some issues with importing gas and electricity safety certificates onto the reporting wizard and the claimant had reported this to the helpdesk.

8.32 On 18 May 2018 the claimant wrote (page 277) to MB to record the fact that she had heard on the grapevine that because she had contacted BR her job was now in question and that AB would find something for her to be dismissed. She recorded that certain gas test certificates had gone missing. The claimant indicated she was going to speak to AB directly about the matter but simply wanted the matter recording by the HR Department. MB replied to the claimant and told her there was nothing to worry about. In evidence MB stated that the claimant was often a difficult person to manage and that he supported AB *"to channel this good work and to get the best out of her".*

8.33 On 20 May 2018 the claimant sent AB an email asking if she had done something wrong (page 279). The claimant wondered if something was arising between herself and AB again and asked if she had upset AB in any way and she continued: "*every time I came to speak to you on Friday about work related stuff – you would either grunt back at me or really not want to speak to me about it and if I'm honest you were really curt which I felt was unjustified".* The claimant sent AB a copy of the email she had sent to MB on 18 May 2018.This was further evidence of the deteriorating relationship between the claimant and AB. The claimant received no reply.

8.34 On his return from leave on 16 May 2018, AB was advised by the Holiday Sales Team that the gas certificate for caravan DV108 could not be found. AB made checks and found that the certificate had expired. On 20 May 2018 AB conducted an investigation meeting with the claimant (pages 280-282). The claimant stated that certain gas certificates which had been in a folder on her desk

had been removed and also referred to the problems she had had with the wizard recording system. The claimant pointed out the difficulties of keeping track on caravans because of the amount of moves on the park. The claimant also pointed out that DV108 had been checked by the accommodation manager and the record in the caravan itself showed certificates were in place. The claimant stated she was not 100% sure that DV108 had been gas tested but pointed out that the recording system had shown that DV108 was a so-called-called showground van. The claimant referred to the fact that she had heard AB was "*going to pin something on me".* The investigation into this matter by AB dragged on until shortly before the claimant's resignation in July 2018. AB did not conduct an interview with the engineer Garry Taylor 16 June 2018 (page 290).

8.35 On 21 May 2018 (page 283) AB received information of a bonus scheme which was available to the claimant and her team. It gave the potential for the claimant and her team to earn a bonus of £500. We accept that this bonus scheme was at no time drawn to the attention of the claimant by AB and as a result the claimant and her team never had the opportunity to participate in the scheme.

8.36 On 30 May 2018 the claimant wrote to MB (page 287) asking how to apply for a transfer of park or location. The claimant referred to her contact with BR in April 2018 and went on: "*the backlash from that meeting is very evident and it is not only having a detrimental effect on my work but also my home life".* She referred to the fact that AB had not carried out her PI review. The claimant set out her perception that AB was covering his own back and that he was protected because of his stepmother's position as HR director.

8.37 On 20 June 2018 and whilst on annual leave, the claimant raised a grievance against AB (pages 291-298). It was sent to SS of HR. The claimant recorded that she had been told that AB had told another member of the staff at the Park that he intended to manage her out whichever way he could. The claimant complained she had not had feedback on her request for an individual pay increase. The claimant complained that AB on occasions did not speak to her or acknowledge her and was rude to her. The claimant attached "*proof*" that it had been said by an internal HR source that AB was protected due to his stepmother's position as HR director. The claimant asserted that she had made AB aware that another member of staff had threatened violence towards her team but that AB had dismissed those concerns. The claimant complained that her request to transfer park or location had been dismissed. The claimant reported she had requested support from BR but it had not been forthcoming. The claimant complained that notes of an investigation had been lost by AB and then typed up again omitting evidence that was crucial to the investigation. The claimant complained that the investigation had been going on for four weeks and that AB had said he was still looking into certain matters. The claimant continued: *"the investigation is extremely cut and dry, there was not a gas certificate in a unit on park, this was because when the 188 safety report was done it did not show the correct information and when I asked him if I should test the units showing on the showground he advised me not to and that was his instruction. The unit in question was not one of those units – his instruction was not to test units showing on the show ground. He is now wanting to discipline me for not having the said unit in test after telling me to ignore it. He then omits this information from the*

notes and then goes on to investigate for four weeks". The claimant indicated her level of upset and that she had sought legal advice.

8.38 SM was appointed to investigate the claimant's grievance. SM was the general manager at another nearby park known as Sandy Bay – a position he had held since March 2018. Prior to that he had worked in Lancashire and had not met the claimant before. The life partner of SM also worked for the respondent and was looking to relocate to the north-east into a suitable position.

8.39 The claimant was invited to meet SM on 25 June 2018 and in advance of the meeting the claimant supplemented the contents of her grievance (page 301 – 302). The claimant complained that AB rarely responded to any email and in particular any email requesting support. She complained that her working days had been increased from 5 to 6 each week. She complained about the absence of feedback from her pay increase request in 2017. She complained about the absence of support in the face of aggressive behaviour from the housekeeping manager. She complained about delays in AB completing her PI review. She complained about the length of the investigation into caravan DV108. She complained about the absence of feedback or conclusion to the investigation in January 2018 about social media activity. She complained about the fact that her disclosures in October 2017 were not treated under the whistleblowing policy and that she was told she had to raise a grievance. She complained that AB had held her safe keys and not provided her with the key for some time in October 2017. She complained about the absence of copies of the notes from her meeting with AB on 20 May 2018. There were 31 points raised in this supplementary note.

8.40 The claimant sent further supplementary evidence in advance of her meeting with SM. This included a copy of the disclosures she made in October 2017. The supplementary information was indexed (pages 323 – 324) and comprised some 29 items.

8.41 The claimant met SM on 25 June 2018. The meeting lasted two hours and was minuted by a note taker (pages 325 – 331). SM asked the claimant questions in order to properly understand her grievances. SM did not have a copy of the disclosures from October 2017 and it was agreed they would be sent to him. The claimant expanded on her complaints and in particular that the investigation notes into DV108 had been lost by AB and they had had to be reconstituted. SM noted that he would look into the matter but would not include it within the grievance. SM stated (page 328) that he would check the claimant's "*whistleblowing letter"* with all the new information provided and stated it would not be discounted. Later in the meeting and after a break SM confirmed he had looked through the "*whistleblowing letter".* SM confirmed he would liaise with HR over the next steps and told the claimant he would resolve the matter as soon as he could.

8.42 We accept that at the outset of the hearing SM did ask the claimant if she would leave the respondent if he did not uphold the grievance. We accept that SM did state at the outset of the meeting with the claimant that he would not take into consideration all the information submitted as he felt it was not necessary to go over old ground. We reach this conclusion in the face of strong denials by SM because of the way in which SM failed to investigate the grievance raised by the claimant and in the light of his wholly inadequate dismissal of the grievances

without any attempt at explanation of the decision reached. In addition, we note that the life partner of SM took over the claimant's role when she left it and that she did so in August 2018. We conclude that the investigation of the claimant's grievances was wholly inadequate and unreasonable.

8.43 On 29 June 2018 SM met with AB and this meeting was minuted (pages 336 – 339). Unlike the meeting with the claimant there was no note taker present and SM prepared the notes himself. No other person was present. AB confirmed that he had in his possession all the documents presented by the claimant as well as the notes from the claimant's meeting with SM on 25 June 2018. AB accepted that a section of the handwritten notes from his investigation meeting on 20 May 2018 had been omitted from the typed notes and that they had had to be added to the typed notes and re-signed. AB accepted that he had asked the claimant to work on a Saturday but had not increased her working days per week but simply altered them. AB accepted that the claimant's May PI review was late in taking place but it had been carried out in early June 2018. AB accepted that he could have kept the claimant better informed throughout the process in relation to the replacement of the safe keys in October 2017 but he could not recall the claimant raising the matter with him at the time. The meeting lasted 90 minutes. In the main AB denied the allegations which the claimant had raised against him and the contents of her complaint.

8.44 SM undertook no further investigation into the grievance. No other employees were interviewed in order to check the conflicting versions of events between the claimant and AB. The meeting with AB concluded around 5pm on Friday 29 June 2018 and SM wrote the outcome letter on the morning of Saturday 30 June 2018. SM reviewed his notes and concluded he was comfortable with the answers he had received from AB. SM discussed the grievance with BR but made no notes of his conversation. The outcome is a bald dismissal of the grievances and provides no explanation for the conclusion which were reached. The outcome provides no analysis of the documentary evidence provided by the claimant. We conclude that this was an example of general managers sticking together: the claimant reasonably reached the same conclusion.

8.45 The grievance outcome was sent to the claimant the next day in very peremptory terms (page 340-341) and was expressed in the following terms:-

"The result of the hearing after investigating the reasons for your grievance is that your grievance will not be upheld. I have fully investigated the point you raised and I cannot find evidence to support your grievance against Anthony Bate. The reasons for this decision are outlined below:-

- *I can find no evidence that Anthony Bate acted in any other way than what would be considered appropriate to his position as general manager or any instances where he has not adopted the correct company procedure in his dealings with you.*
- *I can find no evidence of you being treated unfairly or discriminated in any way".*

The claimant was advised of her right of appeal but in the event did not do so. The claimant was disappointed in the outcome and in the lack of explanation for the

outcome. The claimant's trust and confidence in the respondent was further substantially damaged.

