



EMPLOYMENT TRIBUNALS

Claimant

Seema Badshah

v

Respondent

Anchor Trust

PRELIMINARY HEARING

Heard at: Leeds

On: 15 – 19 July, 20- 26 July 2019

In chambers 16,17,18 October 2019

Before: Employment Judge Wedderspoon

Members: Mr K Lannaman

Mr W Roberts

Appearance:

For the Claimant: In person

For the Respondent: Miss Souter, of Counsel

JUDGMENT

REASONS

The Tribunal made the following determinations

1. The claimant made complaints of automatically unfair dismissal, victimisation, protected interest disclosure detriment, direct race discrimination, religious discrimination, religious harassment.
2. On day two of the hearing the parties agreed a list of issues to be determined by the Employment Tribunal. These are as follows:

2.1. Public Interest Disclosures

In respect of each of the alleged protected disclosures identified at paragraphs 23 to 58 inclusive of the consolidatory response can the claimant establish that in each instance:

- 2.1.1. Information
- 2.1.2. Was disclosed by her
- 2.1.3. Reaching her reasonable believe was in the public interest
- 2.1.4. Which in her reasonable belief tended to show were the prescribed matters in section 43B, namely,
 - a) That a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject (Regulations 10, 12, 13, 16, 18 & 20 of the Health & Social Care Act 2008 (Regulation Activities) Regulations of 2014 or
 - b) That the health or safety of any individual has been, is being or is likely to be endangered.

If so, in each case can she establish that the disclosure was made by her in a manner that accords with section 43C to 43H of the ERA 1996.

2.2. Automatically unfair dismissal section 103A Employment Rights Act 1996

- 2.2.1. Was the claimant dismissed?
- 2.2.2. What was the principal reason for which the claimant was dismissed
- 2.2.3. Was it because the claimant had made any of the protected disclosures alleged?
- 2.2.4. Was she provided with a statement of reasons for her dismissal?

2.3. Whistleblowing detriment section 47B of the Employment Rights Act 1996

In respect of each of the alleged detriments identified at paragraphs 77 – 81, 83 – 91, 93 -112, 114, 116, 117 of the consolidated response can the claimant establish that in each instance:

- 2.3.1. as a matter of fact she was subjected to the treatment alleged
- 2.3.2. such treatment amounts to a detriment as a matter of law
- 2.3.3. she was subjected to that detriment on the ground that she had made the alleged protected disclosure.

2.4. Victimisations section 27 Equality Act 2010

- 2.4.1. Are the acts identified as paragraphs 62 – 73 of the consolidated response protected acts within the meaning of the Equality Act 2010?
- 2.4.2. If so, did the claimant do any of the protected acts identified
- 2.4.3. If so, did the respondent subject the claimant to any of the treatment alleged at paragraphs 76, 79,82 – 86, 90, 93 – 94, 101 – 102, 108 – 110 and 112 – 117 of the consolidated response.
- 2.4.4. If so, did such treatment amount to a detriment
- 2.4.5. If so, was this because the claimant did a protected act and/or because the respondent believed that the claimant either had done or might do a protected act.

2.5. Direct Discrimination because of race section 13 Equality Act 2010

In respect of each of the incidents alleged to constitute discrimination on the grounds of race identified in paragraphs 77 – 81, 83 – 90, 91, 93 – 94, 96, 98 – 99, 101 – 103, 106 – 112, 114, 116 – 117, and 118 of the consolidated response.

2.5.1. Did the respondent subject the claimant to this treatment?

2.5.2. Was that treatment less favourable treatment namely; has the respondent treated the claimant less favourably than it treated or would have treated others in not materially different circumstances?

2.6. The claimant relies on the following comparators:

- a) Emma Ciccone
- b) Katrina Ciccone
- c) Gemma Gledhill
- d) Stephanie Hammond
- e) Karen Sefton
- f) Linda Dray
- g) Joe Starmer
- h) Nicole Stoker
- i) Dean Hood

2.6.1. Were the circumstances of these comparator not materially different to those of the claimant?

2.6.2. If so, was the claimant treated less favourably than those comparators?

2.6.3. If so, was this because of the claimant's race (Asian, non-white) and/or because of the protected characteristics of race more generally?

2.7. Direct discrimination because of religion or belief section 13 Equality Act 2010

In respect of each of the instances alleged to constitute discrimination on the grounds of religion alleged at paragraphs 82, 92 & 94 of the consolidated response

2.7.1. Did the respondent subject the claimant to this treatment?

2.7.2. Was that treatment less favourable treatment namely, has the respondent treated the claimant less favourably than it treated or would have treated others in not materially different circumstances?

2.7.3. The claimant has not identified any comparators for this claim specifically, in the event that she does so were the circumstances of these comparators not materially different to those of the claimant.

2.7.4. If so, was the claimant treated less favourably than those comparators?

2.7.5. If so, was this because of the claimant's religion Muslim and/or because of the protected characteristic of religion more generally?

The Hearing

3. The Tribunal was provided with a number of agreed bundles, first a pleading bundle, pages 1 – 129, and then a substantive bundle pages 71 – 300 in part 1, pages 301 – 600 in part 2 and pages 601- 992 in part 3. The claimant also added in, in additional bundles see 1 and the Tribunal admitted some of the documents as referred to below. The claimant provided a witness statement dated 12 July 2019 consisting of 1,222 paragraphs. The respondent provided and called evidence from a number of its witnesses:

Emma Ciccone the Home Manager of Ashcroft Care Home,
June White, the District Manager,
Katrina Ciccone, Team Leader at Ashcroft Care Home,
Louise Barnard, Team Leader at Ashcroft Care Home,
Gemma Gledhill, Team Leader at Ashcroft Care Home,
Stacey Robinson, Team Leader at Tolson Grange Care Home,
Karen Sefton, Team Leader at Ashcroft Care Home,
Tracy Tatum, Home Manager at Mill View Care Home,
Steven Vessey, District Manager,
Linda Green, Head of Care, North,
and written submissions from Nazmin Chowdhury, Team Leader.

In addition, the claimant added in statements from her interim application including that of herself and Emma Ciccone.

4. Prior to the Tribunal setting out its factual findings in this case it is important to set out the procedural aspects of the hearing.
 - 4.1. On the first day of the hearing the claimant had not brought a copy of her 1,222 paragraph witness statement to the Employment Tribunal because she said she had misunderstood the case management order of Employment Judge Cox dated 28 February 2019 which required *“each party to provide the Tribunal with 5 copies of their witness statements on the first morning of the hearing”*. The Tribunal Clerk copied the claimant's witness statement at the direction of the Employment Judge for the Tribunal's use.
 - 4.2. Further there was no agreed list of issues prepared by the parties. The Employment Tribunal directed a detailed agreed list of issues to be prepared and used as a structure to the hearing of the various complaints. Miss Souter, Counsel for the respondent agreed to prepare the list overnight and send it to the claimant and to the Tribunal.
 - 4.3. At the outset of the hearing the Tribunal had discussed with the claimant any appropriate reasonable adjustments which were required to be made to the hearing to assist the claimant. On the basis that the claimant stated she suffered from some sleeping issues. It was agreed that regular breaks

would take place at two-hourly intervals and the claimant may ask for additional breaks as and when required.

- 4.4. The Tribunal sought representations from the parties as to the order and timetabling of witnesses, the respondent submitted in the interests of justice the respondent's eleven witnesses should go first. It was submitted that the claimant's witness statement was very lengthy and included a number of individuals not mentioned previously by the claimant in her claim and she had made a number of new allegations not previously pleaded, had cast her net of allegations very wide and it was now unclear about the case she was actively pursuing against the respondent. Miss Souter argued that the respondent's witness statements were far more structured detailing responses to the pleaded case and set a structure for the hearing. The Tribunal gave the claimant time to consider a response to the respondent's submission.
- 4.5. In discussion it was suggested the Tribunal would require 1.5 days of reading time before hearing any evidence.
- 4.6. Following an adjournment the claimant requested that she give her witness evidence first.
- 4.7. The claimant also sought to add 43 pages of additional documents to the 992 agreed paginated bundle. The Tribunal considered the additional material and permitted the adding of the documents to the bundle save the documents which were not deemed to be of assistance to the pleaded claims, namely, C1 claimant's bundle pages 5 -7, 13 – 14, 15 – 16 and 17 – 20.
- 4.8. The claimant was invited to suggest the time she would require to cross-examine the respondent's witnesses. The claimant was acting as a litigant in person but until recently had had the support of a solicitor namely, Miss A Dethick. The claimant estimated that she required four hours each for the witnesses of Emma Ciccone, Katrina Ciccone, June White and Linda Green. She estimated 3 hours each for Tracy Tatum, and Steven Vessey and two hours each for Gemma Gledhill, Louise Barnard, Karen Sefton and Stacey Robinson. (Miss Chowdhury's evidence was to be given by written representation). The respondent requested 2.5 days to cross-examine the claimant. The respondent requested the claimant to reconsider her time estimates for cross-examination of the witnesses, the respondent submitted Emma Ciccone was the respondent's most significant witness dealing with a number of issues and accepted it may take the claimant some time to cross-examine her, however, it was submitted that other witnesses were not so significant to the case. On the basis of the claimant's estimates for cross-examination the case would not be completed within the allocated time, the respondent submitted it was important that the case be concluded. It was stated that the claimant remained on full pay since the end of her employment with the respondent following a successful application for interim relief, the substantive hearing had already been postponed from January 2019 on the basis of the claimant's ill health.
- 4.9. The Employment Tribunal having heard the submissions and perused the witness statements and pleadings it concluded it would in fact be more

helpful for the respondent to give its evidence first and the claimant to cross-examine on the basis that the witness statements for the respondent could act as a framework to the allegations made by the claimant. It would greatly assist the claimant and the Tribunal to understand the background to this case. The claimant would not be disadvantaged because she was being given further time to prepare her questions and would be given guidance by the Tribunal as to formatting questions and how she should deal with her claims. The Tribunal would assist the claimant to frame her questions if so required, the case was adjourned until the next day.

