Case number: 2420682/2017

EMPLOYMENT TRIBUNALS

Claimant:	**Mr J Mason**
Respondent:	**Curo Choice Ltd**
Heard at: Bristol	**On: 8 July to 12 July inclusive 2019**
Before:	**Employment Judge Hargrove**
MEMBERS:	**Mr H J Launder** **Mr E Beese**
Representation	
Claimant:	**Mrs Mason**
Respondent:	**Mr S Butler (Counsel)**

JUDGMENT

The unanimous judgment of the Employment Tribunal is that: the claimant made 2 disclosures which were protected, but the claimant claims that he was dismissed and subject to detriments short of dismissal because of the disclosures are not well-founded.

REASONS

1. The claimant was employed by the respondent as a support worker at the respondent's Pathways Project from 4 April 2016 until his dismissal on 10 May 2017 with one week's pay in lieu of notice. On 2 October 2017 he presented an ET1 Claim Form, having entered into early conciliation on 4 August and received a certificate on 4 September 2017.
2. In the course of 3 preliminary hearings (by telephone) on 21 March 2018, 5 September 2018 and 31 January 2019 the heads of claims and issues were eventually identified. The claimant not having 2 years' service to bring a claim of unfair dismissal under section 94 of the Employment Rights Act, he asserts that he was automatically unfairly dismissed and/or subjected to detriments for raising public interest disclosures. The respondent denies that any of the disclosures he made were qualifying disclosures on the basis that there were no identifiable disclosures of information as opposed to the mere making of unsubstantiated allegations. There were allegations which did not amount to

wrong doing in any of the categories in section 43B(1) of the Employment Rights Act and in any event that the claimant had no reasonable belief in the truth of the matters. Further, the respondent denied that the claimant had been subjected to any detriments and that he had been dismissed and asserted that he had been dismissed for reasons unconnected with any disclosure which he made.

3. The law and the Employment Tribunal's self-direction

A claimant cannot bring a claim of ordinary unfair dismissal under section 94 of the Employment Rights Act unless he has 2 years' continuous service under section 108(1) of the Act or if he does not have that length of service he has to establish the reason or principle reason for dismissal with one of the numbers specified in section 108(3). In this case the claimant relies on the claims that he was automatically unfairly dismissed for raising public interest disclosures. Section 103A of the Act 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. In order to give the Employment Tribunal the jurisdiction to consider his claim for automatically unfair dismissal the burden lies upon the claimant if he shows that he made a public interest disclosure to prove on the balance of probabilities that at least the principal reason for dismissal was because he'd made that disclosure. Public interest disclosure is defined in section 43 of the Act which provides as follows:
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> > 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. There are then, a list of 6 of which the 2 material ones are subsection (b) that a person has failed is failing or is likely to fail to comply with any legal obligation to which he is subject, and (d) that the health or safety of any individual has been, is being or is likely to be endangered. The disclosure must also be a protected disclosure which means that there must be in this case, be disclosure to the employer. The claimant has to provide information and not making an undetailed allegation of impropriety and the disclosure must have sufficient information to shows that in the reasonable belief of the person making the disclosure the wrongdoing has occurred or is likely to occur. The disclosure must have sufficient factual detail, to be capable of tending to show the wrongdoing alleged, (see Kilrane v London Borough of Wandsworth [2016] IRLR page 422). The claimant must also establish that he reasonably believed in the truth of the information and that it was in the public interest to disclose it. It is not necessary for the claimant to prove that there was in fact a breach of a legal obligation or a risk to health and safety.'
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> Section 47B(i) of the Act provides –

> 'A worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure. There is a special provision about the burden of proof in relation to detriments but which doesn't apply in respect of the detriment if it is dismissal.

Section 48(2) provides

> 'That on a complaint which includes a claim for detriment for making a public interest disclosure it is for the employer to show the ground upon which any act or deliberate failure to act occurred. In those circumstances, the only burden on the claimant although he has to show that he made a public interest disclosure is to prove facts which point to a detriment, it is then up to the respondent to prove that the reason for the detriment if it is established had nothing whatsoever to do with the making of the disclosure.'

