



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: S/4118195/2018

5 **Held in Glasgow on 4th 5th 6th and 7th of March 2019**

Employment Judge: Laura Doherty

10 **Ms L Shields**

**Claimant
In Person**

**Glasgow Group of the Riding for the
Disabled Association**

**Respondent
Represented by:
Mr Lane –
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant was not automatically
unfairly dismissed contrary to Section 103A of the Employment Rights Act 1996 and
20 the claim is dismissed.

REASONS

1. In a claim presented on 12 September 2018 the claimant claims automatically
unfair dismissal under Section 103A of the Employment Rights Act 1996
(ERA).
- 25 2. The respondents accept that the claimant was dismissed but denied that the
reason for her dismissal was that she had made a protected disclosure.
3. The issues for the Tribunal in this case are to consider whether the claimant
made any disclosures which qualify for protection under Section 43B of the
ERA, and if so whether her having made such a disclosure was the reason,
30 or principle reason for her dismissal.

4. The claimant has less than a year's qualifying service, and therefore she has the burden of proof to establish that she had made a disclosure, and that the reason for her dismissal for her dismissal was that she made the disclosure.
5. After some considerable case management, the claimant identified 4 protected disclosures which she relied upon and which were confirmed with her at the commencement of the Hearing. These disclosures are as set out in a series of e-mails from the claimant sent to the Tribunal on 21 February 2019.
6. The first alleged disclosure related to an employee inappropriately sitting on the knee of a volunteer (page 421). The second alleged disclosure relates to an alleged disclosure about the lack of PVG Certificates (page 423). The third alleged disclosure relates to a disclosure relating to maltreatment of horses (page 427/428), and the last alleged disclosure relates to requests made about gritting the yard (page 431).
7. The respondents do not accept the claimant made any disclosures, and therefore this is an issue for the Tribunal.
8. The Tribunal heard from the claimant, and she led evidence from the following witnesses: -
 - (1) Aileen Palmer, who had been a volunteer with the respondents.
 - (2) Claire McCloskey who had been a volunteer with the respondents.
 - (3) Eileen Joyce, an ex- employee of the respondents.
 - (4) Joyce Harvie, a volunteer with the respondents.
 - (5) Barbara Walker, an employee of the respondents.
9. The respondent's evidence was given by Lynda McKeeman, the respondent's Yard Manager.
10. The parties produced a joint bundle of documents which were added to during the course of the hearing, by both sides without objection.

11. There is also an issue for the Tribunal as to the identity of the respondents. The claimant's position is that the respondent's correct identity was 'Glasgow Group Riding for the Disabled', and the respondent's position is that the correct identity is 'Glasgow Group of the Riding for the Disabled Association'.

5 **Findings in Fact**

12. The respondents are Glasgow Group of the Riding for the Disabled Association, Company Number SC102661, a registered charity which is managed by a Board of Trustees. At the point when the claimant was dismissed there were three trustees on the Board.

10 13. The respondents operate a riding school with the aim of providing therapeutic lessons for people with disabilities. They have 4 full time employees, and 5 part-time members of staff. The respondents also rely upon assistance of around 150 unpaid volunteers.

15 14. The respondents are an independent company; however, they rely on the National Riding for the Disabled Association (RDA) for support and can if they wish, adopt the policies and procedures issued by the national RDA, but are not obliged to adopt them. They also rely on assistance from the RDA in facilitating insurance for their activities.

20 15. There is also a Regional RDA, and there are a number of RDA centres in locations around Scotland.

16. The respondents are recognised by the British Horse Association (BHA). This recognition requires the BHA to make an annual inspection of the respondent's facility and to pass it as fit for purpose. The BHA can also carry out spot checks if they wish of the respondent's facility.

25 17. The respondents provide riding lessons for schools, and in general, the schools which utilise the respondent's services carry out risk assessments of the respondent's facility.

18. The respondents have a relationship with the Vet School at Strathclyde University whereby veterinary students attend the respondent's premises to examine the horses.
19. The claimant, whose date of birth is 1 February 1973, commenced working with the respondents on 24 July 2017. She was employed as Senior Yard staff and her Main Terms of Employment are produced at pages 68 to 70.
20. The claimant was issued with an Employee Handbook when she commenced working with the respondents (page 33 to 67). The claimant read the Handbook when she received it. The Handbook contained numerous sections, one of which dealt with Whistleblowing (page 55). Section B identified a Qualifying Disclosure. Section C under the heading Procedure provided the following: -
- “1) *In the first instance you should report any concerns you may have to the Board of Directors who will treat the matter with complete confidence. If you are not satisfied with the explanation or reason given to you, you should raise the matter with the appropriate official organisation or regulatory body.*
- 2) *If you do not report your concerns to the Board of Directors you should take them direct to the appropriate organisation or body.*”
21. The Handbook also contained a capability and procedure, which contained in Section D, provision under the heading Short Service Staff in the following terms: - *“we retain discretion in respect of the capability procedures to take account of your length of service and to vary the procedures accordingly. If you have a short amount of service, you may not be in receipt of any warnings before dismissal.”*
22. Under the Disciplinary Procedure, at Section F (2), the Handbook contained the same provision.
23. The Capability and Disciplinary Procedure provided for the right of appeal. The Handbook also contained a Grievance Procedure.

24. The respondents have on at least one previous occasion dismissed a member of staff who had less than 2 years' service, without adhering to the disciplinary procedure (Stephanie Shaw).
25. The National RDA have a number of policies and procedures available on their website. One of these is the "RDA and Disclosure Policy Statement" (page 84) and provides *"It is required within RDA that all volunteers and staff, aged 16 years and over, who are involved in RDA sessions, are checked for criminal disclosures."*
26. The respondents did not adopt to this Policy. They have their own policy in relation to disclosure (PVGs), which was that PVG's were not required until such times it was clear that the volunteer or employee was going to take up a role at the RDA, on the basis that the volunteer or employee would never be left alone with the children or vulnerable groups until such times as a PVG was obtained.
27. In her position as a Senior Yard staff, the claimant's main duties and responsibilities involved looking after the horses in the Yard, supervising junior members of yard staff, and volunteers, and instructing. The claimant has a level one UKCC, and she was a trainee riding coach, which meant that she could not take riding lessons unsupervised.
28. Ms McKeeman, the Yard Manager was responsible for supervising the claimant. The claimant's RDA assessment Record is produced at 470 to 478. At page 477 the RDA Coaching pathway provides that a trainee coach; *'Never takes full responsibility for a session. Only permitted to coach under direct supervision of an RDAGC or above'*.
29. The claimant was provided with accommodation while she was in employment with the respondents, as was Ms McKeeman and another employee, a Julia Hillson.
30. The claimant passed her three-month probationary period. The claimant did not hold Ms McKeeman, or Ms Hillson in high regard. The claimant considered she did more work than Ms Hillson, and that this was unfair. This