5. On the second day of the hearing the Employment Tribunal set out its proposed timetable for the case having considered the pleadings including one day for Emma Ciccone, one hour for Gemma Gledhill, Stacey Robinson, Linda Green, Steven Vessey, 30 minutes each for Louise Barnard, Karen Sefton and Tracy Tatum. The claimant had sought further disclosure of supervisions of JS who was dismissed. The respondent resisted the application stating that probationary records were already in the bundle at pages 931 – 935 and at page 859. The Tribunal were satisfied the claimant could address her points with the persons available documentation and in cross-examination of the respondent's witnesses.
6. The claimant also requested a risk assessment concerning employee KL. The respondent responded that it was searching for this material. The claimant raised the issue of her pay and that she wanted reassurance that she would receive pay from the respondent on 26 July 2019 in accordance with her interim relief order because this supported her application of leave to remain at the Home Office. The respondent said that there was every intention to pay her on that date and they had not got the 26 July in any event.
7. Further discussion took place as to the timetabling of witnesses because the claimant submitted she needed further time to question the witnesses. The Tribunal therefore determined the claimant could cross-examine Emma Ciccone for one day, Gemma Gledhill, KL? Steven Vessey and Linda Green for 1.5 hours each, June White for 2 hours, Louise Barnard for half an hour, one hour for Stacey Robinson and 45 minutes for Tracey Tatum. Miss Souter referred to the list of issues which the claimant now agreed in its form.
8. The claimant made an application to submit a further witness statements to deal with evidence recently received from the respondent namely,
 - 8.1. The Crisis Team report and
 - 8.2. evidence from Mrs Stokes and Mr Starmer. The Tribunal concluded this was an entirely reasonable request and permitted the claimant to submit this evidence.
 - 8.3. The claimant also submitted the witness statement from the interim relief application hearing should be included and considered by the Tribunal, it was agreed that these statements should form part of the evidence to be considered in the case.

Again, the Tribunal adjourned off.

9. On the third day of the hearing the claimant stated she was suffering from anxiety and lack of sleep, she felt she could go ahead but would feel constrained to deal with the evidence on the basis of the timetable proposed by the Tribunal. She submitted to be required to cross-examine within a limited period would put

pressure on her and could negatively impact on her claim. It was clarified with the claimant that she did not seek to postpone her case. She stated she needed to go at a slower pace, she was unsure that the case could really be dealt with in the allocated hearing time. The claimant stated she had corresponded with the respondent prior to the substantive hearing that the timescale allotted for the hearing of 10 days was inadequate, she had only recently received the respondent's witness statements.

10. Miss Souter, for the respondent submitted that this case should be completed within the timeframe and should not be postponed or overrun taking into account of the background to the litigation. She submitted, on behalf of the respondent, that the case was originally listed for a substantive hearing for 10 days in January 2019, the hearing was postponed on the claimant's application because she was too unwell to participate in the proceedings. In February 2019 the respondent applied to review/revoke the interim relief order because she was not fit to return to work. At the hearing the claimant was declared fit for work but it was made clear by Employment Judge Cox that the case should not be postponed again. The interim relief order remained in place. It was submitted that the claimant did not correspond with the respondent to suggest the timescale for the hearing was inadequate. Miss Souter also submitted the late exchange of witness statements was caused by the claimant, the claimant was seeking further disclosure of documents, and refused to exchange her witness statement prior to the receipt of the additional documentation. Employment Judge Rogerson had heard the claimant's specific disclosure application on 5 July 2019 and granted very limited disclosure. It was submitted it was imperative the case should be heard and concluded particularly as the claimant remains on full pay pursuant to the interim relief order. The case she said, can be accommodated by considering the timetable of the cross-examination of witnesses. Again, she reiterated that Emma Ciccone was the significant witness for the respondent who it was accepted the claimant would need up to a day to cross-examine. The parties' views were canvassed again about the time requirement for cross-examination timetabling of witnesses.
11. The Tribunal carefully considered the parties' submissions. In the interests of justice and pursuant to the overriding objective it was determined that the case must be heard in the allocated timescale. The case had been ongoing for some time, the substantive hearing had been postponed from its first listing at the beginning of the year, Employment Judge Cox had made the parties aware that the case needed to be concluded within the allocated and agreed timescale on this occasion, the claimant continued to be paid in full pursuant to an interim relief order, there was no up to date medical evidence to confirm that the claimant was unable to participate in the proceedings, reasonable adjustments to the hearing are made by the Employment Tribunal so that the claimant may take regular breaks and they would be provided.
12. The Tribunal reconsidered the timetabling on the basis the claimant needed more time to cross-examine Miss Emma Ciccone, it was determined the timing would therefore be revised as follows:
Emma Ciccone – 1.5 days
Gemma Gledhill, Karen Sefton, Steven Vessey – 1.5 hours
Louise Barnard, Stacey Robinson, Tracy Tatum – 1 hour

Katrina Ciccone – 2 hours

Linda Green – 3 hours

Cross examination of the claimant 2.5 days.

How the claimant uses time was a matter for her but she was reminded that the list of agreed issues of the relevant matters that the Tribunal needed to determine and she should use this as her framework. The Tribunal would attempt to assist her framing her questions where she required assistance.

13. The claimant commenced her cross-examination of Emma Ciccone at 11:45 on the third day of the hearing. The claimant was well prepared and read from a pre-prepared script and list of questions. The claimant was warned on the fourth day that she had in total 1.5 days to cross-examine Emma Ciccone and was warned as time went by on the timeframe that she was allocated to question this witness.
14. In the course of the claimant's questioning of the witness she read from a pre-prepared script. On a number of occasions, the Tribunal assisted the claimant with the phrasing of her questions. Further, the Tribunal advised the claimant she should be asking the witness in terms of the issues flagged up in the agreed list of issues and to focus in on the reason for the treatment. She should put her case, namely, whether she was treated in a particular way because she had made disclosures, subject to race discrimination or religious discrimination. Despite the assistance and guidance given by the Tribunal, the claimant proceeded to ask the questions she had determined she determined that she wanted to ask on her script and she did so without any reference to the assistance and guidance provided by the Tribunal. At the end of day four the claimant was reminded about the witnesses to be dealt with the next day and the allocated timescales for questioning.
15. At the beginning of day 6 the claimant made an application to further question Emma Ciccone. The basis of her application is that she had further questions she needed to ask that due to time constraints she had not been able to do so. The claimant complained she had not been able to put her case and she was unfamiliar with proceedings and she had started her questioning of the witnesses first. The application was resisted by the respondent on the basis that the claimant had failed to adhere to the guidance provided by the Tribunal and would be unlikely to do so even if given further time. The case needed to be completed in the allocated time. The claimant had been advised by the Tribunal how she used her time was a matter for her and she had initially only asked for 4 hours to cross-examine Emma Ciccone now she was asking for more than 1.5 days. The Tribunal considered the overriding objective and it refused the claimant's application. The Tribunal do understand that the claimant was a litigant in person she had previous received legal advice. She was an articulate and intelligent professional person who could understand the guidance given by the Tribunal. Despite the advice she had not adhered to the guidance but instead continued to ask questions she determined she wanted to ask with little adherence to the list of the agreed issues. The Tribunal were not confident that any further time given to the claimant she would adhere to the guidance. The Tribunal noted that it intended to read all the relevant material and the claimant would not be disadvantaged. However, the claimant had tended to ask the same question on multiple occasions to the witness when she did not obtain the answer that she had wanted to and despite the fact that she was politely asked by the

Employment Tribunal to move because she was simply not going to get anywhere with the witness on that particular issue. The claimant had also tended to focus on the minutiae of circumstances rather than address the more significant relevant points of causation of treatment. It was determined that the next witness would be called. The claimant and respondent were reminded at the end of each day the allocation of time for the next witnesses. The Tribunal mindful of the timetabling is an imported tool in dealing with cases expeditiously. It has to do its best to put parties on an equal footing. The Tribunal considered on the basis that the claimant had a list of issues that she had been given guidance and advice she was not disadvantaged in going first because in fact the respondent's witness statements provided a good structure of the issues which needed to be determined which the claimant could directly challenge. She had been advised by the Tribunal to focus on causation and treatment but she had failed to do so. On the conclusion of the evidence the Tribunal met in chambers in October to discuss the case. It was unfortunate there was a delay due to the due to the Employment Tribunal's other commitments. Written submissions were required by the Tribunal by both parties and also an opportunity given to both parties to comment in bullet form on each written submission. The claimant was also guided to consider the case of Dray Simpson and Cantor Fitzgerald Europe UKEAT/0016/18/DA This provided an extremely useful guide to the present state of Whistleblowing Law as set out by the President of the Employment Appeal Tribunal.

16. In the course of deliberations on 17 October 2019 the claimant submitted by email, a number of additional documents, not previously seen by the Tribunal or introduced in evidence. The Employment Judge asked the Clerk to inform the claimant this additional material could not be considered as the case had now ended and the Tribunal was deliberating on the material presented to it.

Part 2

Rachel,

This recording is the same as from 4.1 above to paragraph 14 albeit the wording was slightly different. I have transcribed the final paragraph below as it has more information in it than the original paragraph 14.

14. In the course of evidence the claimant on day 9, half way through her cross-examination she also made another application to submit further documents, this consisted of two bottles of medication she photographed which she said showed that there was alarming neglect that there was more liquid left than there should have been in the amoxicillin liquid. It would appear from the claimant's submission that she had taken photographs of the bottles to evidence what she said was there was more liquid left in it but she had failed to provide the respondent these photographs during the investigation. The Tribunal determined that the claimant's late disclosure was not helpful to the Tribunal and the case should proceed on the current significant amount of material available to the Tribunal. Further, in the course of its deliberations on 17 October the claimant directly emailed the Tribunal with a number of additional documents which had not previously been seen by the Employment Tribunal or had been introduced into evidence. The Employment Tribunal Judge requested the Clerk to the Tribunal to inform the claimant that this material would not be considered as the case had now ended and the Tribunal was deliberating on the materials presented to it within evidence.