8.46 On 23 June 2018 AB carried out a spot check on the gas and electricity certificates for the caravan units for which the claimant had responsibility. AB found that caravan MG42 had no current gas certificate. On 24 June 2018 (pages 303 – 307) AB conducted an investigation meeting with the claimant about this matter. MB attended to take notes. This caravan was one occupied by the staff of the respondent and the claimant raised an issue as to whether it was her job to arrange checks for staff units and asserted that this was the responsibility of the accommodation manager. The claimant asked AB why he had waited until 24 June 2018 to raise the matter when he had first noticed the issue on 1 June 2018. The claimant asserted that she had been asking for support with the duties and nothing had been forthcoming.

8.47 By a letter to AB (pages 332-334) dated 26 June 2018 the claimant noted that AB had completed some of the notes of the meeting on 24 June 2018 before it had started and had shown a person named Eileen Rigg to be present when she was not. The claimant argued that it was not her responsibility to check staff accommodation and that she had told AB on more than one occasion that she was not comfortable in checking staff accommodation. The claimant stated that she did not feel comfortable because she had been the victim of an assault in 1998 and that by going into occupied units she felt vulnerable to a repeat of that situation. The claimant stated that her job description did not make it a requirement for her to deal with staff accommodation and that she had been asking for clarity on that point from AB but it had not been forthcoming. The claimant noted that AB had stated he did checks on 18 May 2018 and if he saw that the certificate was about to expire why he had not raised the matter with the claimant at that time rather than waiting for it to go out of date. The claimant continued: "*I am of the opinion you were aware it was to expire, you were aware that I wasn't carrying out checks…. You also were aware that on 7 June I would be on annual leave for two weeks so unable to get the unit tested. Additionally, at the time you were already investigating me on an exhaustive level for gas safety certification so my performance in this area was already under scrutiny therefore why you didn't mention it that MG42 required a test is concerning. As before, communication between us still isn't at a satisfactory level….".* The claimant stated that she would not allow AB to manage her out.

8.48 On 28 June 2018 the claimant came away from work with work related stress and she submitted a fit note (page 335) for 11 days. During her absence, the claimant spoke to SS by telephone and the issue of arranging mediation with AB was suggested and discussed. By the point of her resignation, the claimant had not been made aware of any firm arrangements for mediation.

8.49 On 5 July 2018 the claimant was invited to a disciplinary hearing on 10 July 2018. The letter (page 342-344) included the following allegations:- "*The purpose of this hearing is in relation to allegations that you have breached health and safety. It is specifically alleged that you have allowed nine gas certificates to expire".* When the claimant received this letter she was shocked as any investigation with her over the previous seven weeks had related to two expired certificates and not nine. She telephoned the writer of the letter SS who told her that there had been a typographical error and the claimant then went on to say that the supporting

documents with the letter referred to nine certificates and she was then told she could put that matter forward as mitigation. The claimant was understandably most upset at this turn of events. Nine gas certificates breaches were alleged on a report sent with the letter (page 346).

8.50 On 6 July 2018 the claimant resigned. The letter of resignation (page 350) reads *"I am writing to inform you of my resignation with immediate effect (6.7.2018). I have looked at all of the options available to me at this time and I feel that I am unable to continue with my role at Parkdean Resorts. I have spoken to Payroll this morning who have advised that I will be paid any annual leave entitlement I have left from the awarded entitlement in January 2018 minus any holidays taken…."* .

8.51 On 7 July 2018 the claimant wrote to SS (page 351) giving further details of the reasons for her resignation. She indicated that she had only been investigated for two missing certificates not nine. The job description that she had been sent was an incorrect job description. The information she had given to AB about the various units had not been provided in the pack and she felt that she was being set up. She complained that there had been a long delay in investigating the matter and went on to say:- "*This is a massive illustration of managing someone out. To say I am furious is an understatement. I have not going to make any decision on whether to go ahead with the above until I have calmed down and thought it through on a logical basis and possibly sought some legal advice".*

8.52 At the same time the claimant wrote to the chief executive officer of the respondent John Waterworth (page 355). In that letter she made it plain she had resigned because her working relationship with her manager had broken down and she went on *"He made me feel useless unappreciated disrespected, he made me feel inadequate. I reported all of this to higher management, to HR to Regional Director level. Because I reported this, he made the Park team aware he would get rid of me, he investigated me over things he himself had actually got wrong saying I had done them, he made my everyday life a misery. I placed a formal grievance and put forward my points, I backed up this with evidence. I whistle-blew. I also had evidence that it was believed he was protected and that his bad practice in the past had been covered up because as he was related to Maggie Pavlou. My grievance was not upheld, I was on the sick due to work-related stress. I was broken….".*

8.53 On 12 July 2018 (page 356) SS wrote to the claimant to confirm that the reference to 9 certificates was her drafting error in the letter and that there were only two certificates in question. She asked the claimant to reconsider her resignation and stated it would not be processed until 16 July 2018 to give a chance to reconsider.

8.54 On 13 July 2018 the claimant wrote again to SS to set out further details of the reasons for her resignation (page 357-358). In it she stated that she felt unsupported by AB, that he had attempted to manage her out of her role when investigating an allegation of gross misconduct, that procedures and guidelines were not followed, that decisions had been made prior to investigation and further hearings in accordance with the company's disciplinary policy, that a grievance was not upheld and that Anthony Bate was protected. In all 10 points were given as the

reason for the resignation. The claimant did not wish to reconsider her decision to resign.

8.55 In response SS replied to the claimant (page 359) indicating that she had not appealed the outcome of the grievance, that previous matters had been investigated by BR and MB, that no decision had been taken on the disciplinary charges the claimant was facing, and that she was hoping the claimant would enter into mediation with AB once the disciplinary hearing was resolved and that she was planning for that to take place. The claimant's resignation was accepted.

8.56 It was only in preparing for the hearing before the Tribunal that the claimant became aware of the bonus scheme of May 2018 of which she had not been given details.

Submissions

Respondent

9. On behalf of the respondent, Ms Millns filed written submissions extending to six pages which were supplemented by oral submissions. These are briefly summarised:

9.1 In considering whether the dismissal of the claimant was by reason or principal reason of protected disclosure an enquiry into the facts or beliefs which caused the decision maker to dismiss is required. In respect of the detriment claim, the person who subjects the claimant to a detriment must personally be motivated by the protected disclosure in order for that claim to succeed. Another person's knowledge and motivation cannot be imputed – **Malik -v- Cenkos Securities plc UKEAT/0100/17.**

9.2 The evidence supports only one conclusion namely that the protected disclosure (and only one is admitted) was not the reason or principal reason for the dismissal.

9.3 AB cannot have been influenced in any way by the contents of the e-mails sent by the claimant on 3 October 2017 because he had not seen them until preparing for this hearing. There is no evidence that his stepmother Maggie Pavlou knew of the whistleblowing e-mails and the evidence is that those matters were kept away from her.

9.4 Detailed submissions were made in respect of each of the twenty protected disclosures which were alleged. We do not rehearse those submissions but take them into account and, where necessary, refer to them when dealing with those matters in our conclusions.

9.5 In most instances the question of whether or not the claimant suffered a detriment is a matter of the credibility of her evidence when compared to that of AB. There are many factors which undermine the credibility of the claimant and, in the event of conflict, the evidence of AB should be preferred.

9.6 In cross examination the claimant stated that before her resignation she was amenable to mediation. This is inconsistent with the respondent having committed a fundamental breach of contract at the time she decided to resign. Alternately it is evident that the claimant had affirmed her contract following any of the alleged acts or omissions by AB.

9.7 The real reason for the resignation of the claimant was not because of alleged acts or omissions of AB but because she held the misconceived belief that she was certain she was to be dismissed at the disciplinary hearing on 10th July 2018 and did not want a finding of gross misconduct on her record. That conclusion was not caused or informed by any repudiatory breach of contract by the respondent. It was caused by ill-informed and plainly wrong Facebook discussions over which the respondent had no control. Further that conclusion by the claimant was not a part of a course of conduct comprising several acts and omissions which viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence.

9.8 The actions of AB in taking the claimant to a disciplinary hearing were proper actions and not unusual actions and certainly not actions which breached her contract.

9.9 The Tribunal will have to grapple with issues of credibility but in doing so the Tribunal should look at the issues the claimant had with previous line managers before moving Cresswell Towers. The claimant is a complex character and her difficult character is the route of the problem. She was not slow in criticising her managers and accepted that she had called AB "*a chocolate fireguard"* and it is noteworthy the respondent took no disciplinary action about this. On the other hand, AB is a young new manager who had been groomed through the outstanding leaders' management programme. When giving evidence, there was no chink in his armour. He answered the questions put to him well and confidently and did not lose his temper. That was in comparison to the claimant who evidenced the mixed bag of her character in her conduct before the Tribunal. A serious blow to her credibility must be the fact that what she now states namely that she was only responsible for holding the gas and electricity certificates in respect of the caravans is not what she stated in her alleged whistleblowing letter of October 2017.

9.10 BR did not say that AB felt threatened by the claimant and that is supposition on the claimant's part. The claimant is prone to exaggeration. Various examples were highlighted in respect of exaggeration and inconsistency in the evidence of the claimant.