was a perception which was shared by volunteers and members of staff who gave evidence, some of whom considered was that Ms Hillson spoke down to them. The claimant considered that Ms McKeeman was lazy and had spent too much time smoking and on tea breaks, as opposed to working. She considered that Ms McKeeman favoured Ms Hillson, and that Ms McKeeman and Ms Hillson were unfairly protected in their jobs by the Trustees of the Board on account of personal relationships between Ms McKeeman and Board members. The claimant, and the other witnesses who gave evidence on her behalf, considered the organisation 'cliquey'. The respondent's organisation did not always enjoy a harmonious working environment, with at least three employees and three volunteers being critical of the organisation's management .

31. During the course of her employment the claimant raised operational issues with Ms McKeeman.
- 15 32. On one occasion the claimant asked Julia Hillson if she had a PVG. Julia Hillson confirmed that she did, although it was the claimant's belief that she did not. The claimant believed that she gave Ms Hillson her PGV certificate with a mail delivery some time after this.
- 20 33. On another occasion she asked Ms McKeeman whether she should take a pony who was stamping out of a riding lesson. The claimant was concerned about the implications of this for the lesson in case the pony threw the rider. Ms McKeeman told the claimant not to do so.
- 25 34. During the course of her employment the claimant spoke to Ms McKeeman about the horses and ponies at the stable. The claimant spoke to Ms McKeeman about one pony named Laddie and suggested upping his feed.
35. The claimant considered that a horse named Kora had leg mites and was biting himself until he bled. The claimant said on one occasion to Ms McKeeman that she did not think that Kora should be used in classes.
- 30 36. On 8 February 2018 the claimant sent a text to Ms McKeeman, telling her that her horse, Trooper, was lame on his front right foot (page 436).

37. In March 2018 during a period of ice and snow, the claimant suggested to Mrs McKeeman that she go to Dawsholm Recycling Centre, to order to get grit for the yard. Mrs McKeeman did not agree to this but ordered grit for the yard. The claimant did not consider the yard was sufficiently gritted.
- 5 38. The claimant she fell on the yard during the icy weather. She completed a RIDDOR form after her accident. Mrs McKeeman completed an accident book.
39. At some point during her employment, the claimant had a discussion with Julia Hillson, about a rider who had fell off during a lesson. Ms Hillson wrote in the
10 accident form that she had dust the surface replaced his hat and remounted him.
40. The claimant did not think this was the correct approach, and that the rider should have been sent to the doctor. The claimant told Ms McKeeman that she thought the rider should have been removed from the lesson and sent for
15 medical treatment, but Ms McKeeman disagreed with this.
41. Ms McKeeman considered she had a reasonable working relationship with the claimant, although in her view the claimant's performance deteriorated after the completion of her three-month probationary period.
42. A number of issues emerged as far as Ms McKeeman was concerned. The
20 first was that she formed the impression that the claimant was attempting to undermine her, by going directly to the Board of Directors on issues, which Ms McKeeman considered should have gone through her. Ms McKeeman spoke to the claimant about this, but the claimant continued to e-mail the Board of Directors directly about certain matters, albeit copying Ms
25 McKeeman into them.
43. There were two issues in particular where this occurred. The first was in relation to a quote for a new arena surface. The claimant was asked by a member of Board of Directors to get a quote for the arena surface, and to give this to Ms McKeeman, so that a report could be prepared and sent to the
30 Board of Directors. The claimant obtained quotes and sent them directly to

the Board. Ms McKeeman spoke to the claimant about this and told her that she wanted the quotes sent to her, rather than to the Board directly. The claimant however continued to e-mail the Board of Directors directly, copying Ms McKeeman into her e-mails.

5 44. The second matter related to the claimant setting up a "Pony Club". The claimant is Pony Club registered, and she suggested it would be a good idea to set up a Pony Club.

10 45. Ms McKeeman asked to get her prices, information and costs. The claimant contacted the Pony Club and asked them to come to assess the suitability of the Centre, which they approved. This was done however before there was any examination of the costs of running the Pony Club. The claimant again e-mailed the information directly to the Board of Trustees about the Pony Club, without going through Ms McKeeman, but cc'd Ms McKeeman into her correspondence. McKeeman again told the claimant to stop corresponding directly with the Board. The Board ultimately decided not to proceed with the Pony Club.

15 46. There were two incidents which Mrs McKeeman was concerned about arising from the completion of paperwork for classes. The first was that the claimant left riders forms in a public area where they were found by Susan McNeil a Board member. These forms contained personal and sensitive information, including medical information about the riders taking part in the class, and should not have been left in a public area.

20 47. The second issue was in relation to completion of riders' forms. It is essential for the purposes of the respondent's insurance provisions that these forms are completed before the commencement of a class for each rider. On one occasion the claimant took a class without completing any forms. When Mrs McKeeman asked the claimant if she had completed the forms, the claimant replied that she had, but she had in fact used school release forms, as opposed to the respondent's mandatory rider forms.

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48. Mrs McKeeman considered that she had shown the claimant as part of her training how to complete the forms, and the claimant should have been aware that the forms needed to be completed. Mrs McKeeman also considered the claimant should have been aware that the completed forms not be left in a public place, and she spoke to the claimant about both these matters.

49. Mrs McKeeman also formed the view that there were issues with how the claimant behaved at work. She considered the claimant had not shown that she was willing to train volunteers, and she avoided conducting induction sessions with volunteers, and that if she was working with a volunteer, she would show them how to do something quickly, and then leave them on their own. Mrs McKeeman considered this to be a failing on the claimant's part, as Mrs McKeeman the volunteers to feel included.