Part 3

17. Having heard the evidence from all the witnesses the Tribunal found that the claimant to be a highly intelligent and very procedure driven individual. She tended to have an obsession with procedure which lost the common sense approach tick box exercise towards caring for the vulnerable. She had also displayed a superior attitude towards carers who she was said, and described by a number of witnesses, as describing as 'you people' a matter which was evidenced in the course of the hearing when she was cross-examining the carer on day 6 at 11:06 Karen Sefton, when she said "you people were putting the service user at risk". The claimant sought to explain this that in fact it was a cultural difference. The Tribunal were not satisfied that this was the case and the claimant did, on occasions, display a superior attitude by way of her nursing professional training towards others that she perceived were less qualified or able as herself. In her obsession with procedural compliance and form filling the claimant tended to lose sight of the fundamentals of caring for the vulnerable. The Tribunal found her obsession somewhat misconceived focus on procedure and a lack of tolerance of others and an obsession of making complaints rather than actually sorting out a relevant problem and taking responsibility of it. The claimant also was unable to take any criticism of her performance whatsoever but so easily felt able to criticise others making serious complaints about abuse.
18. The Home was inspected by the CQC in April 2018 and was rated Outstanding in care (page 679). It was rated Good in all other areas. In March 2018 Bradford City Council awarded the Home a five star hygiene rating (page 676). The infection protection control of the Home was assessed at 97% (page 659). An independent medication audit carried out by Boots and in an audit dated April 2018 did not reveal any issues with regard to dispensing of medication (page 662). The Home worked with the CQC and the local authority safeguarding departments where issues arose and there was no evidence before the Tribunal that either of these bodies expressed concerns regarding the operation of the Ashcroft Care Home. In the bundle the Tribunal were shown a number of policies and procedures used by the Home, these were intended to ensure legal compliance and were policies and procedures to protect residents. These documents can be found at pages 697 – 760. The Tribunal were informed that each resident had an individual care plan which was reviewed and changed if needs of a resident changed. Residents were subject to risk assessments and on occasions where an external assessment was required for a resident this was also sought. Daily records were kept for each resident and these documents set out a resident's day including any issues with the resident which arose on that particular day. The Home had a practice of handing over to the next team on the next shift, there was also a handover document completed to record any care related issues which needed to be passed onto the team and there was also a communication book to record issues. The Home operated a controlled drugs policy which required controlled drugs to be checked and counted twice in a 24 hour period, this was additional to the guidelines which required only one check in the period, medication administration records were completed with doses of medication administered. If a resident required additional care from a District Nurse or a General Practitioner records would be kept by other professionals and the resident's records were updated. Skin integrity monitoring forms were to be completed where a wound was visible and could be monitored by the staff.

Where there were incidents in the Home an AIMS form was to be completed documenting that particular incident, this would be passed to and investigated by the Home Manager and safeguarding issues were reported to the local authority or where necessary were investigations were made. Fall prevention documentation in the bundle was completed where a resident fell. An induction programme was undergone by new staff including the claimant, where the claimant was buddied up with an experienced Team Leader to supervise. This was a form of 'on the job' training which supplemented a number of training courses including manual handling training, health and safety training, fire safety training and falls awareness, care plan review training. New staff were also expected to complete a number of on-line training modules. New staff underwent medication competency training with a Team Leader whereby they were supervised on five occasions to demonstrate their own competency in administering and a series of questions were asked and the document completed by both the experienced Team Leader and the new staff member to indicate competencies had been completed satisfactorily.

19. The Home employed 79 members of staff, it was an ethnically diverse workplace, approximately just over 50% were White, the other 50% were from difference ethnic backgrounds. 43 members were White and Christian, there were a number of different cultures and religions and they also had staff with learning disabilities. The Home was a 24 hour service consisting of both day and night teams of staff, handover was required at the end of each shift and performed by a Team Leader.
20. The Tribunal heard that in the caring profession it was crucial for day and night teams to work together as one team, this was to ensure the safety of the residents and to ensure a safe and harmonious running of the Home. It was also imperative that staff had confidence in one another, trusted and respected one another and were courteous. There were posters informing staff of the 'Whistleblowing' procedures on the walls of the Home. Where mistakes occurred there was an expectation that staff should be open about their mistakes and where it's possible it should be dealt with informally and then it could be used as a learning exercise. The Tribunal were informed that where an error such as a missing signature on a medication chart occurred it should be raised in the first instance with a Team Leader because this could be rectified. In the context of a Care Home where you have dementia patients and that anything could happen day to day including whilst administering medication a resident may fall it may mean realistically that on occasions medication could have been administered but was not signed off if an emergency such as fall occurred. It was therefore conducive to the trust and professionalism of the carers that if this was noted of a missing signature that it be raised in the first instance, information sought from the carer as to whether the medication had been missed and corrected where necessary, or administered.
21. The claimant worked predominantly on the night shift, as a Team Leader the responsibility of the claimant was to complete resident's care plans, handovers, administer medication, overnight care, personal care, ensuring that residents were out of bed, cleaned and dressed and ready for the handover for the day team. The claimant also had responsibility for a team of carers and her responsibilities were to ensure that residents were safe, nourished, medicated and comfortable. The claimant's employment was subject to a probationary period, the claimant in fact was employed by the respondent for some eleven

weeks, she worked on the dementia floor and she cared for 23 residents. The Tribunal have taken a view that because of the number of complaints and allegations made by the claimant during her 11 weeks of employment that it is proportionate to detail each of the claims and make relevant factual findings as an overview to this Judgment.

22. The Tribunal therefore set out some key dates.
 - 22.1. The claimant first raised issues on 26 April 2018 following the CQC visit at the Home. The claimant spoke to Emma Ciccone and June White about her concerns concerning the appropriateness of her induction. She alleged that Gemma Gledhill brought out medication for numerous residents in pots. There is a conflict of evidence as to the nature of the claimant's complaint and whether in fact she complained about drawing of medication from the wrong date of a dosset box. The Tribunal having heard the evidence of Stacey Robinson, Gemma Gledhill, Emma Ciccone and June White it is overwhelming that the actual complaint at the material time was that Gemma Gledhill had brought out medication for numerous residents in pots. Gemma Gledhill disputed in fact when spoken about this that she had done that, but the Home did act promptly on that, it was raised with her and in fact she was supervised and her medication skill was tested and found to be acceptable, that she was adhering to the rules.
 - 22.2. The claimant also made a complaint about inappropriate language being used. It was accepted that in a workplace of this kind that the dementia residents themselves can use Anglo-Saxon type language and that some of the staff also used this sort of language. It was commonplace and it was accepted and there was no suggestion that this harmed or posed a risk to residents.
 - 22.3. The claimant also raised at this point that two residents had been served normal food instead of pureed and that Stephanie Hammond had shouted across the area in a less than professional manner. The context of this was that Stephanie Hammond had realised that a member of staff had served inappropriate food to a resident and she had shouted out to prevent a critical incident occurring.
23. The Tribunal found it important to also comment about the other witnesses that we heard from.
 - 23.1. Emma Ciccone is the Home Manager, the Tribunal found to be a committed professional who had the care and welfare of the residents genuinely at heart. She was running an established and harmonious Home and appeared to be overwhelmed by the number of complaints continually made by the claimant.
 - 23.2. Gemma Gledhill had a no nonsense attitude and was interested in her work and a committed professional.
 - 23.3. Louise Barnard the Tribunal found as a very impressive witness who had 46 years of experience in care. She was very professional, she had a passing work relationship with the claimant but indicated that the claimant she saw on a few occasions with a small black book making notes. This was disputed by the claimant and when she was asked about whether she had been making notes she disputed this. The Tribunal having heard all of the evidence and considering the detail of the claimant's witness

statement consider that it more than likely that the claimant was indeed making notes in the black book.

- 23.4. Katrina Ciccone, we found to be committed and who was apprehensive of the claimant.
- 23.5. Karen Sefton gave evidence about the claimant's use of 'you people'.
- 23.6. Stacey Robinson, we found to be calm and collected as the Deputy Manager.
- 23.7. June White, the District Area Manager was knowledgeable, she was candid about the fact that she was unaware of the relationship policy.
- 23.8. Tracy Tatum was an individual concerned with the claimant's application for promotion interview, she was from a Home, she was the Tribunal found, unaware of the claimant's allegations and was an independent adjudicator on the interview.
- 23.9. Steven Vessey was the individual who heard the grievance, and was offended by the suggestion in any way his findings were of racial content being a foster carer fostering an Asian child.
- 23.10. Linda Green was a neutral, objective, honest witness who considered significant amount of material and carried out a valid job in considering the claimant's appeal.

Part 4

The Law

24. We therefore turn to the Law.

24.1. Allegation 1

On the 26 April 2018 the claimant orally informed Stacey Robinson and Emma Ciccone that the Team Leader Gemma Gledhill had drawn medication from an incorrect counter of a blister pack. The Tribunal heard evidence from the claimant who on the balance of probabilities the Tribunal are not satisfied that the claimant did complain that she had drawn medication from an incorrect counter of a blister pack, on the balance of probabilities the claimant's complaint is that the claimant made an allegation that Gemma Gledhill had failed to bring out the medicine trolley as set out below. On the balance of probabilities the Tribunal do not find that this allegation was made.

24.2. Allegation 2

Staff were using inappropriate language. On the balance of probabilities the Tribunal are satisfied the factual background is this – that the claimant did make this disclosure on 26 April regarding the language of some staff. The Tribunal finds that the claimant would not exactly specify what she had heard or who was using the inappropriate language, the disclosure was made, the Tribunal do not find that this placed the service user at risk, there was no suggestion that XXXX by the claimant that this language was directed to the residents or that they had objected to it.

24.3. Allegation 3

Team Leader Gemma Gledhill failed to bring out the medicine trolley and an AR chart. She instead piled medicine pots on each other, she gave two pots to the Team Leader SH??? to administer and carried out the rest of the administering unsafely. The respondent accepts, and the Tribunal finds that the claimant did indeed complain about this issue. Following her complaint the matter was investigated by Stacey Robinson and as a result of that investigation undertook a supervision with Gemma Gledhill and observed her medication competencies. The Tribunal heard and concluded the Team Leaders were authorised to administer medication from the drug room because it was quieter and the trolley at this time was not working and therefore Team Leaders had been informed they could bring the residents' medication out separately. There is a difference of view as to whether the Team Leader Gemma Gledhill brought out the medication for one service user or a number of service users. The Tribunal finds that on the balance of probabilities that Gemma Gledhill's account was correct and indeed she had brought out service user medication for one at a time.