9.11 Various submissions were made in respect of each of the alleged disclosures and detriments.

9.12 In respect of the allegation of constructive dismissal, it is accepted that the conclusion of the grievance is not detailed but that is not evidence of breach. Whilst the investigation was not perfect, it was certainly sufficient. There was no breach of contract by the respondent but if there was a breach of contract in that regard, any breach was affirmed and in any event there was no series of actions upon which the claimant can rely to support a claim of constructive dismissal. The

reaction of the claimant to the letter which set out nine breaches instead of two was exaggerated and dramatic. In any event the reason for her resignation was not related to that matter but rather the final straw was said to be that she feared having a finding of gross misconduct on her record and that was something beyond the control of the respondent. Her agreement to mediate is completely contradictory to such a stance.

Claimant

10. The claimant made oral submissions which are briefly summarised:-

10.1 The relationship between herself and AB began to break down after her e-mail of 9th August 2017. The claimant had tried to support AB but he resisted her attempts because he thought she wanted his job but in fact she did not.

10.2 The claimant asserted that AB was not credible in his evidence and that he had given inconsistent and contradictory evidence. AB would frequently tell the claimant that if she repeated what he had said, he would deny saying it and that was a bullying tactic.

10.3 The respondent only admitted in its amended response that she had made a protected disclosure in October 2017 and the final straw for her resignation was that AB tried to produce fictitious evidence. She raised the matter with SS who said it was a typographical error. SS did not say that mediation could take place and there was no mention of anything except gross misconduct. Mediation was not discussed with the claimant.

10.4 Everything points to the fact that AB was told of the whistleblowing letters in October 2017 and from that point on his behaviour towards her became worse and worse and their relationship deteriorated. The conduct of AB towards her was repudiatory. He conducted petty investigations, he denied her support, he denied her access to a bonus scheme and he denied her access to training. He was an inexperienced manager and petulant.

10.5 There was no attempt properly to investigate her grievance. Everything which AB said to the grievance officer was accepted as gospel truth and nothing in the outcome letter shows any meaningful consideration of the grievance itself but simply shows a blanket acceptance of all that AB had said without any explanation.

10.6 There was a breach of the implied term of trust and confidence and that led to the resignation.

10.7 It was asserted that the claimant had suffered detriments and that the detriments were because she had made protected disclosures. AB had felt intimidated by her and he had mistreated her and that was on the grounds of having made protected disclosures. The claimant stated she had not found the employment tribunal easy but she was not paranoid. Her claims were not out of time. She had been treated badly and unprofessionally by AB and had exposed his weaknesses.

11. **The Law**

Protected Disclosures

11.1 The Tribunal has reminded itself of the detailed provisions set out in Part IVA of the 1996 Act in relation to protected disclosures.

11.2 In particular the Tribunal has reminded itself of the provisions of section 43B (1) of the 1996 Act which read:-

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

(a) that a criminal offence has been committed, is being committed or is likely to be committed;

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur;

(d) that the health or safety of an individual has been, is being or is likely to be endangered;

(e) that the environment has been, is being or is likely to be damaged; or

(f) that information tending to show any matter falling within any one the preceding paragraphs has been or is likely to be deliberately concealed".

11.3 The definition of a qualifying disclosure breaks down into several elements which the Tribunal must consider in turn.

Disclosure

11.4 The Tribunal has reminded itself of the decision in **Cavendish Munro Professional Risks Management Limited – Geduld 2010 IRLR 37** and the guidance from Slade J to the effect that there is a distinction to be drawn between "information" being provided and an "allegation" being made. The latter will not qualify as a disclosure for the purposes of section 43(B)(1). We note the distinction between these two concepts has been diluted somewhat by the decision in **Kilraine –v- London Borough of Wandsworth 2016 IRLR 422** and we must be careful not to be too easily seduced into asking whether the alleged disclosure was one or the other given that they are often intertwined. The Tribunal reminds itself that simply voicing a concern, raising an issue or setting out an objection is not the same as disclosing information. The Tribunal notes that a communication – whether written or oral – which conveys facts and makes an allegation can amount to a qualifying disclosure.

Reasonable Belief

11.5 In **Darnton v University of Surrey** and **Babula v Waltham Forest College 2007 ICR 1026** it was confirmed that the worker making the disclosure does not have to be correct in the assertion he makes. His belief must be reasonable. In **Babula** Wall LJ said:-

*"… I agree with the EAT in **Darnton** that a belief may be reasonably held and yet be wrong… if a whistle blower reasonably believes that a criminal offence has been committed, is being committed or is likely to be committed. Provided that his belief (which is inevitably subjective) is held by the Tribunal to be objectively reasonable neither (i) the fact that the belief turns out to be wrong – nor (ii) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence – is in my judgment sufficient of itself to render the belief unreasonable and thus deprive the whistle blower of the protection afforded by the statute… An employment Tribunal hearing a claim for automatic unfair dismissal has to make three key findings. The first is whether or not the employee believes that the information he is disclosing meets the criteria set out in one or more of the subsections in the 1996 Act section 43B(1)(a) to (f). The second is to decide objectively whether or not that belief is reasonable. The third is to decide whether or not the disclosure is made in good faith".*
We remind ourselves that the requirement for a disclosure to be in good faith is no longer a liability issue but something to be considered when assessing any remedy which might be due.

Legal Obligation

11.6 The Tribunal has reminded itself that any disclosure which in the reasonable belief of the employee making it tends to show that a breach of legal obligation has occurred (or is occurring or is likely to occur) amounts to a qualifying disclosure. It is necessary for the employee to identify the particular legal obligation which is alleged to have been breached. In **Fincham v HM Prison Service** EAT0925/01 and 0991/01 Elias J observed: *"There must in our view be some disclosure which actually identifies, albeit not in strict legal language, the breach of legal obligation on which the worker is relying."* In this regard the EAT was clearly referring to the provisions of section 43B(1)b of the 1996 Act.

The Tribunal has noted the criticism by the EAT in **Fincham** of the decision of the Employment Tribunal in that case that a statement made by the claimant to the effect "I am under pressure and stress" did not amount to a statement that the claimant's health and safety was being or at least was likely to be endangered and so did fall within the provisions of section 43B(1)d of the 1996 Act.

Method of Disclosure

11.7 The Tribunal notes that the claimant in this case seeks to rely upon disclosure to the respondent and the Tribunal has reminded itself of the provisions of section 43C of the 1996 Act which read:-

"A qualifying disclosure is made in accordance with this section if the worker makes the disclosure …… –

(a) to his employer….."

Public Interest

11.8 We note that the courts have construed the requirement for a disclosure to be *"in the public interest"* narrowly. We are particularly to consider the numbers in a group whose interest the disclosure served, the nature of the interests affected, the nature of any wrongdoing disclosed and the identity of the alleged wrongdoer. We must consider whether the claimant considered any disclosure made by her to be in the public interest, whether she believed that the disclosure served that interest and whether that belief was held reasonably held.

Detriment Claim – Section 47B 1996 Act

11.9 The Tribunal has reminded itself of the provisions of section 47B of the 1996 Act which read:-

"(1) A worker has the right not to be subjected to any detriment by any act or deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure
(2) … this section does not apply where … -
(b) the detriment in question amounts to dismissal (within the meaning of Part X)".

11.10 The Tribunal has reminded itself of the provisions of section 48 of the 1996 Act and in particular to section 48(2) which reads:-

"On such a complaint it is for the employer to show the ground on which any act or deliberate failure to act was done".

11.11 In relation to causation the Tribunal has reminded itself of the decision of the EAT in **Fecitt (Supra)** and the reference in that Judgment to the speech of Lord Nichols in **Nagarjan v London Regional Transport [1999] IRLR 572** where it was stated:-
"Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases with different shades of meaning have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others although in the application of this legislation legalistic phrases as well as subtle distinctions are better avoided so far as. If racial grounds or protected acts have a significant influence on the outcome discrimination is made out".

11.12 The decision in **Barton v Investec Henderson Crossway Security Limited [2003] ICR 1205** is noted where the burden of proof guidelines were discussed and the following guidance given:-

"To discharge the burden it is necessary for the respondent to prove on the balance of probabilities that the treatment was in no sense whatsoever on the grounds of sex since 'no discrimination whatsoever' is compatible with a burden of proof directive".

11.13 We note the decision in **Fecitt** and the following guidance at paragraph 66:-

*"We bear in mind that in the legislation relating to whistle blowing, Parliament has sought to offer protection to whistle blowers. We consider that we should take a broad view of provisions for their protection. Further, the law stated by the Court of Appeal in **Igen v Wong** is binding upon us. The Court of Appeal considered the relevant earlier authorities and insofar as we are concerned its decision is both definitive and binding upon us. Accordingly, in our opinion once less favourable treatment amounting to a detriment has been shown to have occurred following a protected act the employer's liability under section 48(2) is to show the ground on which any act or deliberate failure to act was done and that the protected act played no more than a trivial part in the application of the detriment. That is the meaning in the test of **Igen v Wong**. The employer is required to prove on the balance of probabilities that the treatment was in no sense whatsoever on the ground of the protected act.*

11.14 The Tribunal has reminded itself of the decision in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** and the guidance from the head note which reads:-

*"In order for a disadvantage to qualify as a 'detriment', it must arise in the employment field in that the court or tribunal must find that by reason of the actor acts complained a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to 'detriment'. However, contrary to the view expressed by the EAT in **Lord Chancellor v Coker** on which the Court of Appeal relied in the present case, it is not necessary to demonstrate some physical or economic consequence".*

11.15 The Tribunal further reminded itself of the words of Lord Scott in the same case:-

"The test that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment must be applied by considering the issue from the point of view of the victim. If the victim's opinion that the treatment was to his or her detriment is a reasonable one to hold that ought to suffice. However, an unjustified sense of grievance about an allegedly discriminatory decision cannot constitute 'detriment', a justified and reasonable sense of grievance about the decision may well do so".