4. Having spent half a day reading the witness statements the Employment Tribunal heard evidence first from the claimant and then from Lee Wisbury (LW) against whom serious allegations were made by the claimant, Karl McMutury, service manager and LW's Line Manager who also stood in for LW while he was absent during his mother's final illness and then on her bereavement leave in February/March 2017; then from Donna Baddely (DB) former executive director of Cooperative Services who dealt with the claimant's appeal against the dismissal and was called out of order; and finally Julie Evans (JE), the director of tenancy services who made the original decision to dismiss. There was a bundle of 260 pages to which additions were made.
5. <u>Chronology</u>
   5.1 The claimant was assigned to work at Pathways which was a project to provide accommodation for up to 15 vulnerable and/or troubled teenagers in 4 adjoining terraced houses in Wells Road, Bath. There were a number of support workers some of whom including the claimant were qualified social workers. There were also support worker students assigned to the project. These provided supervision and support to the residents. The project is but one of a number of housing services provided by the respondent. It is sponsored by the local authority and residents were assigned to and to some extent funded by the local authority although another source of income for residence was housing benefits.
   5.2 Amongst the incidents were the following identified amongst the residents were the following identified by their initials who played a part in the background to this case:-
      (i) Who was the subject of a notice to quit
      (ii) BS who was or became a self-harmer
      (iii) KA who was the subject to a visitor ban in April 2017
      (iv) NH
      (v) CP and NR who were female friends of KA.

   There was also a resident of Cleveland House SC. Cleveland House had no assigned support workers on the site, but staff at Pathways provided support externally to the 5 residents there.

5.3 It is not in dispute that the claimant was issued with a personal safety device; and received health and safety instruction and attended personal safety training in the period of April/May 2016 from when he started. The claimant as well as being a qualified social worker has had experience dealing with occupants of a woman's prison with mental health difficulties.

5.4 After a supervision meeting which LW had with the claimant on 13 June 2015, LW sent an email at page 77, confirming that he had reviewed CCTV footage of the claimant working over a weekend and made a comment to the claimant about him 'not doing very much'. On 23 June, the claimant raised a grievance concerning misuse of the CCTV footage and breach of data protection which was upheld following an investigation by Emily Wilson, the governance manager various remedial measures were taken including the training of staff on data protection. EW's report is at page 77 to 78 and she emailed the claimant giving him an update on 1 July 2016. She invited him to telephone her or schedule a meeting if he wished to discuss the matter further. He did not accede to that information. This issue was subsequently raised by the claimant as part of a much wider grievance on the 22 January 2017 in which he raised a number of other issues principally relating to the conduct of LW. This email contains information relied upon by the claimant to constitute public interest disclosures. Previously, this is paragraph 5.5 on 17 November 2016, the claimant was issued with a first written warning by Harriet Bosnell the director of health care and support in the following terms at page 81 of the bundle.

- That you had an inappropriate conversation with a customer whereby you thought it would be funny to make a comment around using crack cocaine through a tennis ball; this is following a previous inappropriate comment which has been picked up with you in supervision.
- That you challenged a colleague inappropriately during a training session. The warning continued. We have agreed that you will at all times maintain appropriate boundaries with our vulnerable customers. The letter ended "I would ask you to ensure that there is no further misconduct on your part as a repeat of similar misconduct or any other instance of misconduct of any kind under the organization's rules within 12 months is likely to lead to the next stage of the procedure i.e. a final written warning." It is to be noted that the claimant was not then warned nor at the time of the invitation to the subsequent disciplinary proceedings in 2017, that he could be subjected to dismissal. The claimant did not appeal the first written warning given in November 2016.