24.4. Allegation 4

Two service users were served normal food instead of puree. Stacey Robinson shouted to alert staff they were on a puree diet and removed plates Stephanie Hammond walked across the lounge, came to the dining area and shouted at staff and behaved in an inappropriately whilst service users were having a meal. There was no dispute that the claimant did make a disclosure regarding a resident being served normal food instead of pureed food in accordance with their plan and that Stephanie Hammond had shouted inappropriately whilst residents were having a meal. The context was that Stacey Robinson was seeking to alert staff about the risk to the resident of serving her non-pureed food. Stacey Robinson stated the claimant was more concerned about the shouting by staff than the risk to the service user. In evidence the claimant did accept that shouting at someone to alert them of an imminent risk might be appropriate. On the factual matrix of this case the service user fortunately did not eat the non-pureed food. The concern for the claimant was that the health and safety of the user had been or was being or likely to be endangered. The Tribunal finds on the facts where the service user thankfully did not eat the non-pureed food that she had been, was being or not been endangered.

24.5. Allegation 5

The claimant alleged that the moving and handling training was not delivered properly by SH. It is agreed between the parties that the claimant did indeed complain about the training that she was provided in manual handling was inadequate. The claimant had undergone manual training elsewhere. SH was an approved trainer, the Tribunal heard and accepted that the course provided by SH had been audited and approved. The respondent investigated this issue to find whether staff who had attended this course, whether the training was appropriate. The staff who had attended verified that it was indeed appropriate. The Tribunal finds that it is unnecessary to show every single possible manual handling operation involving the residents, this

would have been impractical, the purpose of manual handling training was to provide skills and head up warnings of danger when manually handling a resident. We find that the claimant reasonably believed that the training provided was inadequate, the claimant expressed an opinion and there was no risk to staff or service users. In the course of the case the claimant sought to rely upon the fact that there had been an incident involving a resident after her dismissal. It was an incident investigated by the respondent.

24.6. Allegation 6

The claimant already informed us that a service users toe had not been seen by the General Practitioner or District Nurse. It was accepted that the claimant did notify Stacey Robinson of this. The claimant did raise this issue but she did not contact the General Practitioner or District Nurse herself, we heard evidence that the claimant could have contacted 111 or the respondent's single point of access for advice had she considered this was a concern. The Tribunal are not satisfied that the claimant realistically thought that this was a risk.

24.7. Allegation 7

A service user had not been assisted to the toilet and so had soiled herself. There was a dispute of evidence as to whether the claimant had made this disclosure, the Tribunal consider on the balance of probabilities that the claimant did make this disclosure. The evidence heard by the Tribunal is that the service user concerned would call for a potty and would throw herself to the floor when she needed to go to the toilet which is recorded in the care documentation available to the Tribunal. During the claimant's evidence in her cross-examination it was revealed that the claimant was present and that she could have assisted the service user to the toilet had she thought there was a risk, however, the claimant did not do so, instead she complained. There was insufficient evidence that the service user had been left for any length of time. The Tribunal are not satisfied that the claimant had any reasonable belief that the resident was likely to have suffered any harm.

24.8. Allegation 8

The Team Leader Linda Green had not started a course of antibiotics overnight, there is a dispute of evidence between the parties as to whether this issue was ever brought to the respondent's attention. The Tribunal are not satisfied that the claimant did so, even if it is wrong about that the claimant could have contacted the service user's GP or a District Nurse herself if she thought there was a risk or contacted, as we have heard in material evidence, 111 or the single point of access for advice. The Tribunal are satisfied that the claimant did neither of those things in the circumstances and she did not therefore reasonably believe that the resident was at risk.

24.9. Allegation 9

On 25 May 2018 the claimant gave Emma Ciccone a note disclosing audit details that a service user had a skin tear that was seen by a District Nurse but not documented as completed. The Tribunal heard evidence and accepts that the claimant told Emma Ciccone that she had destroyed the medicine bottle after administering the final dose. This medication was clarithromycin for service user HH. The claimant did not tell Emma Ciccone that she had failed to mark on the chart that she had omitted to write that the course had been completed. Instead she reported the entry was made on medicine record sheet the following day by Linda Green. Where the dose had been administered by the claimant on her account there was no risk to the service user. This was an allegation about the practice of Linda Green, it was investigated by the respondent, Linda Green gave a different account to the claimant, it was a conflict of evidence between the claimant and what Linda Green said and therefore no further action was taken. The Tribunal do not consider that there was a disclosure here that qualified for protection on the basis that this was no more than an opinion of the claimant about the practice of Linda Green.

24.10. Allegation 10

A service user had two skin tears that was seen by a District Nurse but the documentation for the skin integrity was not carried out and further on 30 May 2018 the claimant documented in the communication book that no skin monitoring record was in place for a skin tear dated 17 May 2018 and 22 May 2018. The evidence available to the Tribunal is that there was documentation that the service user had one skin tear which was referred in documentation on more than one occasion, the service user was regularly seen by the District Nurses and these visits were documented. The resident therefore was under the care of the District Nurse at the material time. They were the individuals responsible for monitoring and caring for the service user's wound, they were documenting progress. Skin monitoring forms were not completed by the respondent where a wound was bandaged as the wound would not actually be monitored. The individuals working in the Care Home were not generally qualified as Nurses, they were Care Assistants. On the basis that the service user was being cared for by a District Nurse professional there can be no reasonable belief that the care for this individual was not being looked after by the claimant.

24.11. Allegation 11

On 27 May 2018 the claimant via an email alerted her Manager to a documentation error as well as reporting physical abuse to a vulnerable service user which was witnessed by a Team Leader Gemma Gledhill, the claimant alerted the Home Manager to correct the record and submit a safeguarding notification per the regulation. We heard evidence that the claimant completed an AIMS form where she failed to mention physical abuse of a service user. Gemma Gledhill reported that one resident had pushed another, the Tribunal heard evidence in the context of a Home of dementia that residents do occasionally push one another, it is not a physical abuse report nor is it a safeguarding report. It is by the nature of the condition that individuals sometimes act in

different ways, for example if a resident wants to get through a door and another resident is in the way they just might push them out of the way. This is not an intentional abuse, it is unfortunately in the context in which the Homes are working. The Tribunal found that the claimant's use of abuse was a very strong and serious allegation to make, the claimant when cross-examined about this was unwilling to accept that that could be the case and she persisted in referring to the incident as abuse. The Tribunal found there was no risk to the service user caused by a documentation error and that the claimant could not have had any reasonable belief that this was the case in the context of the Home that she was working, this is not a qualifying disclosure.

24.12. Allegation 12

On 30 May 2018 the claimant did not XXXXXXX medication audit and requested at handover to get the service user assessed by the GP in relation to antibiotic administration error. The claimant forwarded in an email to Home Manager poor practice amounting to neglect where she alerted service user medication documentation as administered but the service user in fact had not received them. It was agreed between the parties the claimant did indeed alert Emma Ciccone to the antibiotic administration error in respect of the service user GG. The service user was monitored and did not display any increase in symptoms and there was no reason for a General Practitioner to assess him. In fact the GP was contacted on 6 June in respect of this service user and he was diagnosed as suffering from a cold. The claimant's email did not request for that service user to be assessed or take any steps herself to be assessed, the Tribunal therefore are not minded to consider that the claimant reasonably believed that the service user was at risk rather more the focus of the claimant was to make another complaint. Emma Ciccone, the Manager of the Home, did investigate the complaint raised by the claimant and she spoke to relevant individuals involved, she also took the steps of contacting the pharmacy who assured her that they had no concerns. She was told there was always more medication in the bottle, although the claimant does not accept this, all of the respondent's witnesses cited as this being in their experience. The Tribunal do not consider this to be a qualifying disclosure.

24.13. Allegation 13

On 12 June 2018 the claimant made the following disclosures in her first probation review which were not documented by the Home Manager including lack of food at supper time. The Tribunal heard evidence from Emma Ciccone, this allegation was not put to Emma Ciccone during cross-examination. The Tribunal mindful of the claimant's suggestion that she had inadequate time to ask Emma Ciccone about this however, we take into account the material that we have read before us. The Tribunal heard that there was no lack of food for residents whether at supper time or at all, no evidence that the service users were at risk. Again, this was a matter, if anything, of the claimant's opinion and therefore the expression of opinion does not satisfy the qualifying disclosure test.

24.14. Allegation 14

Kitchen left very dirty and food left uncovered. There is a conflict of evidence between the respondent and the claimant as to whether this disclosure was made at a meeting. The issue was not put to Emma Ciccone during cross-examination however, the Tribunal considered the material evidence namely the five star hygiene rating awarded in March 2018 in support of its position. On the balance of probabilities the Tribunal find that the kitchen was not dirty and food was left uncovered nor do we consider that the claimant actually raised this to Emma Ciccone at any stage.

24.15. Allegation 15

A service user had four falls but this was not documented or pain relief medication listed. There is an issue of fact between the respondent and claimant as to whether this disclosure was ever made. On 27 May 2018 the claimant emailed Emma Ciccone about a service user who she stated had two falls on 26 May 2018. In her email the claimant suggested that she had completed an AIMS form but that the form was incorrect because it stated the fall had not been witnessed when it had. The claimant did not disclose within this information about a lack of pain relief in the course of the email. Effectively, this email notified Emma Ciccone that the claimant had completed her AIMS form incorrectly. The Tribunal find had the claimant considered there was a need for pain relief to this resident then she ought to have administered this to the service user. The Tribunal is not satisfied that this is a qualifying disclosure.

24.16. Allegation 16

Stock records indicates that XXXXX tablet available when in fact they were not available for three weeks. The respondent accepts that the claimant mentioned in a Team Leader meeting on 21 June that some of the tablets were missing, however, it was confirmed that these tablets were in fact in the cupboard. The claimant raised this concern without ever making any attempts to trace where the tablets were themselves. The claimant's case is that she had only been able to find 27 tablets when there were 77 marked as being available on the controlled drug chart. This did not place the service user at risk, Emma Ciccone investigated the complaint and she counted 77 tablets. The claimant had preferred to make a complaint than making any individual checks herself.