Ordinary Unfair Constructive Dismissal Claim – Section 98 of the 1996 Act

11.16 We set out the principles that we have considered relevant to the issues in this matter. We have reminded ourselves of the provisions of Section 95(1)(c) of the Employment Rights Act 1996:

"For the purposes of this part an employee is dismissed by his employer if and only if …

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

11.17 We have reminded ourselves of the classic definition of constructive dismissal by Lord Denning in **Western Excavating (ECC) Ltd v Sharp [1978] ICR 221:**

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

11.18 We have reminded ourselves of the decision in **Malik -v- Bank of Credit of Commerce International SA [1997] IRLR 463** where Lord Steyn states that there is implied into a contract of employment an implied term of trust and confidence which provides that: *"the employer shall not without reasonable and proper cause conduct itself in a manner calculated (or) likely to destroy or seriously damage the relationship of confidence and trust between the employer and employee".* We note that the impact on the employee of the employer's behaviour is what is significant and not its intended effect and that the effect is to be judged objectively.

11.19 We have reminded ourselves of the decision in **Lewis -v- Motorworld Garages Limited [1985] IRLR 465** where Glidewell LJ stated:-

"The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract: the question is, does the cumulative series of acts taken together amount to a breach of the implied term? This is the 'last straw' situation".

11.20 We have reminded ourselves of the words of Browne- Wilkinson J in **Woods v W M Car Services (Peterborough) Ltd [1981] ICR 666:**

"To constitute a breach of this implied term it is not necessary to show the employer intended any repudiation of the contract: the Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect judged reasonably and sensibly is such that the employee cannot be expected to put up with it".

11.21 We have reminded ourselves of the decision in **London Borough of Waltham Forest -v- Omilaju** where Dyson LJ states:-

"Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle that the law is not concerned with very small things… is of general application……The question specifically raised at this appeal is: what is the

necessary quality of a final straw if it is to be successfully relied on by the employee as a repudiation of the contract?... The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. … Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.

I see no need to characterise the final straw as 'unreasonable' or 'blameworthy' conduct… The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred…

If the later act on which he seeks to rely is entirely innocuous it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle. 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."

11.22 We have noted the authority to which reference was made **Tolson v Governing Body of Mixenden Community School [2003] IRLR 842** where Judge Wakefield stated: "*The conduct to be considered when determining an issue as a constructive dismissal is that of the employer. An alleged failure by the employee for example regarding following or not following certain grievance procedures cannot be relevant."*

11.23 We have considered also the decisions in **Lakshmi v Mid Cheshire Hospitals NHS Trust, Court of Appeal - Queens Bench Division, April 24, 2008, [2008] EWHC 878 (QB)** and the guidance there given that there is an implied term in a contract of employment that the employer will follow its own disciplinary procedures unless it can show good reason for not doing so. It is an incidence if you like of the Respondent's duty of good faith. We have noted the decision in **Lim v Royal Wolverhampton Hospitals Trust [2011] 2178** where it was stated by Slade J that the implied term to conduct disciplinary proceedings fairly is fact sensitive in every case. At paragraph 93 it was stated: *"It is no doubt an implied term of contracts of employment that disciplinary processes be conducted fairly and without undue delay. The effect of such an implied term depends on the circumstances of the particular case".*

11.24 We have reminded ourselves of the decision in **Hamill –v- J V Strong & Co EAT/1179/**99 where Judge Altman stated on the question of affirmation of breach:

"It seems to us that a Tribunal confronted with this sort of situation must look and see if the final incident is sufficient of a trigger to revive the earlier ones. This will, it seems to us, involve looking at the quality of the incidents themselves, the length of time both overall and between the incidents, and it will also involve looking at any balancing factors which may have, at any point, been taken to constitute a waiver of earlier breaches.

Finally when considering the issue of waiver, the very nature of the waiver will need to be considered. It is not only a question of seeing whether the facts give rise to either an express or implied waiver, but considering the terms of the waiver itself. Is it a once and for all waiver, or do the circumstances give rise to the implication of a conditional waiver, for instance a waiver subject to the condition that there would be no repeat of similar conduct or, as in this case, that the Appellants would not continue the lack of support. Finally, of course, any finding of waiver has to be identified and based on clear facts or inferences from established facts".

11.25 The Tribunal has reminded itself of the decision in **Nottinghamshire County Council –v- Meikle 2004 IRLR 703** and notes that once a repudiation of the contract has been established, the proper approach is to ask whether the employee has accepted that repudiation by treating the contract of employment as at an end. It must be in response to the repudiation, but the fact that the employee also objected to the other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the acceptance of the repudiation. It is enough that the employee resigned at least in part to fundamental breaches by the employer. We note that this position was confirmed in **Wright v North Ayrshire Council 2014.**

11.26 We have noted the guidance from Underhill LJ in **Kaur –v- Leeds Teaching Hospitals NHS Trust 2018 EWCA Civ 978**.Paragraph 55:

I am concerned that the foregoing paragraphs may make the law in this area seem complicated and full of traps for the unwary. I do not believe that that is so. In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:

(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

(2) Has he or she affirmed the contract since that act?

(3) If not, was that act (or omission) by itself a repudiatory breach of contract?

(4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term ? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para. 45 above.)

(5) Did the employee resign in response (or partly in response) to that breach?

None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy.

Claim for Automatic Unfair Dismissal Section 103A 1996 Act

11.27 The Tribunal reminds itself of the provisions of section 103A of the 1996 Act which read:-

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

11.28 In relation to the burden of proof the Tribunal reminds itself that the burden of proof lies with the respondent to establish the reason for dismissal. In a claim of unfair constructive dismissal, we note the explanation for the respondent to show the reason was explained in **Berriman -v- Delabole Slate Company 1985 ICR 546:**
"First in our judgement even in a case of constructive dismissal section 57 (now section 98 of the 1996 Act) imposes on the employer the burden of showing the reason for dismissal notwithstanding it was the employee not the employer who actually decided to terminate the contract. In our judgement the only way in which the statutory requirements of the Act can be made to fit the case of constructive dismissal is to read section 57 as requiring the employer to show the reason for their conduct which entitled the employee to terminate the contract thereby giving rise to a deemed dismissal by the employer".
If the reason is established it will normally be for the employee who argues that the real reason for dismissal was an automatically unfair reason to establish some evidence to require that matter to be investigated. Once that has been done the burden reverts to the employer who must prove on the balance of probabilities which one of the competing reasons was the principal reason for dismissal.

11.29 The Tribunal reminds itself that there is no requirement of reasonableness in relation to this claim. If the reason for dismissal is that the claimant made a protected disclosure then the dismissal is unfair without further enquiry.

11.30 The Tribunal notes the decision in **Kuzel v Roche Products Limited [2008] IRLR 530** where the following guidance is given from the head note:-

"Where an employee positively asserts that there was a different and inadmissible reason for his dismissal such as making protected disclosures he must produce some evidence supporting the positive case. That does not mean, however, that in order to succeed in an unfair dismissal claim the employee has to discharge the burden of proof in that the dismissal was for that reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different result.

Having heard the evidence of both sides relating to the reason for dismissal it will then be for the Employment Tribunal to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inference from primary facts established by the evidence or not contested in the evidence.

The Employment Tribunal must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the Employment Tribunal that the reason was what he asserted it was it is open to the Employment Tribunal to find that the reason was what the employee asserted it was. But it is not correct as a matter of law or of logic that the Tribunal must find that if the

reason was not that asserted by the employer then it must be that asserted by the employee. That may often be the outcome in practice but it is not necessarily so".

Discussion and Conclusions

12. In approaching this matter the Tribunal has decided it appropriate to consider the issues raised in the following order:-

12.1 To make detailed findings of fact as set out above.

12.2 To consider each of the alleged disclosures and to consider if each alleged disclosure amounted first to a qualifying disclosure and, if it did, whether it became a qualifying disclosure.

12.3 To consider each of the detriments alleged by the claimant and in that regard to consider whether what the claimant alleges happened did in fact occur and, if it did, whether or what occurred amounted to a detriment and, if it did, whether that detriment was on the grounds of having made a protected disclosure.

12.4 The Tribunal will then consider whether the claimant was constructively dismissed by the respondent and thus whether there was a breach of the implied term of trust and confidence as is alleged.

12.5 The Tribunal will then finally consider whether the reason for the dismissal (if there was one) was the fact that the claimant had made one or more protected disclosures or if there is more than one reason for the dismissal whether the principal reason for the dismissal was that she had made one or more protected disclosures.

The Disclosures

12.6 The Tribunal refers to the list of alleged disclosures set out at pages 49 – 52 and repeated at part two of the Appendix. There were twenty alleged disclosures. We deal with each in turn by reference to the numbers appearing on those pages.