5.5 The claimant raised issues in 3 emails dated 12, 13 and 22 January 2017, which were addressed to C McN and Harriet Bosnell. That of the 12 January concerned the notice to quit issued to the resident DN but this is not identified as one of the protected disclosures for the consideration of the Tribunal. The letter of 13 is of January 2017 is at pages 83 to 84 and makes complaints in particular about LW's treatment of CS who was the self-harmer. The third email was dated 22 January 2017 at pages 89 to 92 which raises a whole series of allegations of misconduct, principally, against LW.

5.6 The contents of these emails but particularly numbers 2 and 3 are relied upon by the claimant as his PIDS. The claimant did not clearly identify them in his ET1, but did do so in response to an order for further details provided by email by the claimant on 11 April 2018 (see pages 45 to 46). This e mail also listed 3 detriments to which he claims to have been subjected by the respondent. Based on this email the PIDS and the detriments were identified in the orders of the regional employment judge on 6 September 2017 (see pages 66 to 67 of the bundle), and in particular there were 5 issues of PID raised. The first relating to the email dated 22 January concerned customers incorrectly claiming income support for long periods and the respondent failing to challenge them. The second in the email of 13 January regarding self-harming by CS and a complaint regarding alleged verbal abuse towards the claimant pertaining to the safety plan of the individual involved. The third, which is no longer pursued was an allegation that LW was emotionally abusive to the claimant. The fourth, was in the email dated 22 January raising concerns about the use of CCTV which I have already mentioned that stating _____? June 2016 and the fifth, was in the email dated 22 January raising allegations about LW filing to carry out stairwell checks. The orders also disclosed or identified the following detriments, increase in abusive and obnoxious behavior from LW; no longer given any supervision; and C McN creating fictitious policies which the claimant was supposed to have broken the lead to his first disciplinary meeting and referring to him as a trouble maker. During the course of this Hearing the Employment Tribunal allowed an amendment application made by the claimant on the 2nd day to add a further allegation of PID which arose later in the course of the disciplinary process in April 2017. We will return to this issue later.

5.7 On 24 January C McN met the claimant to investigate the claimant's grievances raised in the emails set out above. The notes of the meeting are at pages 237 to 254(b). On 3 February 2017, C McN notified the claimant of the grievance outcome (see pages 99 to 102). The grievance was unsuccessful. The claimant did not appeal.

5.8 It is to be noted that the respondent has a written whistle blowing policy (see pages 178 onwards). At page 185, there is a provision that the disclosure shall be to the risk and business assurance manager, Phillipa Armstrong. Although the claimant did not follow that pathway it may well be because he had not read the policy or read it fully. He was not advised by C McN to do so and criticizes him for not telling him about it. We express serious concerns that no one from the respondent appears to have recognized that any of the grievances raised by the claimant might possibly have constituted PIDS. This applies in particular to C McN and to DB at the appeal against dismissal, although it cannot be said to apply to JE because she was not even notified that he had raised grievances or complaints earlier. This betrays a serious lack of knowledge of the legal process designed to protect whistle blowers and a lack of training of management to spot potential PIDS. It is absolutely no answer that the claimant did not follow the designated procedure. For the statutory provisions protecting whistle blowers apply whether or not there is a designated written procedure which an employer has. It was clear from DB's answers to questions from the

employment tribunal that she refused to countenance even at the Hearing the possibility that the claimant might have been a whistle blower event though she was aware of the contents of the claimant's grievance emails and issues were raised by him at the appeal hearing including the sixth PID upon which she relies relating to human rights. This criticism is valid notwithstanding that we have found that all but 2 of the disclosures were not qualifying disclosures in the event. The respondent should be aware that an employer's failure to recognize a potential whistle blower gives rise to the danger that an employer may inadvertently discriminate against a whistle blower in the way in which he treats him or her.

5.9 Also February 2017, C McN met with the claimant to discuss the outcome.

5.10 There are a series of acts which the claimant relies upon as detriments to which he claims he was subjected following the raising of his grievances and alleged PID'S including as acts of abusive and obnoxious behavior on the part of LW. (a) That LW pulled him up in the office about wearing a hat and hoodie on 25 January 2017; (b) LW agreeing to mediation then changing his mind; (c) shouting at the claimant; (d) failure to give supervisions.