24.17. Allegation 17

Katrina Ciccone had made an unreasonable demand that furniture be moved. The Tribunal heard that the furniture concerned was a bed on wheels, the claimant could move this during the night time period safely herself. The claimant has suggested to the Tribunal that moving the piece of furniture at night rather than the day involves a health and safety concern. The Tribunal found as a matter of fact having heard the evidence on this issue that moving the furniture during the night time period when it was quiet and that residents would be less likely to be

roaming around, in fact was the safest way to do so. There was a dispute that the claimant made this disclosure at this meeting, the Tribunal are not satisfied on the balance of probabilities that the claimant did so, even if she did, the Tribunal considered that this was not a qualifying disclosure nor could the claimant have a reasonable belief that this would cause any health and safety risk to a resident or herself.

24.18. Allegation 18

Service users left wet and some service users are not assisted to the toilet is the next allegation and that has already been addressed.

24.19. Allegation 19

Gemma Gledhill had said not to take the infection control measures for service users with dementia on the dementia floor. Infection control was not put in place. When 5 service users on dementia floor had diarrhoea Gemma Gledhill said don't even go there, its dementia floor, we tried before it won't work. There is a dispute of evidence as to whether the claimant actually made this disclosure at the meeting, the allegation was not put to Emma Ciccone in cross-examination or in fact an issue of infection control to Gemma Gledhill. The evidence of the respondent is that there was not an outbreak for which infection control was required, the respondent accepted that the claimant verbally mentioned that six residents (not 5 as now alleged) had diarrhoea and that Gemma Gledhill said not to do infection control as it was the dementia floor sometime prior to June 2018. The witness from the respondent indicated that some service users suffer from loose bowels, that is common place, that did not amount to an outbreak. What was required was knowledge of the service users and their habits. June White dealt with this issue in evidence and she addressed the issue with the claimant on 18 June 2018. There was only one service user who had loose bowels and she herself proffered this may have been due to an overflow. The claimant accepted she did not follow the barrier nursing procedure herself which she accepted was not appropriate in the circumstances. The Tribunal do not find that this was a qualifying disclosure.

24.20. Allegation 20

No floor mattress had been provided for a service user who had been assessed as at risk of a fall. Service user falls risk assessment care plans states that she has a fall mattress, Team Leaders were reviewing the care plan monthly and documenting the floor mattress in place where in fact no floor mattress was in place for the service user's safety. The respondent does not accept that the claimant made this disclosure on 2 June 2018 and it was a dispute of evidence. The Tribunal finds that the claimant mentioned a lack of floor mattress to Emma Ciccone. Emma Ciccone explained that she was referring to an old care plan and the service user no longer required a floor mattress. The Tribunal are not satisfied that the disclosure made to the respondent was a failure to comply with the legal obligation or that the

health and safety of any one was likely to be endangered. If the claimant considered there was a risk to the service user's health and safety it would be for her to update the care plan, this is not a qualifying disclosure.

24.21. Allegation 21

On 14 June the claimant informed Stacey Robinson that she had XXX improper administration of a Butec Patch. There is a conflict of evidence as to whether the claimant made this disclosure to Stacey Robinson, the Tribunal are not satisfied on the evidence that it heard that the claimant did indeed make this disclosure to Stacey Robinson at the material time.

24.22. Allegation 22

On 14 June 2018 the claimant notified Emma Ciccone in a hand written note that a service user had not had a Butec Patch changed on 2 June 2018 via a note administration of controlled drug Butec Patch was delayed for 24 hours. There is no dispute between the parties that the claimant conveyed this information to Emma Ciccone, as a result of the claimant raising this concern with Emma Ciccone she spoke to individuals concerned. It was concluded following her investigation that BO had failed to administer the patch in accordance with the MA chart and instruction. As a result BO underwent supervision and was placed on the standard settings as a consequence. The Tribunal heard evidence that Emma Ciccone contacted the service user's General Practitioner about this concern. The General Practitioner confirmed there was no risk posed by the delay in administering the patch. There was therefore no impact on the service user.

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24.23. Allegation 23

On 18 June 2018 by phone and letter and in a meeting the claimant informed the District Manager she had found medication disposed of in a bin rather than in the XXXXX bin. There is no dispute that the claimant raised this disclosure, that she did so in the reasonable belief that it tended to show that a relevant failure had occurred and it was in the public interest. This was a qualifying and protected disclosure. The claimant did not complete an AIMS form and did not check on the service user but the respondent immediately investigated the disclosure, the complaint was taken seriously and the outcome of the investigation is that Katrina Ciccone was demoted.

24.24. Allegation 24

She tried to discuss infection control for five users with diarrhoea, I was told to take no action because they were on the dementia floor -see above.

24.25. Allegation 25

A service user had had four falls and it had not been recorded what pain relief medication was administered, this had been addressed in relation above.

24.26. Allegation 26

A service user with a skin tear had not had a skin integrity form completed – see above

24.27. Allegation 27

A service user had had a fall with a skin cut but this was not recorded and a skin integrity form that the claimant had completed not been placed on file – see above

24.28. Allegation 28

A service user with symptoms of cold was not offered paracetamol. There is a dispute of evidence as to whether the claimant made this particular disclosure, whether it was made in the public interest or in the reasonable belief that it tended to show a failure to comply with the legal obligation. The Tribunal heard evidence that pain relief medication is offered to service users at each medication round, it is not automatically provided, it is provided on the as and when required basis, the Team Leader having made an assessment using their skills and experience as to whether it was needed in the appropriate circumstances. A decision to administer the pain relief medication is not given unless a service user who is able to choose says so where the service user is able to request, accept or decline medication. We heard evidence that pain is actually a fluid concept, the fact that the claimant assessed the need for a resident to have medication on her shift does not mean that it was required on another shift therefore, the Tribunal take the view that there could be no reasonable belief in the claimant that she really thought in her knowledge and expertise, particularly in view of her nursing qualifications, we do not find that this was a protected disclosure.

24.29. Allegation 29

The allegation that a service user left wet, some are getting distressed, incontinence needs were not met, 2 service users' incontinence needs are left in bed, both service users are able to express their needs and they have not assisted to toilet and have no commode in place. The parties agreed that the claimant XXXX the availability of commodes with Emma Ciccone, the Tribunal find that Emma Ciccone did seek to assess the needs of the service users straight away, the assessment referred to toileting or commode which meant that either could be used to assist the service user. It was the respondent's policy for reasons of dignity of the service user and hygiene that the service user would use a toilet where possible. The Tribunal notes that the claimant was very critical of White employees failing to update care plans, she was not so critical of BA, a BAME employee who failed to update the plan in April, May and June 2018. The claimant could have contacted the commode provider and updated the service users plan accordingly. Once the claimant had become aware that the service users were wet as a Team Leader it was her responsibility to assist the service user and meet the care needs, also to speak to the members of staff in charge of the care of the service users. The service user was not at risk and it was an expression of her opinion with no support from anybody else.

24.30. Allegation 30

22 June 2018 in an email to the District manager and in an AIMS form the claimant raised health and safety concerns that the Manager had repeatedly neglected the service users, there is a dispute between the respondent and the claimant that this disclosure was made. The Tribunal find the claimant completed an AIMS form in relation to a service user who suffered a fall but she did not say that Emma Ciccone had repeatedly neglected the care needs of the service user. This was not put to Emma Ciccone or June White in cross-examination. The Tribunal conclude that this was not a qualifying disclosure.

24.31. Allegation 31

On 22 June she completed an AIMS form where a service user had a fall and sustained injuries. She alerted a health and safety concern involving two doors opening in opposite directions, she left a note in the maintenance book too. There was a dispute between the respondent and the claimant as to whether she indeed made this disclosure, it was clear that the claimant completed an AIMS form in relation to the service user having a fall and concluded that her toilet door opening direction needed changing. The claimant did not make a note in the maintenance book as it is alleged, the respondent does not accept this amounted to a health and safety concern, the claimant did not follow it up, it is not a qualifying disclosure it is an expression of her opinion with no evidence or foundation and no support from anyone else. The Tribunal do not find this to be a qualifying disclosure.

24.32. Allegation 32

On 25 June 2018 the claimant, in her letter to June White, alerted about induction practices and raises resulting in a large number of errors in auditing of medication by untrained staff. There was not dispute between the parties, the claimant did indeed raise this issue with June White and others. June White acknowledged the claimant's letter and assured her that the claimant's concerns would be investigated. The respondent's case is that the claimant's medication induction was conducted with the respondent's policy. The claimant provided medication training documents which were completed during the course of her employment with the respondent. Medication observations were conducted by Katrina Ciccone, who deemed the claimant competent, the claimant was able to answers on the medication competency document correctly and she signed this document, all of this suggested the claimant was competent to administer medication in the circumstances. The Tribunal do not consider that the claimant had any reasonable belief that the medication training was insufficient in this regard. In particular, the Tribunal had taken note of the fact that the claimant made this allegation very late in the day. The claimant complained about manual handling within days of starting her employment and undergoing this training, she was competent due to her nursing qualification in Pakistan. In the event that the claimant was not competent in administering medication, she failed to bring that to

the respondent's attention in circumstances where she clearly ought to have done so because she went on to administer medication throughout her employment. This could not be a qualifying disclosure given that the claimant had no reasonable belief that she was inadequately trained and in fact no service users were placed at risk.

24.33. Allegation 33

On 28 June 2018 the claimant emailed Emma Ciccone to inform her that staffing levels and problems with agency staff relating to health and safety concerns. It is agreed that the claimant did indeed make this disclosure on 28 June 2018 regarding staffing levels and agency workers. The respondent's evidence was that staffing levels were adequate and legally compliant; the Home was overstaffed by 500 hours per week. Service users were not placed at risk as a consequence of staffing levels. The claimant did not put these points about Agency workers or staffing levels to Emma Ciccone in cross-examination but in any event the Tribunal find as a fact as it was overstaffed by 500 hours per week it could not reasonably be considered that this would ever or by the claimant and this did not place service users at risk, this amounted to no more than the claimant's opinion.

24.34. Allegation 34

On 28 June 2018 the claimant emailed Emma Ciccone to inform her that staffing levels, carers were not getting support from the Team Leader, getting stressed with the Agency staff, were leading to health and safety concerns. There is a dispute between the claimant and the respondent as to whether this disclosure was made, the respondent does not accept the claimant notified them of a lack of support from Team Leaders or stressed or specific problems with Agency workers. Emma Ciccone's evidence was not challenged, the fact the claimant thought that Agency staff were not sufficiently competent or trained in her opinion but that did not amount, in the Tribunal's view, to having a reasonable belief.