50. Mrs McKeeman also formed the view that the claimant's work rate was not as efficient as it should be, and she performed work slowly. She considered that she had to spend a lot of time telling the claimant what she had to do, and then making sure that she performed these tasks in the time and did not slow down the work rate in the Yard.

51. Mrs McKeeman experienced issues with the claimant during her phased return to work after breaking her leg. Mrs McKeeman asked the claimant to carry out office tasks which included making an updated Yard folder, but the claimant did not perform this task at all.

52. On 12 May 2018 Mrs McKeeman was approached by another volunteer, Linda Fair, regarding an incident in which it was said that the claimant had initiated a conversation with another member of staff, in front of junior members of staff and volunteers, and which turned into a heated conversation in which others working with the respondents were the subject of severe criticism. Mrs McKeeman formed the view that it was inappropriate for the claimant to have engaged in such a conversation with junior staff and volunteers present in this way.

53. In addition, Mrs McKeeman received a complaint from the parent of a rider, who had been given a lesson by the claimant. The complaint was to the effect that the rider was on medication which made her hand shake, and that the claimant knew about this, but had spent time during a lesson telling the client not to shake. Mrs McKeeman did not however speak to the claimant about this prior to her dismissal.
54. Mrs McKeeman also took into account some other factors in her assessment of the claimant. Those were that a grievance against her; and that although the claimant had been taking able bodied lessons, she had said at her interview there were a lot of clients who had wanted to follow her, but there was no evidence of this. Ms McKeeman formed the view that the claimant would cancel private lessons rather than let others take the lessons in her place.
55. Ms McKeeman also had regard to the fact claimant at her interview, had said she was on a Level 1 UKCC, and only had to submit her portfolio for Level 2 but this had not been completed. She considered that although she had asked the claimant how the respondents would help with this, the claimant had not taken up this offer, but simply said that she would get it done, but that it had not been.
56. Ms McKeeman discussed these issues with the Board. Advice was taken from an external HR Adviser. Having done this there was a collective decision taken between Ms McKeeman and the Board, that the claimant should be dismissed.
57. On 7 June 2018, Ms McKeeman asked the claimant to attend a meeting. The claimant had no prior warning of this. The claimant recorded the meeting on her mobile telephone, and the transcript of her notes from that recording are produced in the bundle (page 465 to 469). Ms Susan McNeil, one of the Board members was present at the meeting.
58. Mrs McKeeman told the claimant that there were a few smaller issues in the past with riders' forms not be completed, and left lying around, which

5 contravened the respondents insurance and data protection. She also said there were some issues with the claimant not adhering to the management structure. Mrs McKeeman said that she was investigating a couple of complaints against the claimant, and it have been proven to her that the claimant was not conducting herself and a senior member of staff should.

59. The claimant asked in what way. She was told it was about talking about other members of staff in front of volunteers, and there had been complaints about that.

10 60. Ms McKeeman told the claimant the respondents had decided to end her contract.

61. The claimant was told she would need to vacate her tied accommodation within a month, and she would need to remove her horse from the yard as soon as possible.

15 62. The claimant was extremely shocked to hear this and expressed this in the meeting. She said she thought it was a witch hunt.

63. The claimant complained that she had not had the same support as Julia Hillson. She said that because she will say that something is wrong; she had said that Trooper had been in agony for months and had just been left, and that's not how she would have run things; she had said that Kora's legs had been itching. The claimant said and there were loads of things wrong, and she would speak up because the horses did not have a voice.

64. Ms McKeeman told the claimant that her caring for the horses was not an issue, and Ms McNeil said that had never come into question.

65. The claimant also complained that there had been no warnings.

25 66. The claimant was told in the course of the meeting that a complaint had been put in against her, but those investigations had not been completed.

67. The claimant was told she had the right of appeal, and neither Ms McKeeman or Ms McNeil would be involved in that process.

68. After the meeting on 7 June the claimant received a letter on 8 June 2018 (page 74) confirming her dismissal. That letter stated that the matters of concern were: -

- *“Issues with you not adhering to management structure*
- 5 • *Appropriate rider forms not being filled in which would contravene our insurance*
- *Riders forms left in general areas which would contravene data protection*
- 10 • *Conducting yourself in a manner uncondusive to being a senior yard member.”*

69. The claimant was told that that dismissal would take effect immediately, and she would be paid 4 weeks’ pay in lieu of notice. The claimant was advised of her right to appeal and was told that she should appeal within 7 days, and to write to a Sharon Hutchison, who was a Trustee.

15 70. The claimant appealed against the decision to dismiss her in a letter dated 14 June 2018 (page 479 to 481). In that letter the claimant stated *inter alia*: -

“I wish to appeal against dismissal. The above are not the only, or even main reasons I was dismissed.

20 *I was dismissed because I had been labelled a troublemaker and my face doesn’t fit because I raised concerns “whistleblowing”. This is the real reason I was dismissed.*

25 *I have complained about the following often (a non-exhaustive list, there will be others) and although these are genuine complaints which RDA should take seriously, they have not. I now forward a list of 16 items which the claimant said she had raised including mistreatment of different horses including the following: -*

- 5 “(1) *Mistreatment of different horses, including Lynda’s own horse and failing to arrange vet appointments for horses who had clearly needed treatment.*
- (2) *a horse tied up with Chiffney bit.*
- 5 (3) *a horse biting Erin, vulnerable volunteer/employee due to poor yard management, so this should have been avoided.*
- (4) *one worker leading 4 horses into the yard, which was too many for one person.*
- (5) *Lynda told Barbara, Irene and myself that not everyone had completed a valid PVG to help in classes as they aren’t*
10 *unsupervised. This is a serious breach of RADA policy and puts both children and vulnerable adults at risk.”*
- (6) *Breach of First Aid procedure when a rider falls off a horse in a lesson.*
- 15 (7) *a volunteer who was in for her induction walking freely around the yard, this is in breach of rules and insurance.*
- (8) *I had to use a day off for my coaching assessment, but others were permitted to do it during working hours.*
- (9) *There have been 2 people sacked and 1 resign because of*
20 *bullying by Lynda McKeeman, yard manager and her best buddy Susan McNeil; Lynda was given a bonus and promoted to the position of yard manager during an investigation into allegations of bullying made against her. I have been treated very unfairly and, compared to Lynda, very inconsistently.*
- 25 (10) *Lynda herself has in the past left rider forms out and has even had them hanging out of her back pocket as she went round the yard.*