5.11 On 2 April 2017, LW issued 2 emails to staff at Pathways notifying that he had issued a visitor's ban to KA (see page 107). The first of these reads

> "I have issued KA with a week's visitor's band due to multiple breaches of the visiting policy. On Saturday I provided KA, CP and NR with the reminder of the visiting rules. However, KA chose to have multiple people in her room and to attempt to sign people overnight for Saturday and ignored security and then later that day another 2 Pathways' staff unfortunately KA did not agree with a visitors' ban as she was drunk despite a reasonable explanation about why she has been issued with this she called me a 'fucking prick'. She has been issued with a written warning for this. At the stage she would be issued notice to quite, however, this is already planned to be happening, Thursday in a joint professional's meeting so I have issued a non-numbered written warning to note officially this was not acceptable and will issue the notice to quit Thursday.
>
> If we experience any further A.S.B (anti-social behavior) this will be issued sooner with the caveat that we can bring this notice forward. As discussed with the team, I foresee a period of A.S.B at Pathways with NR and CP both aligning themselves around KA. They will be subject to the conditions of their licenses and will receive appropriate warnings. I have already discussed with CB's professionals as they had raised concerns over her friendship with KA and the negative effect this having on her behavior engagement. Unfortunately, NR has no work to inform. On 4 April C McN had received a telephone call from Sonia _____? to the effect that the claimant had undermined LW's instructions. On the same day Ashlind Flood emailed C McN (see page 109). This e mail

also asserts that the claimant had notified KA's friend CP that she was allowed to knock of KA's door despite LW telling her that she was not to do it. This email also alleged that the claimant had gone up to KA's room and taken a photograph on his mobile phone of the back of KA's door which apparently contained an indecent image and an abusive remark about LW."

5.12 The claimant was invited to an investigatory meeting with C McN the next day, 5 April. He agreed that he had informed CP that she was not allowed to knock on KA's door. He asserted that there was a breach of article 11, not allowing residents to go where they want. He agreed that he had entered KA's room and taken the photograph which he had not (by then) circulated. C McN did an investigation summary (see pages 117 to 118). On 18 April, the claimant was invited to a disciplinary hearing with JE and the invitation at page 137 identified the allegations as follows:

- Unreasonable refusal to follow an instruction issued by a manager in that you did not enforce a visitor's ban which you were aware and the customer advised you of because you considered it a breach of human rights.
- That you went into a vulnerable and complex customer's room with her with the door closed despite being advised by the Service Manager. CMcN on a separate occasion why this was inappropriate.
- That you did not follow standard procedure and immediately emailed the team with the evidence of criminal damage to Curo property that you had on your mobile phone."
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As already indicated, the letter did not give the claimant warning that he might be dismissed. However, it did indicate that he had the right to be represented at the Hearing. The disciplinary meeting took place on 28 April 2017. The claimant was represented by the local UNISON branch official. The notes of it are at pages 141 to 1454. There is no serious dispute as to the accuracy of the note. In particular, the claimant raised a human rights issue in relation to the visitor's ban. The HR Manager who also attended the meeting asserted that the Human Rights Act did not apply in any event. Secondly, the claimant raised the CCTV issue from the previous year. The HR Manager wrongly claimed that the grievance the previous year had not been upheld when it had in fact been upheld. The outcome letter is at page 155. The outcome letter repeats the issues that were the subject of the Hearing and noted that there appeared to be no standard procedure for reporting evidence of criminal damage. Accordingly, that was not found proved but the earlier 2 allegations of unreasonable refusal to follow an instruction issued by the Manager, LW and entering a vulnerable and complex customer's room with her with the door closed were upheld. She stated in the letter having considered all the evidence and the fact that you have a live written warning on file I am concerned about your boundaries with customers and your ability to follow management instructions despite my attempt to get assurances from you in the

disciplinary meeting that you will follow instructions in the future and I am not convinced by your responses that you would do so. The claimant appealed by letter of 8 May 2017, at page 157. Donna Bradley, DB chaired the appeal meeting on 8 June 2017. The claimant was again represented by the UNISON Branch Manager. The claimant raised again the human rights issue at considerably greater length. DB upheld J's decision in a lengthy letter of 23 June at page 174.