24.35. Allegation 35

On 30 June the claimant sent an email to the CQC giving details of a number of concerns. The Tribunal finds and it is accepted by the respondent that the claimant did send an email to the CQC, the disclosures referred to in the email to the CQC were under investigation by the respondent. The claimant had been informed of the outcome of the investigations where necessary. The Tribunal have some sympathy with the respondent's argument that despite the investigations ongoing internally about the claimant's concerns which in substance had been informed to the claimant it was a repetitive and unremitting nature of the claimant's complaint. In any event the respondent was not notified of this complaint until after the claimant was dismissed.

24.36. Allegation 36

On 30 June 2018 in an AIMS form given to Emma Ciccone the claimant said that a service user had been given a medication overdose. It would appear from the evidence that the claimant was actually involved in this

incident but she did not make any reference to this in the allegation, she instead made allegations against another member of staff who she accused of causing the overdose. This was untrue and the claimant knew at the material time that it was untrue, it would appear on the balance of probabilities it was the claimant indeed herself that gave the service user an overdose. The other member of staff failed to document correctly on the MAR chart that she administered the medication earlier that day, the claimant did in fact make that disclosure, she did not do so in the public interest. The Tribunal find that she did so to get Carrie Jessop, her colleague, into trouble with the respondent.

25. The Tribunal now deals with the claimant's complaint of victimisation. The claimant makes a number of specific complaints about 11 acts of victimisation as follows:
 - 25.1. On 30 June 2018 the claimant reported to Emma Ciccone in an AIMS form that the Team Leader Linda Green had discriminated against the carer Lucia Honey because of her race. The Tribunal finds there is no form on this date for this incident. The claimant suggested that this was destroyed to cover up racist behaviour towards a non-White colleague. The claimant did complete another AIMS form on this day in respect of Metformin incident. If the respondent was in the business of destroying audit trails the Tribunal find that it is likely that it would have reported that this is not found to be a reported protected act.
 - 25.2. On 30 June 2018 the claimant complains that she reported in a handover an Agency staff was not booked and was unable to open and close XXXX on time due to a staff shortage on the floor. There is a dispute of fact as well as whether the claimant at any time mentioned to Emma Ciccone that the non-attendance of an Agency member of staff had meant she was unable to open or close her XXXX on time. This is not a matter suggested to Emma Ciccone in cross-examination that she did so, the Tribunal are not minded, bearing in mind the factual findings that the claimant needed to contact the recruitment agency to find out where the Agency worker was and to make alternative arrangements with another recruitment agency if needed. This was not a protected act.
 - 25.3. On 19 June 2018 the claimant reported to Emma Ciccone a carer accused two Afro-Caribbean agency staff of sleeping, one Agency staff said she was on a break saying a prayer, Agency staff also said she was told to use the service user toilet and was not allowed to attend staff toilet. Agency staff accused the Team Leader Linda Green of discriminating against her on the grounds of race and she was supportive of the White carer. This is very general in terms and had no particular evidence in this regard, this was not a matter put to challenge Emma Ciccone's evidence. This appears to be one member of staff challenging another member of staff who appeared to be asleep, it would be a serious if a member of staff was asleep whilst looking after individuals in a Care Home and even if there appeared to be on a break or saying their prayers this does not appear to be a complaint of discrimination and the Tribunal do not find it to be a protected act.

- 25.4. On 28 June 2018 the claimant, via and email, raised with the Team Leader Linda Green, that she had extra support overnight where the claimant has to work with one Agency staff on dementia. The claimant raised it as fair and proportionate, the claimant requested equal work environment. There is no dispute that on 28 June 2018 by email the claimant informed Emma Ciccone that Linda Green had more staff members to assist her than the claimant did. The evidence is that Emma Ciccone investigated and spoke with Linda Green who had a rather different recall of the night in question. This is not a protected act.
- 25.5. 10 July 2018, on 10 July 2018 the claimant raised with June White via an email, management favour and protect White employees and takes disciplinary action where other races involved. The claimant raised probation period does not mean she gets treated less favourably. There is no dispute between the parties that the claimant sent this email raising these concerns. The Tribunal find that as a matter of fact that employees are treated differently within their probation period. That is not a protected characteristic. There is a significant difference between an employee who has worked for a short period for the respondent within their probation period and an individual with a long-standing career and service with the respondent. In the circumstances this is not a protected act because it does not raise a complaint of discrimination.
- 25.6. On 17 July 2018 in an appeal against unfair dismissal the claimant erased her initials to cover up White Team Leader. She said she was treated less favourably than White staff in relation to conduct and behaviour issues, she said Emma Ciccone confirmed environment is not provided to all employees in particular on racial grounds. There is no dispute that the claimant did indeed raise these concerns in her letter on 17 July 2018. From this document the claimant seeks to rely on her race rather than protected disclosures as being the reason for her dismissal. This was raised after the claimant has been dismissed but before her appeal against dismissal. It does, on the face of it, amount to a protected act because it raises allegations of discrimination against the employer.
- 25.7. On 17 July 2018 in an appeal against unfair dismissal the claimant raised a pregnant employee of Afro-Caribbean background was not offered extra support and was assigned to work on dementia floor. There is no dispute that the claimant did raise concerns in her letter appealing her dismissal. The claimant complained about the lack of support for her colleague rather than herself been allocated any extra resource to cover the work whilst a pregnant colleague was unable to do so. The claimant had to do these tasks herself which she was unhappy about, this does not amount to a protected act.
- 25.8. On 27 August 2018 the claimant lodged a grievance alleging that Bola Ogeno?? an African-Caribbean employee had been subject to race discrimination and that he had been subjected to formal disciplinary action when no action was taken against a White British Team Leader Gemma Gledhill. There is no dispute the claimant did lodge a grievance in respect of this issue. This is a protected act of discrimination.
- 25.9. On 12 September 2018 the claimant lodged a grievance complaining about her treatment in relation to Metformin overdose alleging that she

had been subjected to race discrimination, there is no dispute that on 12 September 2018 the claimant did indeed lodge a grievance raising this issue, this qualifies as a protected act. The Tribunal however notes that the claimant was not subjected to any treatment as a consequence of the Metformin incident, it was investigated, reported as a safeguarding concern, this was not due to race.

- 25.10. On 14 September 2018 the next allegation in her appeal hearing, the claimant complained that Linda Green was treated more favourably in relation to the Deputy Manager post and that she discriminated against staff on racial grounds. This amounts to a protected act.
 - 25.11. On 14 September 2018 the claimant's grievance appeal, she alleged poor practice which amount to neglect, the claimant raised a reasonable investigation was not carried out as colleagues who administered medicine were from White background. There is no dispute that the claimant did raise these issues in the appeal and that this is an allegation of race discrimination.
 - 25.12. The next allegation on 14 September 2018 in her appeal hearing the claimant complained that Linda Green was treated more favourably in relation to the Deputy Manager post and that she had discriminated against staff on racial grounds. It is agreed that the claimant did raise issues of less favourable treatment on grounds of race at her appeal hearing. This was a protected act.
 - 25.13. On 14 September 2018 in the claimant's grievance appeal poor practice amounting to neglect the claimant raised reasonable investigation was not carried out as colleagues who administered the medicine were from a White background. It is agreed that the claimant did raise this issues in the appeal, it was a protected act.
 - 25.14. On 14 September 2018 the claimant complained that June White responded to her complaint about Team Leader leaving the Home was discriminatory because of her religion. This was accepted that the claimant did make a complaint to this effect and it amounted to a protected act.
26. Having found the facts in this case the Tribunal now consider the detriments to which the claimant alleges she was subject to.
- 26.1. The first allegation that the respondent failed to obtain statements from people who made positive comments about her, the respondent only obtained statements from colleagues who had negative comments about her and this was an act of victimisation because she had made a protected act. The finding of the Employment Tribunal is this, in the course of investigating this issue the respondent chose to obtain statements from individuals who were present at the material time. The investigation was about the claimant's conduct on 30 May 2018 rather than a review of the claimant's employment. In conducting any investigation the Tribunal is satisfied that an employer, and the employer in this particular case took statements from members of staff who were involved in the day, it was not a general fact finding about all issues concerning the claimant. The statements obtained on this day unfortunately paint a very negative picture of the claimant in respect of her attitude, her manner and her behaviour

towards colleagues. This is the opinion of the colleagues of the claimant which were consistent. It is not a detriment the Tribunal find for matters to be investigated and they were the concerns of named staff members regarding the claimant.

- 26.2. The respondent Manager breached the company recruitment policy. Emma Ciccone jointly with Tracy Tatum breached the recruitment policy fabricated the claimant interview record and decided not to appoint the claimant to the Deputy Manager post by reason of a detriment on the ground of protected disclosures and discrimination because of race. The Tribunal heard evidence that Mr Vessey had investigated the procedure adopted in respect of the interview of all three candidates for the position of Manager, Mr Vessey's conclusions is that the respondent had indeed breached the relationship policy by permitting Emma Ciccone to be involved in the interview process of the claimant and two other candidates. However, the evidence that the Tribunal has heard and accepts that none of the candidates were found to be up to the standard to effectively be promoted, no promotions were made. Tracy Tatum had no information that the claimant had indeed made any public interest disclosures. From the evidence heard there was a script adopted and the same questions and the same interviewer techniques were used in the interview. The interview notes were recorded at the same time in bullet form. From enquiry of the Employment Tribunal there seemed a significant difference between the initial interview and very positive comments of the claimant and some negative comments which were made by the respondent in the course of the promotion interview. Miss Tatum explained to the Tribunal that the promoted role was at a much higher level than the role that the claimant had been appointed to as Team Leader and that this was an explanation as to the negative feedback provided by the respondent to the claimant. Miss Tatum told the Tribunal that in fact in the course of her interview the claimant had told us about the fact she was required to safeguard but she had not done anything about safeguarding incident which was of serious concern to her. The Tribunal are satisfied that Miss Tatum was an objective independent witness and that notes of the record were not fabricated nor were they without foundation. The Tribunal are satisfied that the claimant was unsuccessful in the interview due to her performance in that interview which had nothing to do with her race or the fact that she had made previous protected disclosures. The suggestion by the claimant that she was invited to make up the numbers was not farcical; the claimant had been appointed only to be a Team Leader only 3 weeks before this particular interview. The applicants were notified of the decision after an investigation by Stephen Wood into another's complaint regarding Katrina Ciccone. The evidence of Emma Ciccone and June White was that the conclusion had been reached by SW and relating the fact that he does not write his outcome letter for a number of days after he reaches the conclusion is immaterial. The complaint was anonymous so the outcome letter was not actually addressed to a specific individual. All applicants were notified on this date and none were offered the position. There was no detrimental treatment of the claimant.
- 26.3. The claimant complains that a detriment was a failure to investigate the other carer AA shouted at HC, Team Leaders Katrina Ciccone and HG

laughed at the claimant, the claimant was confronted and subject to a hostile treatment of Katrina Ciccone and Gemma Gledhill. The claimant complains of a hostile treatment by fellow colleagues were disregarded by the respondent. This was a detriment on ground of protected disclosures and discrimination because of race. The evidence heard by the Tribunal was there was no specific shouting by AS towards the claimant there was a general shouting to everyone. The claimant's conduct towards these individuals had been quite hostile herself. At the probation interview on 12 June Emma Ciccone had addressed the difficulties which the claimant's behaviour was having in the Home and with the team. A number of support mechanisms were put in place to assist the claimant for example June White arranged a team mediation meeting in an attempt to address these issues. Steve Vessey investigated the claimant's concerns and was satisfied the steps were put in place to address them. The claimant's complaints were not disregarded and this is not a detriment.