(11) *Elizabeth McCready who was the former fundraiser here is also happy to give a statement about how rider forms not being kept securely was always an issue, with Lynda being one of the worst ones guilty for it.*

5 (12) *There are documented and recorded previous episodes of all rider details being emailed to board members' personal email addresses. I was a trainee who should have been under constant supervision, coached and guided through the correct procedures to help catch and correct any oversights.*

10 (13) *Julia taking volunteers home, which is against RDA rules, with Lynda's consent and knowledge.*

(14) *When the Glasgow RDA has Fun days at the centre they used to use a young man who supplied and worked on fun stalls. This man was never PVG checked and is now on the sex offenders list after having served time in prison for inappropriate dealings with minors. Lynda sings his praises and tells me she vouched for him*

15 (15) *There is also a complaint being made against both Lynda and Julia over Julia's sitting on a vulnerable young man's knee while on tea break because there were no seats. Ryan who is 23 years old and on medication for anxiety was horrified by Julia's actions and both Lynda and Julia openly laughed at his embarrassment and both had continued to refer to it while laughing at him.*

20 (16) *Julia breaks yard rules frequently which all render insurance nil and void and Lynda knows about every single one of them and allows her to do as she pleases. There are witnesses to this too'.*

25 71. The appeal took place on 5 July 2018, and was conducted by Sheila Lamont,
30 an external consultant. Verbatim notes at the appeal hearing are produced

at pages 222 to 259. This was a lengthy meeting, at which a number of matters were discussed.

- 5 72. Ms McKeeman was asked to prepare documents setting out her reasons for dismissal for the purpose of the appeal, which she did (pages 71 to 73). This document set out Ms McKeeman's concerns about the claimant's performance which were taken into account at the point when the decision to dismiss her was made.
- 10 73. Prior to the appeal hearing taking place, a number of individuals who had been involved in the respondents, either in the capacity of volunteer, or employee, wrote to Ms Lamont, with letters complaining, among other things, about the respondent's Board of Trustees, Mrs McKeeman, the inequality of treatment of staff, operational issues, treatment of the horses, and the behaviour of Julia Hillson. Letters were sent by Elizabeth McCready, who had previously worked for the respondents as a fundraiser but who had resigned, Aileen Palmer, who had been a volunteer with the respondents, and
15 Claire McCloskey, who had been a volunteer with the respondents.
74. Having heard the appeal Ms Lamont concluded that her decision to dismiss the claimant should stand, and she wrote to her on 14 July 2018 confirming this (pages 354 to 356).
- 20 75. The letter of appeal reiterated the 16 points which the claimant had set out in her letter of appeal, but stated that having given the matter full consideration, the decision taken should stand on the basis there was no evidence of the claimant having been dismissed for whistleblowing, and there was no evidence submitted in relation to the 16 points in the claimant's appeal letter
25 which proved that she had been dismissed for any of the reasons noted in that letter.
76. On 19 June 2018, Eileen Joyce, an employee of the respondents, lodged a written complaint with the Board of Trustees, about the alleged treatment of her son RJ, at the hands of Julia Hillson. She stated she wished to put in a

complaint against Julia Hillson for “abuse of power, gross misconduct, and sexual harassment”.

- 5 77. This complaint related to an incident which was said to have occurred in August 2017. It alleged that Julia Hillson had sat on Ms Joyce’s son’s (RJ) knee. It was said that RG was a vulnerable adult who suffered from anxiety.
78. The respondents investigated the incident. Barbara Walker, Lynda McKeeman, and Lynda Brown were identified as being present. Julia Hillson also identified two veterinary students as being present.
- 10 79. Interviews was carried out, including an interview with Ms McKeeman, who stated she had no recollection of the incident. Ms Walker said that she did recall the incident.
80. The respondents did not uphold the complaint, and they wrote to Ms Joyce on 11 July 2018 confirming this.
- 15 81. On or around 16 May 2018, Claire McCloskey, who had been a volunteer with the respondents e-mailed the National RDA, complaining about the way the horses were treated by the respondents. The RDA’s responded to that complaint and carried out an inspection of the respondent’s premises but found no mistreatment of the horses.
- 20 82. On 16 July 2018, Aileen Palmer, who had been a volunteer made a complaint to the British Horse Society, about the respondents. The British Horse Society carried out an inspection of the respondent’s premises but did not find the complaint to be upheld.
- 25 83. A complaint was made to the RSPCA about the treatment of Ms McKeeman’s horse Trooper. The RSPCA visited the respondent’s premises prior to the claimant being dismissed but did not find the complaints to be upheld.
84. On 26 July 2018, a veterinary report was obtained on the horse Korra, which made diagnosis of lameness due to foot pain. Subsequent to that on 14 August 2018 a recommendation was made that Korra was to be put down.

85. On 4 June 2018 the veterinary recommendation from Glenbrae Veterinary Clinic was made that Laddie was put down.

86. Mrs McKeeman's own horse Trooper, was also put down because of health reasons.

5 87. The RDA vet carried out a horse inspection of the respondent's premises and produced a report dated 4 October 2018 in which they expressed the view that the respondents were a good example of a friendly caring yard where the horses and their welfare were paramount, and that Ms McKeeman was well informed and knowledgeable on the medical condition of her charges.

10 **Submissions**

Claimant's Submissions

88. The claimant made an oral submission, which she also helpfully emailed that to the Tribunal. She referred to the unexpectedness of her dismissal, and the lack of regard for employment law, or ACAS procedure, and the upset
15 which this has caused her.

89. The claimant submitted that she was labelled a troublemaker on account of her continued whistleblowing, which was referred to in a letter of appeal, and supported by her witnesses. That was the only the reasons for her dismissal.