12.7 **Disclosure 1**. We accept that the claimant disclosed that there was raw sewage spilled on the holiday park verbally to AB in March and July 2018. We are satisfied that information was disclosed to AB. We conclude that the spillage of sewage was not an uncommon occurrence on the Park to the extent that the respondent had a regular contract with "Drain Doctors" to come and resolve those problems as and when they arose. We do not accept that the claimant entertained a belief that the information she disclosed to AB tended to show that the health and safety of individuals was being put at risk or the disclosure was in the public interest. The claimant gave us no evidence on those matters and clearly did not put her mind to those questions when she disclosed that information to AB or subsequently. The position is that the respondent had a regular contract with "Drain Doctors" to deal with the situation which the claimant reported and, whilst it was not an everyday occurrence, it was not exceptional and the claimant appropriately contacted "Drain Doctors" and the problem was resolved. We do not accept there was any qualifying or protected disclosure of information in this regard.

12.8 **Disclosure 2**. This effectively is a repeat of the disclosure at number 1 save that it was discussed in the meeting on 11 April 2018 between the claimant and BR. We accept that these matters were referred to in April 2018 but we reach the same conclusion in respect of this disclosure of information as we do in respect of disclosure 1 above.

12.9 **Disclosure 3**.

12.9.1 We accept that the claimant disclosed to AB in August and September 2017 information that a member of the staff at the park had been having so-called "*lock ins"* after hours and that he had given another member of staff a bottle of vodka from the stores to keep quiet. We accept that this disclosure amounted to a disclosure of information and we accept that the claimant entertained the belief that this conduct meant the respondent was in breach of a legal obligation namely the conditions attached to its alcohol licence. We have considered whether the claimant entertained the belief that this disclosure of this information was in the public interest. We do not accept that the claimant entertained any such belief. The claimant gave us no evidence about any such belief on her part. Even if we had concluded that the claimant had entertained a belief that this disclosure of information was in the public interest, we can see no basis on which it can be said that such a belief was based on any reasonable grounds. We reject the contention that these disclosures about "*lock ins"* either to AB or subsequently to others amounted to qualifying disclosures.

12.9.2 We refer to our findings of fact at paragraph 8.25 above and accept that the claimant disclosed to AB in November 2017 that, at the staff party after the end of the season, alcohol had been sold and money had changed hands. Whilst we accept that the claimant was wrong in her belief, we accept that that is what she believed had occurred. We conclude that the claimant did entertain the belief that such conduct placed the respondent in breach of its alcohol licence conditions and so in breach of a legal obligation to which it was subject. We have considered whether the claimant held a belief that this disclosure was in the public interest. In relation to this matter, we are satisfied that she did hold such belief. There had been difficulties in obtaining the alcohol licence for the Park and there had been objections to the licence from nearby residents. Conditions had been placed on the licence to allay - at least in part - those concerns. The claimant saw what happened at the staff party as a breach of the conditions which it would be in the interests of those residents to disclose. Having concluded that the claimant held those subjective beliefs, we have considered whether it was reasonable for her to hold such beliefs. We are satisfied that it was. The conditions attached to the alcohol licence were complex and the claimant was aware that certain conditions in particular applied after the end of the season to prevent noisy parties disturbing nearby residents. We conclude that the claimant reasonably believed that her disclosure to AB tended to show that the respondent was in breach of a legal obligation to which it was subject and that it served the public interest (namely the interests of those residents) as well as also serving the interests of the respondent. We conclude that such beliefs were held reasonably. The claimant disclosed these matters to AB and, in so doing, disclosed them to her employer. We conclude that the disclosures in relation to the November 2017 party amounted to protected disclosures within Part IVA of the 1996 Act.

12.10 **Disclosure 4**. We accept that, in her dealings with BR in March /April 2018, the claimant made the same disclosures of information in respect of the alcohol licence to BR as she had made at an earlier stage to AB. We reach the same conclusions in relation to the disclosures of information to BR as we do in relation to the disclosures to AB set out at paragraph 12.9 above. We conclude that there was a protected disclosure to BR in April 2018 in relation to the party in November 2017.

12.11 **Disclosure 5.** We accept that in July 2017 the claimant disclosed to AB information that the swimming pool lifeguard was attending work under the influence of drugs. We accept that in August 2017 the claimant disclosed to AB information about the poor hygiene standards in the pool and the fact that certain guests had engaged in sexual activity in the pool. We refer to our findings of fact at paragraphs 8.10 and 8.12 above. We conclude that in disclosing this information the claimant did entertain the belief that such conduct was endangering the health and safety of the guests who were using the pool and also placing the respondent in breach of a legal obligation to ensure the pool was safe for reasonable use. We conclude that the claimant held the belief that this disclosure was in the public interest namely the interests of the considerable numbers of people who used the pool on a daily basis. We conclude the claimant entertained the belief that that disclosure to AB served the public interest in that she hoped to see matters improved. We have considered whether those beliefs on the part of the claimant were reasonably held and conclude that they were. The matters being disclosed were serious and the safety of the respondent's guests could have been placed at risk. The claimant disclosed the information to AB and thus her qualifying disclosures became protected disclosures in July and August 2017. We note that in its amended response the respondent finally accepted that these matters did amount to protected disclosures (page 54 - paragraph 9.3).

12.12 **Disclosure 6.** We accept that the claimant raised issues orally with AB in 2017 in relation to a member of staff falsifying timesheets. We had no evidence from the claimant as to how or why such disclosure of information fell within section 43B(1) of the 1996 Act. Even if such subjective belief could have been established by the claimant, we can see no grounds for saying such belief could reasonably have been held to be in the public interest. This matter amounted neither to a qualifying nor to a protected disclosure.

12.13 **Disclosures 7 and 8.** We take these disclosures together as they relate to the same subject matter. Whilst we accept that the claimant raised both with AB in November 2017 and with BR in April 2018 the fact that caravans were being moved around the park in wet and muddy conditions and that the people moving the caravans did not have the correct equipment, we do not accept that the claimant entertained any belief that such action was endangering health or safety or placing the respondent in breach of a legal obligation. We reach this conclusion because the claimant herself accepted that she assisted in the moving of the caravans and so we pose the question – why would the claimant herself carry out those activities if she held any belief that health and safety (including her own) was being endangered or a legal obligation breached. We do not accept that the claimant held any such subjective beliefs nor do we accept that the claimant held any belief that disclosing that information as she did was in the public interest. The claimant gave no meaningful evidence of her beliefs in relation to this particular matter and we do not

accept that there was any qualifying disclosure to the respondent. Given that is our conclusion, we need not consider this matter further.

12.14 **Disclosures 9,10,11 and 13.** These allegations were withdrawn as alleged protected disclosures by the claimant on the basis that there could be no public interest in the matters allegedly disclosed as they related to the claimant's own terms and conditions of employment and did not extend beyond that. We need not consider them further.

12.15 **Disclosure 12**. In relation to those matters which we find amount to protected disclosures above then in so far as the claimant referred to those matters at her grievance meeting with SM on 25 June 2018, we accept that the claimant made further protected disclosures on that date to SM.

12.16 **Disclosure 14**. The claimant gave us no meaningful evidence of anything disclosed to Chloe Squires ("CS"). We do not accept that the claimant made any disclosure of information let alone a qualifying or protected disclosure to CS.

12.17 **Disclosure 15.** The claimant gave us no meaningful evidence of anything disclosed to Louise Fairbairn ("LF"). We do not accept that the claimant made any disclosure of information let alone a qualifying or protected disclosure to LF.

12.18 **Disclosure 16.** The Tribunal accepts that the claimant disclosed to AB in August/September 2017 and in the period from January until June 2018 that the floors in certain caravans were soft and a potential breach of health and safety. We accept that this was a disclosure of information and that the claimant held a subjective belief that the situation amounted to a breach of health and safety legislation and that the disclosure was in the public interest for any member of the public entering such caravans could be injured. We accept that the claimant's beliefs were reasonably held. The floors in the identified caravans were soft and it was possible for someone to put her/his foot through the floor and be injured as a result. These disclosures were both qualifying and protected disclosures.

12.19 **Disclosure 17.** We did not receive any meaningful evidence from the claimant in respect of any disclosure in relation to the housekeeping building or her beliefs in respect of any such disclosure. We had no reliable evidence as to when such disclosures were said to have taken place. We are not satisfied that information was disclosed in relation to this building and even if that is wrong, that what was disclosed amounted to a qualifying disclosure.

12.20 **Disclosure 18.** We reach the same conclusion in respect of any alleged disclosures about the housekeeping building made to BR by the claimant in her meeting with BR on 11 April 2018.

12.21 **Disclosure 19**. The claimant gave us no meaningful evidence of anything disclosed to Jonny Campbell ("JC"). We do not accept that the claimant made any disclosure of information let alone a qualifying or protected disclosure to JC.

12.22 **Disclosure 20.** We conclude that in as much as any of the matters which we conclude amounted to protected disclosures were contained in the anonymous

complaints made by the claimant to the respondent in October 2017, then those matters amounted to protected disclosures at that time in those letters. The respondent did not recognise any of them as such at the time.

Allegations of Detriment on the ground of protected disclosures: section 47B of the 1996 Act.

12.23 In relation to each allegation of detriment we have considered whether the event alleged occurred, if so, whether what is alleged could amount in law to a detriment and if so, whether the detriment was on the grounds that the claimant had made a protected disclosure as set out above. We deal with these matters by reference to the detriments numbering 12 set out in part one of the Appendix.