Conclusions

6 PID number 1

It relates to the resident SC.
She was the resident at Cleveland House not Pathways, and as stated above, the establishment did not have residents who were identified as being vulnerable and there were no support workers on that site. Nevertheless, the staff at Pathways were expected to assist and provide guidance to residents there and there were assigned support workers. There are contact sheets at pages 76(a) to 76(O) covering a period from 29 October 2015 to 11 February 2017. Most of the initial entries were made by a support worker known as Andy. Initially, SC was at college and was in receipt of income support. It is apparent that she dropped out after a short period but continued in receipt of that benefit. There were occasions when she was not at the property or did not attend meetings. On 8 April 2016, another support worker is recorded as advising her that she should come off income support and, we should note that it is incorrectly labelled as JSA in the notes and that she should apply for JSA as she was no longer in education. A month later in May 2015, LW had a session with her which is recorded in the following terms at page 76(c). SC attended and we discussed

"SC has not been staying at property
SC wants to keep property and understands she needs to occupy the premises
SC goes on holiday for a week from tomorrow and has agreed she will stay at C house from when she returns and then this.
SC has been offered a job with Westgate Pub as waitress and bar maid. We discussed earnings and the effect has on benefits."

There are records thereafter, that SC did not attend meetings with the next support worker, Emma Andrews. LW who was by now the team leader at Pathways and to whom the claimant reported instructed the claimant to be her support worker in October 2016 and he made in depth enquiries as to her benefit status and accompanied her to a meeting with the DWP as a result of which her position was regularized. She was intending to work as a bar maid and became eligible for universal credit. The claimant was commended for his efforts. The nature of the disclosure which the claimant made in this connection is not entirely clear but it appears to be that the claimant was incorrectly claiming income support for a long period; the respondent had failed to challenge her in that respect. The background is that her rent for her accommodation was sourced or sourced in part from housing benefit. The claimant's case appears to be that he raised this in his email of 22 January 2017 and that there had been no action taken by the respondent and in particular by LW at his meeting with her on 18 May 2016 to regularize SC's benefit payments and that the respondent was in consequence in receipt of rent from housing benefit which was improperly sourced. The claimant raised the matter as follows in his email of 22 January 2017 (by which time her benefit's position had

been regularized) see the bullet point 3 on page 90. I am concerned by case note history that LW knowingly failed to challenge customers who were incorrectly claiming income support for long periods up to a year (SC and a reference to another service user resident). LW has left us open to claims that Curo has knowingly profited from benefit fraud. It is also very hard to save someone's tenancy once this has happened. We accept that the claimant did provide information although it is unclear precisely what breach of a legal obligation he relies upon other than a fraudulent benefit claim in which the respondent was supposedly colluding by receiving housing benefit from her. The information was based on his reading of her case notes. In this respect he does not complain of fraud by SE. We do not accept that in this respect the claimant had a reasonable belief that the respondent or LW were guilty of any breach of a legal obligation. It is to be noted that it is not disputed that SC was entitled to some form of benefit, whether income support or JSA or Universal Credit and that whatever the benefit was it would include housing benefit and we note that this was confirmed to the claimant by the housing benefit office on 17 January 2017 before he raised the grievance about this particular issue. He cannot reasonably have believed that the respondent was in receipt of housing benefit fraudulently obtained or anything else done on the part of the respondent which amounted to a breach of a legal obligation. This fails.