90. The claimant referred to the lack of care for animals, and the lack of health and safety for failing to grit the yard, and the failure to deal with the grievance about RJ. She made submissions to the effect that there was a clique within the respondents, and that she and others were excluded. The claimant referred to Mrs McKeeman's evidence, to the effect that five employees had left or had been dismissed since Mrs McKeeman had taken on her managers
20 role eighteen months ago, and that she had been subject to 3 bullying
25 complaints.

91. The claimant accepted that she had left confidential paperwork out once as a trainee, but submitted that she should have been supervised, and that Mrs McKeeman also left confidential paperwork out in a public area.

92. The claimant submitted Mrs McKeeman's evidence was not credible, and that she could not recall many of the different dates and issues, and that she gave evidence to the effect the PVGs were destroyed on receipt, which was untrue.
93. The claimant categorised as Mrs McKeeman blatantly lying. She also asked the Tribunal to draw an inference to the fact the respondents only called one witness to defend the claim.
94. The claimant also referred to the fact that Trooper, Laddie and Korra have all been put down, and that the only independent vetting report was dated October 2018, four months after her dismissal.
95. The claimant submitted that she believed the respondents falsely accused her of contacting the BHS, and the SSPCA, but it was in fact it was her witnesses who had contacted the BHS, and the regional RDA, and it could have been anyone visiting the Yard who called the SSPCA, given the condition of Trooper.
96. The claimant submitted that the inspections carried by the regulatory authorities were inadequate, as spoken to by her witnesses.
97. The claimant submitted there was a tight clique within the respondents, who have got away with appalling, unprofessional, cruel behaviour, pathological lies, corruption, and lack of a basic duty of care to humans and animals, covering under the umbrella of the RDA. The claimant wanted to make clear she was only referring to particular individuals, not everyone within the respondent's organisation.
98. The claimant submitted that she believed that Ms McKeeman felt threatened by her professionalism and expertise, and that she was unfairly dismissed due to whistleblowing.

Respondents Submissions

99. Mr Lane also provided written submissions. He submitted that the burden of proof rests with the claimant to establish both that she had made a

disclosure(s), and that the principle reason for her dismissal was that she made that disclosure(s).

100. Mr Lane suggested the Tribunal should adopt the approach of firstly considering if the reason for dismissal was established. He urged the Tribunal to find the conduct and performance issues were the reasons for the dismissal, and he referred to Mrs McKeeman's evidence, and the documentary evidence which he submitted was consistent with that, in particular the dismissal letter, Mrs McKeeman's own notes, and the notes of the dismissal meeting.
101. Mr Lane submitted in any event the claimant had not established the making of a disclosure was the reason for her dismissal. She had failed to provide any documentary evidence to support making alleged disclosures despite her assertion that she kept a written timeline from the first week of her employment.
102. Mr Lane submitted the claimant's witnesses provided only limited evidence that they had witnessed the claimant making the alleged disclosures. Mrs McKeeman's evidence that the claimant had not made these disclosures, was subject to limited cross examination, and should be accepted.
103. The Tribunal should also accept Mrs McKeeman's evidence that the claimant's making disclosures was not the reason for her dismissal. Mr Lane also referred to the claimant's own evidence, to the effect that she was dismissed due to Ms McKeeman mistakenly believing that she made a complaint to the SSPCA, the RDA, and the BHS.

Note on Evidence

104. The Tribunal heard a good deal of evidence in this case, not all of which was relevant to the issues which it required to determine, and it was unnecessary for the Tribunal to resolve every factual issue which the evidence presented.
105. It was however necessary for the Tribunal to make an assessment of the credibility and reliability of some of the evidence, as there a significant issue in this case as to the reason why the claimant was dismissed. The claimant

on the one hand says that it is because she made protected disclosures, the respondents on the other hand say it is because of performance issues. There are also issues as to whether the claimant made the disclosures she relies upon.

5 106. The Tribunal did not consider that the claimant deliberately set out to mislead it, but it did form the impression that her evidence was not always credible and reliable. During cross examination from time to time the claimant gave her evidence in a volatile, occasionally bordering on hostile, manner and she readily levelled unbridled criticism against others involved with the
10 respondents, in particular Ms McKeeman and Ms Hillson, for example stating that Ms McKeeman was 'sloth like' or that Ms Hillson spoke to people like dirt. Further it appeared the claimant on occasion was incapable of making appropriate concessions. An example of this occurred in cross examination, when the claimant was asked to accept that the respondent's charity number
15 identified in their letter heading was the same number, therefore denoting the same charity, as noted at the foot of their notepaper, but was incapable of doing so. These elements impacted adversely on the Tribunal's assessment of the claimant's credibility, and it formed the impression that the claimant's sense of outrage and injustice at her dismissal was such that it coloured her
20 evidence, particularly in relation to what she categorised as a protected disclosure, and her assessment of Mrs McKeeman's obligations and her own responsibilities.

107. The claimant also led a number of witnesses, who to varying degrees gave evidence about what they considered to be the mistreatment of horses under
25 the management of Ms McKeeman, and poor management including favouritism amongst staff, in particular favouritism towards Julia Hillson.

108. The Tribunal formed the view that the witnesses in general had a very poor opinion of Mrs McKeeman and the Board of trustees, and that this was a significant motivation behind some of the evidence the Tribunal heard.

30 109. Ms McCloskey and Ms Palmer were both qualified riding coaches of considerable experience, who gave evidence with a good deal of passion,

and the Tribunal had no doubt they were convinced that their views about the treatment of horses and management issues at the Glasgow RDA were correct. However, Tribunal found it telling that neither of their complaints to the regulatory bodies (the BHA and the Regional RDA) about this mistreatment of horses were upheld. While the witnesses sought to suggest that the regulatory inspections were in some way defective, the fact that their complaints were not upheld, did not support the conclusion that horses were being mistreated.

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110. Joyce Harvey, who is a volunteer for the RDA, gave evidence to the effect that she considered there was a clique amongst those working at the Glasgow RDA. This was also the evidence of Barbara Walker, currently an employee of the respondents. She also spoke of there being a clique involving Ms McKeeman, Julia Hillson another employee, Chelsea, and the Board.

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111. In light of this evidence, the Tribunal considered that there was not unlikely that there were issues which may well have created a difficult working environment, with some members of staff or volunteers feeling an antipathy towards management, and/ or that they were excluded.