12.24 **Detriment 1**. The allegation is that the claimant was treated differently by AB. The claimant does not specify in what way she was treated differently by AB either when compared to herself (at an earlier time) or to some other person. The allegation in respect of AB is so vague as to not permit us to reach any conclusion on the matter. There then follows an allegation that AB neglected his general duties which the claimant then had to pick up to ensure that people management on the Park was not neglected. The evidence from the claimant in relation to AB neglecting his duties was vague and we have reached no conclusion that that was the case. It is clear that the relationship between the claimant and AB deteriorated after August 2017 and went from bad to worse. We are not satisfied that in so doing AB neglected his general duties between October 2017 and 6 July 2018. The factual basis on which this allegation of detriment is advanced is not made out by the claimant. This allegation of detriment fails and is dismissed.

12.25 **Detriment 2.** The allegation is that AB refused to support the holiday sales department (of which the claimant was the head) to overcome barriers which were hindering the day-to-day running of that department. The evidence from the claimant in relation to these matters was vague and we have made no finding that AB refused to support the holiday sales department: indeed, we received no evidence from the claimant to enable us to make any such finding of a refusal to support as is alleged. Again, the factual basis on which this allegation of detriment is advanced is not made out by the claimant. This allegation of detriment fails and is dismissed.

12.26 **Detriment 3**. We are not satisfied that AB at any time said to the claimant words to the effect that if he had wanted to get rid of her, he would have done. Even if such a statement had been made, we are not satisfied that it could amount in law to a detriment for the inference from the alleged remark is that the speaker of the remark (AB) did not want to be rid of the claimant. The factual basis on which this allegation of detriment rests is not made out. The allegation fails and is dismissed.

12.27 **Detriment 4.** We are not satisfied that AB said to the claimant at any time words to the effect that she was a gossip. The factual basis on which this allegation of detriment rests is not made out. The allegation fails and is dismissed.

12.28 **Detriment 5**. The claimant does not set out any detail of the staffing issues which she asserts were left for her to deal with by AB who therefore did not support her. Without further specific details of the allegation, it is not an allegation on which

we can make any findings. Therefore, the factual basis on which this allegation of detriment rests is not made out by the claimant. The allegation fails and is dismissed.

12.29 **Detriment 6**. The Tribunal accepts that in May 2018 AB withheld from the claimant details of the bonus set out at pages 283/4. We refer to our findings of fact at paragraph 8.35 above. We conclude that the claimant was subjected to a detriment as a result of this failure on the part of AB. We have considered the explanation advanced by AB for this conduct on his part. The explanation advanced was that the matter was drawn to the attention of the claimant. We reject that evidence and therefore we reject that explanation. Therefore, the question arises as to whether the failure of AB in this regard was materially influenced by the protected disclosures which we have found were made by the claimant. We have considered what the protected disclosures were and when they were made. By May 2018 all the protected disclosures which we find were made in this case had been made with the exception of the disclosures to SM. The relationship between the claimant and AB was by this point a very poor one and we infer that AB was seeking to do the claimant down. The claimant had disclosed matters to him in respect of the staff party in November 2017, the soft floors in various caravans and the issues regarding the swimming pool. These same matters had been raised with BR at the meeting in April 2018. The subject matter of the disclosures was uncomfortable to AB as it reflected on him and the way he carried out his duties as general manager. Whilst the subject matter of the claimant's disclosures was not the only factor which influenced AB to keep back details of the bonus from the claimant in May 2018, we conclude that it did play a material part in the thinking of AB not to disclose the details of the bonus in May 2018. Accordingly, this allegation of detriment on the ground of protected disclosure is well founded and the claimant is entitled to a remedy.

12.30 **Detriment 7.** We accept that AB did investigate the claimant in relation to the gas certificates in May 2018. We are not satisfied that the claimant has established that anyone else ought to have been investigated at that time. Even if it were the case that such investigation was required, we conclude that the failure to investigate others could not amount to a detriment to the claimant in the circumstances of this case. The claimant was properly investigated in respect of this matter as she had responsibility for gas certificates and we are not satisfied that anyone else carried such responsibility. This allegation of detriment fails and is dismissed.

12.31 **Detriments 9 and 10**. We take these allegations together as they relate to the conduct of unspecified members of the HR department of the respondent. These allegations are vague and lacking in detail. We are unable to conclude that unidentified members of the HR Department of the respondent refused to acknowledge that the claimant had a problem on the Park on the basis that AB was "*the son of their direct line management".* The reference here is presumably to the fact that AB was the step-son of Maggie Pavlou. The claimant has failed to establish the factual basis on which these allegations of detriment are based. The allegations therefore fail and is dismissed. For the avoidance of any doubt, we accept that AB is the stepson of Maggie Pavlou.

12.32 **Detriments 8, 11 and 12.**

12.32.1 We are satisfied that the claimant has established that her relationship with AB deteriorated between October 2017 and July 2018 to the extent that AB did not speak to the claimant from time to time, did not respond to e-mails from her from time to time and ignored the claimant from time to time: their working relationship became dysfunctional. The meeting between the claimant and BR in April 2018, at which AB was present for part of the time, prompted a short-lived improvement in the relationship but by May 2018 the relationship was again dysfunctional. A relationship between a manager and her line manager is of course a two-way relationship and there can be fault on both sides. We conclude that AB was an inexperienced manager and, in the claimant, he had an employee who was difficult to manage and we find AB simply did not know how to manage the claimant at times. This led AB to retreat into a policy of ignoring the problem rather than addressing it head on and so AB did ignore the claimant, he sought to avoid contact with her and failed to reply to her correspondence from time to time. We are satisfied that in treating the claimant in that way AB subjected the claimant to detriment. That conduct on the part of AB extended into the investigation into the gas certificates which began in May 2018 and went on up to the point of the claimant's resignation on 6 July 2018. AB did not progress that investigation as he should have done, the length of the investigation into DV108 was excessively long and caused the claimant to suffer the additional stress of an unwarrantedly lengthy process. The claimant was subjected to detriment by AB.
12.32.2 We look to the respondent, in the guise of AB, for an explanation for that conduct. The explanation from AB is that such conduct did not occur. We reject that explanation because we find that it did occur. We have therefore considered whether that conduct on the part of AB was materially influenced by the protected disclosures which the claimant made to AB as we have detailed above. We conclude that AB did receive protected disclosures of information from the claimant, that he knew that she had disclosed information to the HR department in October 2017 and that further disclosures were made to BR at the time of the meeting in April 2018. We have considered whether such matters materially influenced his conduct towards the claimant. In the absence of an acceptable explanation we may conclude that his conduct was so influenced but we are not obliged to reach that conclusion. In fact, we do reach that conclusion. We conclude that there were a variety of factors in play which caused AB to act as he did towards the claimant. The poor personal relationship, the difficult character of the claimant, the propensity of the claimant to involve herself in matters which were not her concern and her willingness to "fire bullets" at AB prepared by other members of staff were no doubt weighty factors causing AB to act as he did. However, we conclude that the protected disclosures were a material influence on his general conduct. Those disclosures related to matters which were central to the duties of AB and he objected both to the content and the fact of the disclosures. The disclosures called into question his ability to effectively carry out his duties and they materially influenced how he conducted himself towards the claimant in terms of the manner in which he related to her from October 2017 onwards.

12.32.3 Accordingly, we conclude that the claimant has established that she suffered a detriment in this regard which falls within section 47B of the 1996 Act and as a result, she is entitled to a remedy.

Summary of Detriment claims

12.33 Accordingly the claimant's allegation of detriment in respect of the failure to be advised on the May 2018 bonus opportunity and the general conduct of AB towards her from October 2017 onwards are well founded and she is entitled to a remedy.

Unfair Constructive Dismissal: sections 94/98 of the 1996 Act

12.34 We have considered whether the claimant has established that the conduct of the respondent had breached the implied term of trust and confidence in her contract of employment by 6 July 2018 and whether, as a result, she was dismissed by the respondent. In dealing with that question we have considered whether the respondent without reasonable and proper cause conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between the claimant and itself. We have reminded ourselves that a breach of the implied term of trust and confidence does not have to be an intentional act on the part of the respondent. Our function is to look at the employer's conduct as a whole and consider whether its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

12.35 We have reviewed our findings of fact and the relevant acts on the part of the respondent which cumulatively are said to amount to a breach of the implied term of trust and confidence.

12.36 We note our findings in relation to the salary of the claimant. By agreement the claimant reduced her salary when going to work at the Park but it was known to the respondent, and in particular to AB, that she had taken a considerable reduction in salary and was keen to make up that reduction. As a result, the claimant requested an exceptional increase in September 2017 and asked AB as her line manager to support that request. In the event, we find that AB did not do so and furthermore did not provide any feedback to the claimant in relation to his unwillingness to do so. That upset the claimant and undermined her trust and confidence in the respondent. In looking at this aspect of the case, we take no account of the actions of AB in May 2018 in relation to the potential bonus available at that time because that matter was not known to the claimant at the point of her resignation. However, it does provide us with evidence as to the attitude of the claimant's line manager towards her.

12.37 The claimant raised what we determine were protected disclosures with her line manager been in July and August 2017 in respect of the health and safety of visitors using the swimming pool. Those disclosures were not taken seriously by AB and undermined the claimant's trust and confidence in him and therefore in the respondent.

12.38 In September 2017 the claimant was investigated in relation to the absence of an electrical certificate for caravan DV24. In breach of its own disciplinary policy the investigation into this matter was protracted and resulted in the issuing of a letter of concern to the claimant at the end of October 2017. The claimant's line manager had concluded that disciplinary action was not to be taken against her because the caravan in question did not require an electrical certificate. However, a letter of

concern was issued which referred to the claimant's negative behaviour which had not been investigated with her. We conclude that AB improperly used the device of the letter of concern to attempt to improve the claimant's poor attitude and behaviour (as AB perceived it to be). That was not a proper use of such a letter and was a hallmark of AB's lack of experience. The respondent acted without reasonable and proper cause in using the letter of concern in that way and for that purpose.