- 26.4. In respect of the further allegation that the claimant says only negative comments were collected about her, this has been dealt with before.
- 26.5. The claimant next alleges that the respondent portrayed a negative picture of the claimant and instructed others in a chain to carry out action against her and labelled her 'antisocial, rude, unapproachable, arrogant, she doesn't communicate, wanting to be treated high, bow down, talks over people, works against staff, not in touch with residents' this amounted to a detriment on ground of protected disclosures and discrimination because of race. The claimant accepted that employers were entitled to have an opinion, those opinions should be respected. Statements obtained from colleagues on 30 May were expressions of the opinions of those individuals. There is no attempt by the respondent to portray the negative picture of the claimant, in fact this was just the description given by colleagues. A number of colleagues observed that she created conflict within the team, failed to work as part of the team and talked down to members of staff, failed to listen or to respect their opinions, thought she was above everybody else and was rude and unprofessional. This was not a detriment, this was just the opinions of her colleagues and what they thought about her. Various comments included from Maria Armead on 13 May "can't communicate with her she speaks at you instead of with you" "she is thick always finds a problem, works against" detriment on the ground because of race not accepted. Maria Armead says she explained "she couldn't close a XXX it's just an excuse" 30 May Hayley Teals used an offensive phrase against the claimant to be "nipped in the bud". The Tribunal cannot see that "nipped in the bud" could be offensive in any way, it is just a turn of phrase to mean that something should be stopped at an early stage, it is not offensive and not a detriment.
- 26.6. 30 May 2018 the respondent Manager Emma Ciccone via an email, sent a negative message to the claimant in response to the claimant's disclosures and protected acts, this is said to be a detriment on the ground of protective disclosures and discrimination because of race, victimisation due to protective act. This is denied by the respondent, again the Tribunal has not received any evidence in respect of that particular issue.

- 26.7. On 9 June 2018 in a phone call Emma Ciccone said to the claimant “you sent me an email, poor practices that amount to neglect, it is not up to you to decide what is neglect, your keeping raising minor issues this will affect continuity of employment”. There is a conflict of evidence as to whether this telephone conversation took place and these words said. It was not put to Emma Ciccone however, the evidence of Emma Ciccone was that she had only ever spoken to the claimant once on the telephone, later clarified in her evidence perhaps it was twice, neither conversation was on 9 June. The Tribunal having heard Emma Ciccone in live evidence struggled to see that continuity of employment would have effectively rolled off her tongue, this did not appear to be a phrase used by Emma Ciccone and we do not accept that it was used on the relevant occasion.
- 26.8. The claimant was cross-examined about her regular use of the words ‘negligent abuse’ and ‘overdose’ and that she had made those allegations prior to an investigation into concerns. Emma Ciccone’s evidence was that she had suggested to the claimant that use of that phrase are serious indeed with serious connotations and that an investigation needed to be conducted before somebody could be accused of being negligent or abuse. The respondent was concerned about the claimant’s frequent use of this phrase as one of the reasons for the problems she creating with her colleagues, the claimant persisted on using the phrase regardless. This is not a detriment.
- 26.9. On 12 June 2018 in a probation meeting Emma Ciccone told the claimant communication is not good and gave an example of poor practice amounting to neglect. Emma Ciccone said if you communicate with staff like this they will work against you not with you. The claimant thought this was an implied threat, a veiled warning was served on the claimant. She says this is a detriment on ground of protected disclosure, discrimination due to race and victimisation. The Tribunal do not find that this was a threat or a veiled warning. The Tribunal find that her Manager was seeking to guide the claimant about the use of this language in terms of improving her relationship with her colleagues, these observations could not be considered to be discriminatory because of race, victimisation or detriment but rather reflected the reality of the situation that whilst strong extreme language was used a fellow colleague it was likely to be detrimental to relationships within the Home.
- 26.10. On 12 June 2018 Emma Ciccone said staff at Ashcroft were very firm with their opinion ‘you are finding fault on every shift working against’ the claimant says she was subjected to oppressive and justified criticism as a reprisal for earlier disclosures, she relies on detriment on the ground of protected disclosures and discrimination due to race. If the Tribunal find that Emma Ciccone did say this to the claimant it was not related to the fact that the claimant had made a protected interest disclosure or disclosures but merely because of the number and the form that she sought to do so. The reality that Emma Ciccone was trying to emphasise to the claimant was that she was in effect raising lots of criticisms which was not helpful to team working relationships.

- 26.11. 12 June 2018 the claimant reported to June White that on 12 June Emma Ciccone did not document the claimant's concern and the claimant felt singled out. The probation review was one sided and this was a detriment on the ground of protected disclosures or discrimination due to race discrimination. The claimant did complain to June White about the conduct of her probation review meeting. The Tribunal find that this involved a two-way discussion at the meeting and the claimant's views were invited as can be seen from the probation review form. The Tribunal also notes that at the bottom of the review documentation there is an opportunity for the claimant at 227 and 231 of the bundle to detail her concerns, but she did not add anything, it is therefore not accepted that the claimant really did feel as she did but in any event the fact is that there was no detriment on ground of protected disclosure, discrimination, this is a supported measure in the course of the probationary review to assist the claimant as to how she may improve and fulfil and pass her probation at a later stage. The claimant's training was discussed, it was suggested steps that she should take to support the claimant and identified other support mechanisms which were available to her and advised the claimant how to make things easier for her in terms of her workload. There was no detriment. XXXX refers that this was a supportive meeting at which Emma Ciccone did everything she could to assist the claimant to improve matters. Unfortunately, the claimant declined to address or improve her behaviours following it at this particular meeting.
- 26.12. On 18 June 2018 June White labelled the claimant's disclosures as 'tit for tat' and wrote to the claimant that she would take all such concerns seriously. This is alleged to be a detriment on making a protected interest disclosure and discrimination due to race. This is denied by the respondent. The Tribunal heard a lot of evidence from Emma Ciccone, June White, Steven Vessey and Linda Green that complaints raised by employees are taken seriously by the respondent and investigated. The labelling of a complaint as tit for tat is not offensive. Her disclosures were investigated by the respondent and taken seriously.
- 26.13. On 21 June 2018 at a Team Leader meeting notes were fabricated in order to distort the facts, this is said to be a detriment on ground of protected disclosure, discrimination because of race and victimisation due to a protected act. The Tribunal are not satisfied that the team meeting notes were fabricated, notes are not verbatim but prepared as an overview of the meeting. The claimant told the Tribunal that she did not take her own notes but does challenge the content of the respondent's notes. On balance of probabilities these notes being contemporaneously made at the relevant time the Tribunal find they are more likely to be accurate than not as an overview as opposed to a verbatim record.
- 26.14. On 26 June 2018 June White states "it's the feeling that they are now being victimised in this process" (Emma Ciccone and Katrina Ciccone). June White supportive to the White employees the claimant alleges this was a detriment on the ground of protected disclosure and discrimination because of race. Katrina Ciccone did feel as though she was being victimised, in her evidence before the Tribunal she explained why. Her evidence was "every day there was a phone call, every day you got pulled into the office before we had been able to deal with the issues June White

was there going to work was like treading on egg shell, you made me so poorly I didn't know when to bring things up, these things happen because of the way you made everyone feel, I forgot why I was going to work to care for the service users, I wasn't going to care I was so focussed on not making a mistake that more happened, this was not a case of the issues that you were raising but how they were being raised, it is how you made me feel". Emma Ciccone gave evidence that the claimant undermined her as the Manager of the Home who failed to respect or trust her and had no confidence in her ability as a Manager. Again, the Tribunal do not find that these were detriments, they were opinions which these employees held. It was not discriminatory treatment either.

- 26.15. On 26 June 2018 June White responded to the claimant's report that care staff had left the Home to attend stray animal by saying that this was no different to the claimant's authorised absence to celebrate Eid. This is said to be discrimination because of religion or harassment related to religion. The Tribunal had some difficulties in understanding the claimant's complaint in this regard, the factual matter seems to be this – that during the lunch break members of staff were permitted to attend to a stray animal as members of staff are allowed to do as they please during their lunch break. The claimant was provided with time off to celebrate Eid, June White explained she had asked for time off to go to the Doctor or the Dentist she would have used this as the term of reference as June White pointed out had she just said that staff were allowed to do what they wished on their breaks and to leave their posts if they wished without specific reference to XXXX when the claimant had been gone to such accommodation this cannot amount to discrimination because of religion or harassment it is entirely unreasonable for the claimant to allege this comment violated her dignity in respect it fails both the subjective and objective elements of the test.
- 26.16. On 28 June 2018 the respondent decided not to investigate the claimant's complaints against Linda Green. Detriment was on the ground of protected disclosure, discrimination because of race and victimisation due to a protected act. The claimant made a complaint about the night shift on 26 June via her email sent on the same date. The Tribunal found that Emma Ciccone investigated the claimant's complaint. Linda Green also emailed Emma Ciccone expressing her concerns about the claimant's behaviour over the course of this shift. As a result Emma Ciccone spoke to other members of staff present on that shift and concluded there had been a breakdown in communication between the claimant and Linda Green and she responded to both in similar terms. Simply because an employee disagrees with the outcome does not necessarily mean that it is a detriment, victimisation or discrimination because of race and the Tribunal do not find that either.
- 26.17. On 28 June 2018 the respondent replied to the claimant's complaint against Linda Green that she would be coming on days in three weeks so this may help the situation on the night. The respondent further wrote to the claimant that she is arranging her probation review to discuss a couple of areas involving staff. Detriment on ground of protected disclosure, victimisation because of a protected act, discrimination because of race.