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112. The fact that there was such a dynamic amongst those involved with the respondents did not however impact on the Tribunal's assessment of the credibility of the reasons which Ms McKeeman gave for the decision to dismiss the claimant.

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113. The respondents called only one witness, Mrs McKeeman, and the Tribunal found her in the main to be a credible and reliable witness. She gave her evidence in a calm and straightforward manner, and her evidence was consistent with contemporaneous documents produced, which included the claimant's own notes of the disciplinary hearing. That document recorded, that Mrs McKeeman told the claimant, albeit in very summary form, that the reasons for her dismissal were connected to two issues with riders forms which contravened the respondents insurance, and had data protection implications; that the claimant was not adhering to the management structure;

that there had been complaints about her; and that Mrs McKeeman considered should not conduct herself properly as a senior member of staff.

114. The claimant's criticised Mrs McKeeman's evidence due to the fact that she responded to some questions by saying she did not know, or could not remember, however it appeared to the Tribunal that Mrs McKeeman's recall of the events was in the main consistent with the passage of time.
115. The material conflicts which the Tribunal had to resolve related to whether Ms McKeeman genuinely had the reasons she gave in evidence, which were taken into account by her and the Board in deciding to to dismiss the claimant; and whether the claimant had made the protected disclosures which she claimed she had made.
116. In general terms, Mrs McKeeman's position was that none of the matters which the claimant relies on as protected disclosures had been raised as such, albeit she accepted that that the claimant had raised matters with her during the course of normal day to day working. She had no specific recollection of any of the information which the claimant relied upon as a protected disclosure, being imparted to her by the claimant.
117. The Tribunal accepted that this was Mrs McKeeman's recollection of matters, and that she had no particular recollection of the claimant identifying an issue as being a matter of concern, or a protected disclosure. It appeared to the tribunal be plausible Mrs McKeeman did not remember conversations about day-to-day work issues, which explained that she did not recall the claimant imparting the information which she relies upon as being a protected disclosure. The fact that Mrs McKeeman did not remember information being disclosed, to her does necessarily mean that it was not disclosed her, but it does impact on any assessment of causation between the making of the disclosure and the decision to dismiss.
118. There was a considerable degree of conflict between the evidence of Mrs McKeeman, and the claimant, as to the reasons Mrs McKeeman gave for the claimant's dismissal.

119. The first issue Mrs McKeeman had was that she considered the claimant undermined or attempted to undermine her. The claimant did not accept this. It was the claimant's evidence that she had been asked to report directly to the Board both in relation to information about the arena surface and the Pony Club, she did not accept that she had been told that she had to go through Mrs McKeeman but failed to do so. She said she had copied Mrs McKeeman into emails.
120. Mrs McKeeman's evidence that the claimant was 'trying to cut her out of the loop'. The claimant had been told to go through her with the quotes for the arena surface, and for proposals for the Pony Club, but did not do so, continuing to contact the Board directly. Mrs McKeeman said that the claimant only copied her into emails after she had spoken to her about this.
121. On balance the Tribunal was satisfied it was likely that given Mrs McKeeman was the manager in charge, that it was intended that these matters went through her, and the fact that the claimant reported directly to the Board, created the impression in Mrs McKeeman's mind that the claimant was attempting to undermine her position.
122. In relation to Mrs McKeeman's concern that the claimant left confidential information in a public area, the claimant accepted she had done this. She was however she was very critical of Mrs McKeeman for allowing this to happen, on the basis that Mrs McKeeman was her supervisor for the purposes of her the RDA coaching programme, and the claimant's position was that she should be supervised at all times. She was also criticised of Mrs McKeeman, saying that she carried forms around in her back pocket.
123. The Tribunal concluded, indeed it was accepted by the claimant, that she had left these forms which contained sensitive information in a public place, which in the Tribunal's view explained Mrs McKeeman's concern. Mrs McKeeman did not accept the the claimant's criticisms of her and did not accept that she was required to supervise the claimant to the extent suggested by her. It was Mrs MCKeeman's position that she had shown the claimant how to deal with the requisite forms, and the Tribunal was prepared to accept that this was

correct. The claimant accepted she know the forms should not have been left in a public place.

124. Secondly, Mrs McKeeman was concerned about the fact that the claimant had not completed mandatory forms for the purposes of the respondent's insurance, prior to taking a class. The claimant was hesitant in accepting responsibility for this cross examination, saying only that she knew she should have been told how to fill the forms in. She did however accept that Mrs McKeeman had to stop a class because the requisite forms had not been completed before the class commenced. The claimant categorised her actions as 'unwittingly and unknowingly', as she was a trainee.

125. Notwithstanding of the claimant's view of this, the evidence supported the conclusion that the claimant was taking the class, albeit supervised by Mrs McKeeman; she had not completed the forms; that the forms were mandatory; and this failure caused Mrs McKeeman concern.

126. The Tribunal was therefore satisfied that Mrs McKeeman genuinely had concerns about the rider forms being left in a public place on one occasion, and not completed on another.

127. The claimant rejected a notion that her work ethic was not good and that she had to be micromanaged. The claimant repeatedly asserted that Mrs McKeeman spent the majority of her time in the smoker's corner drinking tea, and categorised her as slovenly, and sloth like. The claimant said that her witnesses would back up that she was a good worker. The claimant's witnesses did indeed speak to the fact that they considered the claimant to be a good worker, and the Tribunal has no doubt that was their impression.

128. Mrs McKeeman however was involved in the day to day management of the claimant and she gave convincing evidence as to the concerns she had about the claimant's output, and on balance Tribunal was prepared to accept her evidence that she had genuine concerns about this, even if it did not appear to the claimant's witnesses that these concerns were justified, and that this formed part of the respondent's consideration in taking the decision to dismiss.

129. In relation to Mrs McKeenman's position that the claimant had behaved inappropriately, the claimant said that this was an exaggeration. She categorised the discussion which she took part in as a 'frank discussion between adults'. This may well have been the claimant's view of matters, but the fact that she viewed the conversation in this way lent support to Mrs McKeenman's evidence that the claimant had engaged in a heated discussion where sharp criticism was directed against others who work with the respondents. The Tribunal accepted that the claimant had engaged in such conversation and that Mrs McKeeman and the Board did not look favourably upon this and took this into account in reaching its decision to dismiss the claimant.