12.39 In October 2017 the claimant's safe keys were removed from her whilst a new safe was installed. When AB was given the keys to the new safe, other members of staff were provided with keys but the claimant was not. This reasonably caused the claimant to have feelings that she was not trusted and the absence of the keys meant she could not properly and easily carry out certain of her responsibilities. This added to the erosion of the claimant's trust and confidence in the respondent.

12.40 In October 2017 the claimant wrote letters of disclosure to the respondent using its whistleblowing facility. The respondent refused to accept her disclosures under the whistleblowing procedure and told the claimant if she wished to pursue the matters she would have to raise a grievance against her line manager. The respondent subsequently accepted that at least one of the matters raised by the claimant in that correspondence amounted to a protected disclosure and should have been investigated under the whistleblowing procedure in accordance with training videos seen by the claimant. The claimant took the decision not to raise a grievance against her manager and so her complaints and concerns found no outlet at that time. This further undermined the claimant's trust and confidence in the respondent.

12.41 The claimant subsequently made further disclosures to AB and to BR and to SM which we conclude were protected disclosures. None of the recipients took the disclosures seriously and the concerns of the claimant found no outlet in the whistleblowing procedures of the respondent as they should have done. This further undermined the claimant's trust and confidence in the respondent particularly as such disclosures ranged from issues relating to the safety of the swimming pool, breaches of the respondent's alcohol licence and soft floors in various caravans. The claimant found no outlet for the serious concerns and this further undermined her trust and confidence in the respondent.

12.42 The relationship between the claimant and AB deteriorated from August 2017 onwards. There were periods when AB ignored the claimant, did not respond to her correspondence and avoided her. Whilst there may have been reasons for this on the part of AB, his failure to address the matter directly and properly further undermined the claimant's trust and confidence in the respondent. If AB had concerns in respect of the claimant's behaviour and attitude then such concerns could and should have been addressed directly with the claimant through the disciplinary procedure. In acting as he did, AB acted without reasonable and proper cause and caused the claimant to reach the view that AB was out to find a reason to dismiss. The claimant addressed this concern with AB directly and was not reassured and then saw further conduct on the part of AB particularly in relation to the disciplinary investigations of May and June 2018 which led her to conclude that her suspicions were well-founded. This further undermined the claimant's trust and confidence in the respondent.

12.43 The claimant asked her line manager to put her forward for career development. We conclude that AB did not do so and provided no explanation for that failure. We accept that the required one to one meetings between the claimant and AB did not take place as they should have done and were not well conducted when they did. This further undermined the claimant's trust and confidence in the respondent.

12.44 At the meeting on 11 April 2018 the claimant found herself admonished by BR in respect of a comment she had made about her line manager but that admonishment was delivered in the presence of the line manager. At that meeting BR blatantly took the side of AB who he had decided must be supported against what he perceived to be the claimant's difficult attitude and behaviour. That caused BR not to look properly at the matters being raised by the claimant and so further undermined the claimant's trust and confidence in the respondent.

12.45 The investigation by AB into caravan DV108 was protracted and characterised by inefficiency in that notes were lost and had to be reconstituted and when they were reconstituted, they were reconstituted incorrectly. The simple investigation took over six weeks which again further undermined the claimant's trust and confidence in the respondent.

12.46 The treatment by SM of the claimant's grievance was inadequate and resulted in a dismissal of the numerous matters raised without any explanation or analysis of any kind. The only action taken was to interview the claimant and AB. No consideration was given to the lengthy and detailed documents submitted by the claimant in support of her grievance. No part of the grievance was upheld even in respect of matters which AB accepted in his meeting with SM on 29 June 2018 could have been handled better than they were. We conclude that the grievance investigation was not in accordance with the respondent's policy and did not reasonably address the matters which the claimant had raised. That outcome undermined the claimant's trust and confidence in the respondent to a very significant extent.

12.47 The claimant found herself summoned to a disciplinary meeting in July 2018 after investigations in respect of two missing gas/electricity certificates. The letter bringing her to the disciplinary hearing alleged that she was being investigated for nine missing certificates. When the claimant raised the matter, she was told that there had been a typing error in the letter but when she referred SS to the fact that an accompanying certificate showed nine certificates out of date, she was told that that matter should be raised as mitigation. Whilst we accept and conclude that this unfortunate error was unintentional on the part of SS, the question with which we must engage is how that was reasonably perceived by the claimant.

12.48 When we consider the respondent's conduct as a whole, we conclude that judging it reasonably and sensibly it was conduct which the claimant could no longer be expected to put up with and that the conduct did amount to breach of the implied term of trust and confidence contained in the claimant's contract of employment.

12.49 We have considered whether the claimant resigned her employment in response to that breach. We engage with the submission of Miss Millns that the

claimant resigned because of her own conclusion that she could not defend herself at the disciplinary hearing in July 2018 in light of the allegation of nine certificate breaches and that that was not because of any breach of contract by the respondent but rather the claimant's unjustified and irrational conclusion. We do not accept that submission. We conclude it is not possible to separate the claimant's conclusion from the actions of the respondent. If the respondent had not acted in the way that it did and breached the claimant's contract, then claimant would not have reached the conclusion that she did. The matters are inextricably linked. We conclude that the claimant's conclusion was a reasonable one in the light of the history of the matter as set out above. We conclude that the claimant did resign her employment because of the breach of the implied term of trust and confidence by the respondent. If that is wrong, then we note from the authorities of **Meikle** and **Wright** referred to in paragraph 11.25 above that it is sufficient if the claimant resigns her contract at least in part by reason of the repudiatory breach by the respondent: we conclude that the claimant would not have resigned had it not been for that repudiatory breach and thus the resignation was at least in part because of the respondent's repudiatory breach of contract.

12.50 We have considered whether the claimant delayed or otherwise affirmed her contract and waived any breach. In this case there is a series of events. The last straw identified effectively was the respondent's statement that the claimant faced nine allegations of defective certificates. That added something to the catalogue of events which had preceded it and fulfils the test set out in **Omilaju** above. The claimant resigned promptly after receiving that notification and there can be no question of affirmation by delay. We have considered whether the claimant's investigation into the possibility of mediation with AB amounted to an affirmation of the contract. We conclude that it did not. The claimant had had only preliminary discussions on that point. We conclude there was no affirmation of the contract on the part of the claimant by that reason or indeed any other.

12.51 Accordingly we conclude that the claimant was dismissed by the respondent within the meaning of section 95(1)(c) of the 1996 Act.

The claim of automatic unfair constructive dismissal

12.52 It is appropriate therefore at this point to consider the automatic unfair constructive dismissal claim. In considering this claim, we have considered whether the reason or the principal reason for the actions of the respondent which led the claimant to resign were by reason of the fact that the claimant had made one or more protected disclosures.

12.53 We are satisfied that the principal reason for the actions of AB which lead to the claimant being constructively dismissed were his inexperience as a manager and the difficulty he found in effectively managing the claimant. Whilst we have concluded that the protected disclosures made to him and others were a factor in the motivation for certain of his actions as set out above, we do not conclude that that was the principal reason why AB acted as he did. The principal reason was his inexperience and antipathy towards the claimant which increased gradually from August 2017 through to the point of her resignation.

12.54 In respect of the actions of SM and his inadequate and unreasonable investigation of the claimant's grievance, we conclude that the fact of the protected disclosures was not his reason or principal reason for acting as he did. We perceive that SM had his own motivation for treating the claimant as he did and that was to secure a vacancy for his own partner. If the protected disclosures had any bearing on the actions of SM, then the bearing was nothing more than trivial and did not amount to the principal reason for the decisions and the actions he took which contributed to the repudiatory breach of the claimant's contract of employment.

12.55 In terms of the actions of BR, we conclude that his principal reason for acting as he did was his frustration at the claimant's attitude and approach and his wish to be seen to support AB in his relatively new role as general manager. Any influence on the actions of BR caused by the protected disclosures made to him or to others was no more than trivial.

12.56 We conclude that the actions of MR and SS in relation to this matter, if motivated by the protected disclosures at all which we doubt, again were motivated only to a minor extent. The actions of these HR officers insofar as they contributed to the breach arose through careless error and a lack of appreciation of the seriousness of the situation rather than anything in respect of the protected disclosures made to others. These officers missed opportunities through inadvertence to improve the working relationship between the claimant and AR. We are satisfied that the inadvertence was unintentional and not by reason of protected disclosures.

12.57 In those circumstances, the claim of automatic unfair constructive dismissal fails and is dismissed.

Ordinary unfair constructive dismissal claim

12.58 We conclude that the claimant was dismissed by the respondent. The burden to prove the reason for the dismissal lies with the respondent. In this case the respondent denied that there was a dismissal and did not seek to advance any reason in the alternative. In the circumstances and given that the claimant was dismissed, it follows that the claimant was unfairly dismissed. Therefore, the claim of ordinary unfair dismissal is well-founded and the claimant is entitled to a remedy.