PID number 2

This concerns BS

BS had a history of being subjected to financial abuse and suspected sexual abuse. She had been the subject of a safeguarding plan prepared by social services and had been referred to the respondent for accommodation by the local authority. At some state after she had moved to Pathways she started self-harming. The nature of the claimant's complaint in respect of BS is that there was no safe-guarding plan in force in relation to BS prepared by the respondent and in particular the respondent via LW failed to refer BS to the primary care liaison service (PCLS, part of the local mental health services, in respect of her self-harming. In particular and this is the common feature of all of the claimant's claims PID's the claimant claimed in detail in his email of 13 January 2017 at page 83, that LW was responsible for that failure had not treated BS properly. The respondent's case as put by LW was that there was no obligation on the respondent to provide a safeguarding plan as such; and that there was a process of performing a risk assessment and that he decided that it was sufficient merely to refer BS to BS's self-harming to her treating psychologist and to her social worker. We believe that LW give a sharp answer to the claimant. When the subject of a reference to PCLS was raised by the claimant in a meeting but we do not believe that LW shouted at him. The essential issue here is whether the claimant has satisfied us that he disclosed information which in the reasonable belief of himself was in the public interest and which tended to show that the health and safety of BS was being or was likely to be endangered. We note that C McN agreed that the claimant had telephoned him at the time to raise the issue and that he C McN instructed Shamara Finch, BS's then support worker to inform PCLS 'as per her safeguard plan'. In addition, CMcN said that he had not taken any action in respect of this against LW because of the distressing personal circumstances relating to LW's mother. In these circumstances we accept that the claimant did make a qualifying and protected disclosure concerning a matter which was or which he reasonably believed was a possible threat to health and safety.

PID number 3 was the allegation of bullying of the claimant by LW, but is no longer pursued.

PID number 4 concerns the CCTV issue

There were 2 aspects of this allegation. As to the first, the claimant discovered after a suspension meeting with the claimant by LW confirmed in an email of 11 June 2016 from LW that LW had been viewing the internal CCTV record for the previous weekend. We have actually detailed this earlier in this judgment. The claimant raised a grievance which was investigated at the time by the governance manager, Emily Wilson. She prepared an instant summary on 30 June in which she upheld his complaint of a breach of data protection by LW in using the CCTV to monitor the claimant's performance and that it amounted to misconduct. Data protection training was to be provided. In an email to the claimant on 1 July, and again we have already dealt with this, EW invited the claimant to schedule a meeting if he wanted to take the matter further and he didn't raise the matter again until 22 January. Over 7 months later, in the next passage in the email the claimant raised a different data protection allegation which is not identified as a PID, namely an instruction by LW to manually monitor car number plates of vehicles parked in the vicinity of pathways, the motive for this apparently being because of a genuine suspicion that the occupants might be engaged in grooming residents or in drug dealing. We accept that the first matter did constitute a PID. We declined to deal with the second matter because it's not identified as one of the PID's in the directions. However, in respect of the first original complaint we note that it was dealt with at the time. The claimant never raised it until much later, some months later and we regard it as highly unlikely that the circumstances provided any motive for dismissing the claimant or ill-treating him in any way.

PID number 5

Failing to carry out stairwell checks by LW. The claimant alleges that LW told him that he never checked the stairwell of number 24 which is one of the 4 houses while doing a daily check, this is denied by LW. LW claims that there was required to be a weekly check of the premises. We do not accept the claimant's evidence as to what LW said, but in any event, we do not regard this as forming the basis of a reasonable belief that the health and safety of the residents was being endangered and that PID therefore fails.

PID number 6 is the human rights PID and its as well to remind ourselves of the provisions of the article which the claimant relies upon the article of the European Convention on Human Rights. Article 11 reads freedom of assembly and association.

Paragraph 1

> "Everyone has the right to freedom of peaceful assembly and to freedom of association with others including the right to form and to joint trade unions for the protection of his interests.

Paragraph 2

> No restriction shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety for the prevention of disorder or crime, for the protection of health or morals, or for the protection and rights of the rights and freedom of others."