130. The claimant had no awareness of the other issues which Mrs McKeeman referred to in evidence; in the grievance raised against her, and the complaint about the lesson. This which consistent with Mrs McKeenman's evidence and her note which was to the effect that she had not spoken to the claimant about the complaint about the lesson, and that the claimant had not been advised about the ongoing grievance. The Tribunal did not conclude however that the fact that the claimant was not advised of these other matters did not mean that they were not part of the consideration in the decision to dismiss, in circumstances where the respondents were no bound by the requirements of their disciplinary procedure on account of the claimant's length of service.

Consideration

131. The preliminary issue which the tribunal had to consider was the identity of the respondent. The claimant contended that the respondents were the 'Glasgow Group Riding for the disabled', as set out in the ET1. It was the respondent's position that the respondents are 'Glasgow Group of the Riding for the Disabled Association'.

132. In support of her position the claimant relies upon her understanding of the respondent's name, her wage slips and her understanding of the respondent's

designation. The respondents produced a screenshot from Company's House (page 82).

133. Albeit the Tribunal can understand that the claimant may have been confused as to the correct identity of her employer, it concluded that the information provided on the Companies House screenshot, which was the company name (The Glasgow Group Of The Riding For The Disabled Association) and company number (S C102661), which matched the information on the letter heading on correspondence produced by the respondents, supported the conclusion that the position contended for by the respondents was correct, and that the respondents are correctly designed as The Glasgow Group Of The Riding For The Disabled Association.

134. The first substantive issue which the Tribunal considered was whether the claimant had made any of the alleged disclosures upon which she relied.

135. The burden of proof rests with the claimant to establish if she made qualified disclosures. Section **43B** of the Employment Rights Act 1996 provides;

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

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

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

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

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

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

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

136. In order for there to be a disclosure which is protected in terms of **Section 43 B**, there must be a 'disclosure of information'. That means the disclosure must convey facts, rather than simply be an expression of opinion, or an allegation. Secondly, the disclosure of information must, in the reasonable belief of the worker making the disclosure, be made in the public interest and tend to show one or more of the failures in subsection (a) to (f) of Section 43B. The worker must therefore reasonably believe that as the disclosure is made in the public interest and tend to show that one of the 6 relevant failures has occurred, is occurring, or is likely to occur.

137. 'Reasonable belief' is a low threshold, and the Tribunal has to consider the reasonable belief of the worker *making* the disclosure, not simply the reasonable belief of a worker.

138. With this in mind the Tribunal considered each of the alleged disclosures upon which the claimant relied.

The first alleged disclosure

139. The first alleged disclosure upon which the claimant relies, as set out in her email of 21 February, was that Julia Hillson sat on the knee of a vulnerable adult, RJ. In her email, the claimant stated that when she spoke to Mrs McKeeman as the Protection Officer, she laughed. The claimant's email stated that this took place in the tea bar, in front of Barbara Walker.

140. Mrs McKeeman denied that the claimant had made any kind of disclosure along these lines, although she accepted that there had been a grievance raised about this incident which was investigated, and the course of which she made a statement.

141. This grievance was in fact raised after the claimant left the respondents employment, albeit it related to an incident which took place in August 2017.

142. The Tribunal did not conclude that the claimant had raised an issue about Julia Hillson sitting on RJ s knee with Mrs McKeeman which would qualify as a protected disclosure. The claimant did not give any clear evidence about what she said about this or when. Mrs Joyce and Mrs Walker spoke about the grievance lodged on behalf of by RJ, but their evidence was simply about the fact that a grievance made been lodged, and statements had been taken, their view of matters, and the grievance was not upheld. This evidence did not confirm that the claimant had made a protected disclosure, and Barbara Walker, did not speak to the fact that the claimant made a disclosure in connection with RJ and Ms Hillson, despite the claimant saying that she had witnessed this.
143. The claimant's evidence was that at some point she spoke to Mrs McKeeman about Julia being over friendly. She also said that she spoke to Mrs McKeeman after a lesion one day and said that Julia was overly familiar.
144. That evidence does not support the disclosure which the claimant identified, and which she relies on in bringing this claim. Furthermore, statemens to the effect that the claimant considered Ms Hillson to be overly friendly or overly familiar are expressions of opinion, as opposed to information.
145. The claimant's witness, Barbara Walker, did not speak to the fact that the claimant made a disclosure in connection with RJ and Ms Hillson despite the claimant saying that she had witnessed this.

The second alleged disclosure

146. The second disclosure relates to Julia Hillson taking part in RDA classes from the week beginning 28.08.17 despite not having a PVG form.
147. It is said by the claimant in her email of 21 February that she raised the issue about the lack of PGV with Mrs McKeeman.
148. The claimant stated in evidence, that she asked Julia Hillson if she had a PVG number and was told by her that she did not need one. The claimant stated

in her email that this was with Mrs McKeenman's consent. It was the claimant's position that this was a breach of the RDA rules and policies.

149. The claimant referred to the national RDA procedure, a section of which was produced in the bundle and referred to in the findings of fact. The Tribunal accepted that the claimant considered that the respondents should be bound by this policy. However, asking a question of Ms Hillson as to whether or not she had PVG number did not amount to a disclosure of information for the purposes of Section 43B of the ERA.
150. The Tribunal also accepted the respondents were entitled to create their own policies, and that the policy which was adopted, was that there was no immediately requirement for a PVG, provided the individual was not left unsupervised with children or vulnerable groups. It was Mrs McKeenman's evidence that this was the respondent's policy, and the Tribunal accepted that was the case. There was no attempt by the respondents to hide the fact that this was their policy, or that it resulted in workers and volunteers working at the premises, at least initially, without a PVG, provided they were not in one to one contact with children or vulnerable adults. It is not a matter for the Tribunal to consider the rights of wrongs of that policy.
151. The claimant said in evidence that she had spoken about the importance of PVGs at tea break in front of Barbara Walker. There was no evidence from Mrs Walker about the claimant having said anything about the importance of PVGs, but in any event, a generalised statement on the part of claimant as to the importance of PVGs would not be sufficient to qualify as 'information' disclosed for the purposes of section **43B**.
152. The claimant also said in her evidence that two or three days after she was reprimanded by Mrs McKeeman for having left confidential forms in an open area, she checked the respondent's files for her classes, and then discovered that another volunteer, a Fiona Hegglin, did not have a PVG. She said that she told Mrs McKeeman that Ms Hegglin did not have a PVG, and that Mrs McKeeman told the claimant that she was fine and did not need one. On

balance, the Tribunal was not satisfied that the claimant had made a disclosure of this information to Mrs McKeeman.