Remedy Considerations

13.1 Orders are issued separately to enable the parties to prepare for the remedy hearing.

13.2 At that hearing the Tribunal will in particular consider the following non-exhaustive list of matters:
13.2.1 whether the claimant has taken all reasonable steps to mitigate her loss.
13.2.2 any arguments advanced by the respondent for a reduction in any award of compensation for unfair dismissal. In particular, the Tribunal will consider whether the claimant's failure to appeal the grievance outcome should result in any reduction in compensation.
13.2.3 what remedy the claimant should receive in respect of the successful detriment claims. The Tribunal will assess any chance the claimant would have had

to achieving the bonus of which details were denied to her in May 2018. In case it assists the parties to resolve this matter without a further hearing, the Tribunal expresses its initial view (and it has not formed any fixed view on this matter at all) that any award of compensation for injury to feelings arising from the successful detriment claims would appear to fall in the upper section of the bottom Vento band.

Final Comments

14.1 The Tribunal heard a great deal of evidence in this case in respect of the respondent's procedure for ensuring all relevant caravans have up-to-date and appropriate gas and electricity safety certificates. It became clear that each employee (such as the claimant) charged with this responsibility on each site was effectively left to devise her/his own system for monitoring such matters and for ensuring appropriate steps were put in place to ensure certificates did not become out of date before a further certificate was obtained. This is clearly a most important function. The Tribunal finds it surprising to say the least that there is no cross company approved method for such matters to be monitored and checked. If such a system was in place many of the difficulties which arose in this case might have been avoided with the resulting benefit to all parties.

14.2 There has been a delay in the Tribunal being able to finalise this judgement and sending it to the parties. That delay is much regretted as is any resulting inconvenience to the parties. The delay has been occasioned entirely by pressure of work.

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Employment Judge A M Buchanan

Date: 26 June 2019

APPENDIX

PART ONE

CLAIM – DETRIMENT

1.) The respondents acted in detriment when Anthony Bate (General Manager) treat me differently for reporting to Whistleblowing and Barrie Robinson (Regional Director) that he was not fulfilling his general duties and that I was having to pick these up to ensure the people management of the park wasn't neglected. This happened between October 2017 and my leaving date of 06 July 2018.

2.) The respondents acted in detriment when Anthony Bate (General Manager) refused to support the Holiday Sales Department which I requested personally as it was facing barriers that were hindering the day to day running of business. This happened between October 2017 and my leaving date 06th July 2018.

3.) The respondents acted in detriment when Anthony Bate (General Manager) advised me "If he wanted to get rid of me, he would have done" This happened on the 21st May 2018

4.) The respondent acted in detriment when Anthony Bate (General Manager) advised I was a gossip when reporting issues on park. This happened September 2018.

5.) The respondent acted in detriment when Anthony Bate (General Manager) left me to deal with staffing issues and would not support me with this. This happened between October 2017 and July 2018

6.) The respondent acted detriment when Anthony Bate (General Manager) withheld a Bonus Scheme from me. This took place on 21.05.2018.

7.) The respondents acted in detriment when Anthony Bate (General Manager) only investigated me and not other employees in relation to Gas Certification. This happened in May 2018.

8.) The respondent acted in detriment when Anthony Bate (General Manager) didn't speak to me for days thus enforcing the 'silent treatment' and didn't even respond to email communication attempts. This happened between October 2017 – July 2018 even to the point of leaving me to sit on my own at Heythrope Hall in January 2018.

9.) The respondent acted in detriment when their Human Resources department

refused to acknowledge I had a problem on park on the basis that Anthony Bate (General Manager) was the son of their direct line management. This happened after several documented emails were not responded to between December 2017 and July 2018 reporting my concerns.

10.) The respondent acted in detriment when the 'company' did not act in a trustworthy manner to any concerns I flagged up over a 11-month period deeming me "insecure" between August 2017 – July 2018

11.) I made a Protected Disclosure in October 2017 in relation to several breaches on park by Anthony Bate (General Manager) this has been set out in the disclosures statement and subsequently reclarified to the respondent's solicitors with answers to relevant questions. This protected disclosure sparked the isolating behaviour from Anthony Bate (General Manger) This behaviour went on between October 2017 and July 2018. For the purpose of this statement the breaches in relation to Whistleblowing were, Health & Safety of the Public and Legal Obligation and Criminal Offence (Fraud).

12.) I made disclosures within a documented meeting between me, Barrie Robinson, Matt Brown and Anthony Bate. During this meeting Anthony Bate advised his people management was not up to par and that he would take direction from me on issues to do with staff morale. This is illustrated in the minutes of the meeting, however, went on a spree on persecution against me as punishment of the disclosures concerning his behaviour and his consistent breach and over look of health and safety. He went on to send fictitious information to Human Resources to have me dismissed for Gross Misconduct. Disclosures during this meeting were Health and Safety Breach in the interest of the public, Harm to the Environment, Legal Obligation)

PART TWO

CLAIM – DISCLOSURES

1.) I disclosed to Anthony Bate (General Manager) that there was a raw sewage spill on the holiday park verbally which he ignored.
(A)- I verbally advised Anthony on 2 occasions between March & July 2018 – this is recorded with Drain Doctor as on both occasions I have logged the spill and requested their attendance, this will also be recorded in the "jobs" book as I requested Maintenance to sanitise the area"

2.) I disclosed to Barrie Robinson (Regional Director) during a meeting that Anthony allowed raw sewage to remain on the park resulted in me going above his head in order to ensure that it was dealt with.

This was disclosed in the meeting between Me, Barrie Robinson, Matt Brown and Anthony Bate. – This is in the minutes – the minutes are part of the evidence included for viewing by the tribunal

3.) I disclosed to Anthony Bate (General Manager) that licencing laws in the Complex were being breached during lock in's – he dismissed this and ignored me.
I approached Anthony verbally with Eileen Rigg to advise him that Gary Hope had been having lock in's after hours, and that he had given Jake Bennett (Security) a bottle of vodka from the stores to keep quiet. additionally the staff party night when in excess of £800 was taken over the bar and Anthony Bate requested Gary Hope to write the takings off the till and declare it as a waste/loss

4.) I disclosed to Barrie Robinson (Regional Director) that licencing laws in the Complex were being breached during lock in's – he dismissed this and ignored me.
The Lock in is the Breach money exchanged hands outside of licensing hours for the sale of alcohol

5.) I disclosed to Anthony Bate (General Manager) that HSEC Pool Safety was in breach and that RLSS guidelines were in question.
I have set these out as points and attached the HSEC Pool Document for your review, I have also attached the whistle blow letter and colour highlighted each breach reported and additionally draw your attention to the email between myself and Anthony Bate in the evidence list on 9th August 2017 where I also disclose ALL listed points.

- Page 7/60 Point 18
- Page 7/60 Point 20
- Page 7/60 Point 24
- Page 11/60 – Point – Pool Alarms
- Page 14/60 – Admissions
- Page 17/60 – Point 77 – Inadequate Supervison
- Page 17/60 – Pool Supervision
- Page 18/60 – Pool Supervision continued
- Page 20/60 – Note 1
- Page 21/60 – Point 93
- Page 21/60 – Point 94
- Page 21/60 – Point 95
- Page 22/60 – Point 99
- Page 29/60 – Competencies
- Page 37/60 – Point 177
- Page 37/60 – Point 180
- Page 37/60 – Point 181
- Page 38/60 – Point 183
- Page 57/60 – Point 3

6.) I disclosed to Anthony Bate (General Manager) that there was a legal issue with the Sports and Leisure Manager was falsifying time sheets in order to gain money from the company.

7.) I disclosed to Anthony Bate (General Manager) that the Health & Safety surrounding moving caravans around park was in breach, he ignored me.

This was disclosed verbally and then also recorded in the meeting minutes between myself, Barrie Robinson, Matt Brown and Anthony Bate – This was breached as the ground was so wet and muddy the vans were sliding when being moved, additionally staff didn't have the correct PPE and I was untrained however moving units around park whilst Anthony was aware.

8.) I disclosed to Barrie Robinson (Regional Director) that the Health & Safety surrounding moving caravans around park was in breach, he ignored me.

9.) I disclosed to Ashley Watson (HR Lead) that my terms and conditions were being breached.

10.) I disclosed to Stacy Savory (Employee Relations Specialist) that my terms and conditions were being breached.

11.) I disclosed to John Waterworth (CEO) that my terms and conditions were being breached.

12.) I disclosed all listed disclosures to Steve Mills (General Manager)

13.) I disclosed to Matt Brown (HR Lead) that my terms and conditions were being breached.

14.) I disclosed to Chloe Squires (Sales and Service Director) that Health & Safety issues on park were being breached as caravan floors were soft.

15.) I disclosed to Louise Fairbairn (Groups Manager) that Health & Safety issues on park were being breached as caravan floors were soft.

16.) I disclosed to Anthony Bate that floors were soft in caravans and it was a Health & Safety breach.

17.) I disclosed to Anthony Bate that the floor in the Housekeeping Building was soft and it was a breach to Health & Safety

18.) I disclosed to Barrie Robinson that the floor in caravans was soft and it was a breach to Health & Safety.

19.) I disclosed to Jonny Campbell (General Manager) all of the listed disclosures.

20.) Out of the above disclosures, points 3, 4,5, 6, 9, 10, 12, 13, 14, 15, 16, 18 & 19 were all disclosed as part of a protected disclosure on the 4th October 2017 which was submitted to the Whistleblowing facility at Parkdean Resorts UK Ltd.