We are accepting that LW did impose the visitor's ban on KA and that he specifically told CP and NR not to knock on her door. We do not accept that that justified a reasonable belief that there was a breach of the article 12 rights and it has not been made clear whose rights were said to have been breached, but whoever it is we don't accept that it applies or was a reasonable belief either in respect of KA or CP or NR. There was freedom to associate anywhere than in KA's room in the common areas or outside in the street. She was not confined to her room or incarcerated in her room, she was free to leave and speak to anybody at any time. It was meeting within the room that was banned. We regard that as being perfectly justified and we regard the claimant's contention that it was a breach of her article _____? rights as being totally misconceived. That deals with the public interest disclosures, 2 of which we are satisfied did amount to public interest disclosures. We now state our conclusions on the actual heads of claim. So far as the dismissal is concerned we are satisfied that JE who we also accept was unaware that the claimant had raised any complaints constituting PID's except which we found to be constituting PID's although she was aware of the human rights point raised made the decision to dismiss for the reasons contained in her outcome letter. She genuinely took the view that the claimant had failed to follow an instruction issued by LW, in particular by notifying CP that she, CP need not comply with the direction that she do not knock on KA's door. It was a reasonable inference from the 2 emails LW issued on 2 April, that such a direction would follow a visitor ban that people should not encourage the person the subject of the ban to flout it by knocking on their doors, Ashley Flood and Sonia Hermes obviously had the same interpretation as LW, CMcN and later JE, visitor bans were envisaged by the visitor's handbook. It did not need to be specified that people who heard of the ban should not approach the door or knock on the door. Another aspect of JE's decision related to her interpretation of what the claimant had said at the disciplinary hearing with regard to the future obedience to lawful instructions by staff including his Line Manager. In addition, the claimant had also entered KA's room, we accept in breach of the sole working policy which while unwritten in this respect was we accept the practice. She was entitled to take the view that there was no emergency and the purpose appears in any event to have been merely to take a photograph. Finally, the claimant had a previous live warning for failing to maintain boundaries. The claimant's conduct was clearly the reason for his dismissal and although it may very well not have constituted gross misconduct there is not an issue of fairness here. The claimant has certainly failed to satisfy the Tribunal that the real reason for his dismissal was because he had made the 2 disclosures which we accept as having been protected. The same considerations apply to the appeal outcome although we have expressed concerns about DB's attitude to whistle blowing it did not play any part in her decision. We are satisfied that the claimant was not subjected to any detriments short of dismissal because of the accepted PID's. As to the dress code issue, not only the claimant but

also another support worker were reminded by LW on the instructions of CMcC of a change in the corporate dress code. This is not a detriment and it certainly doesn't relate to any PID that the claimant made.

Mediation

We accept that LW changed his mind about attending mediation but it was always a voluntary process and he was entitled to change his mind. As to the allegation that LW shouted "It's not a difficult question" there is a distinct lack of detailed evidence about this contained in the witness statement.

The claimant's witness statement

No longer given supervision. The claimant has not identified when he was due to have a supervision from LW and when it should have taken place, except that there were periods in February/March 2017 when the claimant was absent. There is evidence in an email that LW declined to meet the claimant on his own because of the allegations made against him. This was a precautionary measure on the part of LW which was justified we do not accept in those circumstances that it amounted to a detriment all the detriment alleged by the claimant. Finally, there is the issue raised against CMcM that he referred to what is described as fictitious policies which the claimant was alleged to have broken. We understand this to be a reference to the loan worker policy which is conceded did not include a reference to support workers not entering residents' rooms alone. We accept however, that it was a well-established practice no to do so. It was not a fictitious invention. An exception to the policy again unwritten was that a support worker could go in alone in a genuine emergency but there was no genuine emergency at the time when the claimant went into KA's house room in April 2017. These are the reasons why the claimant's claims are rejected.

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Employment Judge Hargrove

Date: 31st August 2019