153. In reaching this conclusion, the Tribunal takes into account the claimant's specification of her her disclosure, she does not state that she disclosed this information to Mrs McKeeman. Rather she states that Mrs McKeeman had Ms Joyce and Ms Hegglin in classes with no disclosure.

154. Had the claimant disclosed this information (that Ms Hegglin did not have a PVG) and considered it to be in the public interest at the time when she did so it, it appeared likely to the Tribunal that she would have included it as a specific disclosure, and there was no reason explaining why she had not done so.

155. In support of its conclusion, the Tribunal also attached some weight to the fact that Ms McKeeman has no memory of the claimant raising this. It also took into account that despite the fact that she said that she had read the respondent's handbook, which made clear the provisions on whistleblowing, the clamant had not disclosed this information or (indeed made any disclosure of information) to the Board. The fact that she did not do so tended to suggest that she had not disclosed the information in the first place, and secondly, that even if she had, she did not consider it showed one of the relevant failures and to be in the public interest at the relevant time.

156. The claimant also said in connection with PVG issue that she had asked Julia Hillson if she had a disclosure form, and Julia said she did; the claimant she was lying, and that she gave her mail sometime later, which included her PVG certificate.

157. There was nothing in this passage of evidence to suggest the claimant disclosing this information could qualify as a protected disclosure.

Failure to care adequately for horses

158. In her email of 21 February 2019 which set out her alleged disclosure, the claimant made complaints about the condition of a number of horses, and the steps which she took to treat the horses to alleviate their condition, and Mrs

McKeeman's refusal to engage with the treatment she recommended. In her email the claimant complains that Mrs McKeeman put an end to the treatments the claimant was administering, calling them a waste of time.

5 159. There was nothing in the content of the claimant's email in relation to this which identified the disclosure of any information.

10 160. The claimant stated in her specification of the alleged disclosure that that ponies who needed treatment scratched their legs, and stamp their feet and could unseat the rider, and she states that one of the ponies, Laddie could have collapsed, which was not only a danger to a rider, but to the leader and side walker.

15 161. In her evidence, the claimant said that she asked Mrs McKeeman on one occasion when a pony was stamping whether she should take the pony out during a lesson, and Mrs McKeeman told her that she should not do so. There was corroboration for this, from Ms Palmer, who gave evidence to the effect that she saw the claimant asking Mrs McKeeman if she should take a pony out of a lesson. That question however does not however constitute the claimant disclosing information for the purposes of section **43B**, of the ERA and was simply a question which she asked about how to deal with a particular pony.

20 162. The claimant also in her evidence took the Tribunal to a text which she sent to Mrs McKeeman where she states that Mrs McKeeman horse Trooper, was lame. That is a disclosure of information, however it is very simple statement of fact, and there is nothing in that statement which renders it capable of falling within any of the subsections of **43B**, thus rendering it a protected disclosure.

25 *Gritting the yard*

163. In her email of 21 February, the claimant provided a copy of her RIDDOR form, which she filled in after breaking her leg while at work. She stated this was another example of how people are put at risk by the respondent's management and said that she had asked Mrs McKeeman about grit on many

occasions in front of Barbara Walker and Joyce Harvey. She said that she made these requests repeatedly.

164. In her email and in her evidence, the claimant said that she suggested to Mrs McKeeman that she went to Dawsholm Recycling Centre to fill buckets with grit, so she could grit the entrance, the car park and the yard and these requests were denied.

165. Regardless of whether or not that did or did not happen, there was nothing in the claimant's specification, or which she gave evidence about which constituted disclosure of information capable of falling within any of the subsections in section 43B. Mrs Harvey spoke to the fact that she heard the claimant ask Mrs McKeeman for grit, and the claimant may well have done that in the course of day to day work issues, but such a conversation does not amount to a disclosure of information for the purpose of section **43B** of the ERA.

166. The Tribunal was therefore not satisfied that the claimant had made any of the alleged disclosures upon which she relies.

Dismissal contrary to Section 103A of the ERA

167. Section **103A** of the ERA provides;

'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.'

168. As the claimant does not have the requisite qualifying service to present a complaint of unfair dismissal, in order to succeed in her claim of unfair dismissal under Section **103A** of the ERA the claimant would require establishing firstly that she had made a protected disclosure(s), and secondly, that her having making of that disclosure(s) was the reason, or if more than one the principle reason, for her dismissal.

169. The Tribunal's conclusion that the claimant had made no protected disclosures means that it is unnecessary for it to go onto consider that second question.

170. In the event the Tribunal is wrong in its conclusion as to whether the claimant made a protected disclosure, it was in any event satisfied that the respondents dismissed the claimant for the reasons spoken to by Mrs McKeeman in her evidence and recorded in the findings of fact.

171. The Tribunal recognised that dismissal came as a shock to the claimant, and that she was dismissed in an a very summary manner. The Tribunal was satisfied however that the peremptory nature of her dismissal reflected the fact that that the respondents availed themselves of the discretion which was written into the handbook and which allowed them to dispense with their disciplinary procedure when dismissing the claimant, on account of the fact that she had less than two years qualifying service.

172. The Tribunal was satisfied on the basis of Mrs McKeeman's evidence that she had reasons which she considered significant for being concerned about the claimant's performance in a number of areas, (even if the claimant did not accept that her concerns were justified, and considered that Mrs McKeeman was a very poor manager), and that it was for these reasons, that Mrs McKeeman and the Board took the decision to dismiss the claimant.

173. The effect of these conclusions is that the claim under Section 103A of the ERA of automatically unfair dismissal for having made a protected disclosure is dismissed.

Date of Judgment

25 March 2019

**Entered in register
and copied to parties**

26 March 2019

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