Again, the Tribunal do not understand this argument that it amounts to detriment, victimisation or race discrimination.

- 26.18. On 28 June 2018 Katrina Ciccone said in an interview with Sharon Crouch that the claimant's disclosure that the claimant wanted to report on everyone, this was a detriment on the ground of disclosure. The Tribunal find that Katrina Ciccone did say these matters to Sharon Crouch in the course of an investigatory meeting on 28 June but employees must be entitled to express their opinions about how they feel. The Tribunal does not understand how this could be a detriment, if it was the genuinely held belief of the employee and her opinion this was not a result of the treatment but simply Katrina Ciccone's opinion.
- 26.19. On 28 June 2018 Katrina Ciccone said she did not report and did not want to get anyone in trouble with all what was going on Katrina said unfortunately have someone in the building who wants to report everyone. Detriment on ground of protected disclosure and discrimination because of race, again this is Katrina Ciccone's opinion. The Tribunal cannot see if it was a genuinely held belief which the Tribunal find that it was that this was some form of detriment alleged to be taking place by Katrina Ciccone as a consequence of her opinion.
- 26.20. On 29 June 2018 the claimant's grievance alleged neglect of an abuse under Care Standard Act 2014 was not investigated. She says that this was a detriment on the ground of a protected disclosure. The Tribunal find as a fact that the claimant's grievance was investigated by the respondent, there was a lot of material evidence that Emma Ciccone did act on the claimant's grievances as did June White, Steve Vessey and Linda Green. They took time in dealing with the claimant's complaints and the Tribunal are reminded that June White told the Tribunal it was all that Emma Ciccone was doing at this time. There is a significant amount of documentation within the bundle that there were such investigations there can therefore be no detrimental treatment as alleged by the claimant.
- 26.21. On 29 June 2018 Gemma Gledhill said in a 1-1 meeting with Emma about the claimant that all the claimant does medication, look for other errors in the daily record. This was a detriment on ground of protected disclosure and discrimination. The Tribunal find that Gemma Gledhill did express this opinion in the course of a 1-1 meeting with Emma about the claimant, it was a genuinely held belief that the claimant was working against her team rather than part of the team. There is another allegation that Gemma Gledhill subjected the claimant to less favourable treatment or a detriment, she was simply expressing her opinion, the Tribunal do not find that this was a detriment or discrimination because of race.
- 26.22. On 2 July 2018 Emma Ciccone made a safeguarding alert, physical abuse, Metformin overdose where Emma Ciccone distorted the facts and unfortunately, we are unable to identify which Team Leader had made the error. The claimant says this is a detriment on ground of protected disclosure and race discrimination. The Tribunal finds that Emma Ciccone did make such a safeguarding alert and that she was duty bound to do so. The fact that she was unable to identify which Team Leader had made an error the Tribunal find cannot amount to a detriment or discrimination because of race. The claimant was not singled out nor was she treated

less favourably than Carrie Jessop, in fact both individuals were treated equally, the Tribunal find this to be a misconceived complaint.

- 26.23. On 6 July 2018 the claimant's grievance, poor practice amounting to neglect and conflict of interest Deputy Manager interview were not investigated sufficiently by Steve Vessey and the grievance meeting notes were not provided prior to the outcome judgment on making protected disclosure and raising a formal grievance. Mr Vessey did investigate the claimant's grievance, he met with the claimant and he gave her an opportunity to state her case and discuss her grievance. In fact that he upheld her grievance, this complaint is misconceived. The fact that the claimant was not provided with notes does not amount to a detriment. He provided a fully reasoned outcome letter. Notes were provided to the claimant and her comments were invited on them in any event. There is no detriment or race discrimination.
- 26.24. On 10 July 2018 in the probation review Emma has criticised the claimant's wording of the email and communication with colleagues and labels claimant's communication dictatorial style. Emma Ciccone said claimant can portray herself as the only one right she is deliberately seeking out the problem to see others fail. Detriment on the ground of protected disclosure, discrimination due to race, victimisation due to a protected act. The Tribunal finds that a number of issues were brought to the Manager Emma Ciccone's attention by the claimant's colleagues. It is the practice of the respondent to investigate issues raised by members of staff, the claimant accepted in cross-examination that staff were entitled to have their grievances investigated. I do not see that this is detriment or discrimination.
- 26.25. On 10 July 2018 in the probation review Emma Ciccone stopped the claimant's response to the Swiss Roll incident, said this is an ongoing case and cannot discuss further, then the claimant gets dismissed. The respondent reported the claimant to the local safeguarding in relation to the Swiss Roll incident. The detriment on ground of protected disclosure, discrimination due to race, victimisation due to a protected act. The claimant's account of the Swiss Roll incident was invited, the comment whereby the claimant was told that no further discussion could be made relates to the discussion regarding another colleague's induction. The claimant had made some complaint that this individual's induction had been unsatisfactory, alluding to the fact this is why there was an issue with her serving non-pureed Swiss Roll to a service user. This issue was not relevant to the claimant there was a discussion about the Swiss Roll incident and that is set out in the meeting notes. She was asked to give her version of events. This incident was reported to local safeguarding on the basis that it posed a risk to a service user, it is noteworthy the claimant considers any criticism of her to be a detriment on the grounds of protect disclosure or race but her own situation that she referred to in April of a similar situation she thought was worthy of criticism and deserving a disciplinary sanction. The respondent notified local safeguarding on 11 July 2018 that the claimant had failed her probation as another employer would have done so in similar circumstances.

- 26.26. On 10 July 2018 in the claimant's probation meeting Emma Ciccone criticised the claimant by saying she contributed to Metformin overdose administration to a service user by not counting the tablet balance prior to administration. This was a detriment on the ground of protected disclosure or a discrimination because of race. Carrie Joseph, a White British Team Leader who was also involved was told she had no case to answer. The respondent accepts she was found to have contributed to the Metformin overdose and she was subject to criticism, this was because her behaviour was culpable, she had exposed a service user a potential health and safety issue and amounted to a failure to follow the respondent's values. She was questioned with a regard to her involvement and criticised for it. Any other individual having done what the claimant did would have been subject to the same process. Neither Carrie Joseph nor the claimant actually faced any disciplinary sanction, they were treated equally.
- 26.27. 10 July 2018 the probation interview June White stopped the claimant to respond to the Metformin overdose, this is ongoing. This has been dealt with above.
- 26.28. On 10 July 2018 in a probation review meeting Emma Ciccone said the claimant created a hostile environment by raising the missing Zopiclone tablet. This was a detriment suggested on the ground of protected disclosure. This was raised by Emma Ciccone in the course of the meeting, this was not the Tribunal find, a detriment on the ground of protected disclosure itself, it was the manner she made them that created the hostile environment. A number of the respondent's witnesses testified to that effect. The claimant made disclosures in a manner which created a hostile manner for her colleagues.
- 26.29. On 11 July 2018 Emma Ciccone wrote to the late local safeguarding authority in critical terms about the claimant. The claimant alleges that this was a detriment on the ground of protected disclosures and discrimination because of race. The respondent having undertaken an investigation took the view that the claimant had contributed to the Metformin overdose, the Tribunal find on the evidence that that was a reasonable conclusion to reach following a reasonable investigation. In the circumstances it was procedurally correct for the Manager Emma Ciccone to write to the safeguarding authority in the terms used. The claimant contend that the respondent had sought to scapegoat her in respect of this incident, the Tribunal do not accept the fact that where the claimant criticised the respondent for stating could not prove which Team Leader was responsible that she was actually scapegoated, she was treated the same as the other Team Leader.
- 26.30. On 17 July 2018 Emma Ciccone wrote to the local safeguarding authority about the claimant in critical terms, that the claimant contributed to an overdose, further portrayed the claimant in manner as to indicate to the authority that malicious activity was going on with medication in order to undermine the claimant's genuine and serious safeguarding concerns. The claimant contends that this was a detriment on the ground of protected disclosure and discrimination due to race. On the 17 July the Tribunal finds that the respondent wrote to the CQC because it had some

concerns about the claimant, Emma Ciccone set out factually her findings based on her contact and knowledge of the claimant over the previous 11 weeks. Emma Ciccone based her opinions on evidence assessment and investigation, she did not seek to undermine the claimant's disclosures. In the circumstances the Tribunal do not find this to be detrimental treatment and was not discrimination due to race.

26.31. On 17 July 2018 the respondent changed the outcome letter to make it clear that there was a reason for dismissal other than her protected disclosures, detriment on the ground of protected disclosure, discrimination because race and victimisation because of race. The Tribunal find that there were two drafts, there was a first draft of the outcome letter and the second draft being sent to the claimant. The Tribunal notes that the initial outcome letter simply contended that the claimant had not followed the respondent's values and behaviour, further particulars were added to that allegation in the letter sent to the claimant saying that she had not followed respondent's values and behaviour by failing to support the team. The respondent do not see how this could amount to victimisation because of race, a detriment on the ground of protected disclosure or victimisation. The Tribunal find from the evidence it has heard that the claimant was dismissed for the reasons stated, she had failed to ensure the dietary care plan for a resident on a puree diet was followed because the claimant had actually brought in the Swiss Roll, she had failed to complete paperwork when this resident was given the cake and she failed to complete an AIMS form to document her daily records and failed to follow the respondent's roles and behaviours by failing to support her team. That had nothing whatsoever to do with race, previous disclosures or a protected act, although the claimant did not ask Emma Ciccone the reasons for the dismissal the Tribunal took it upon themselves to put in direct terms to Emma Ciccone the reason for the claimant's dismissal. Emma Ciccone was quite clear that the reasons for the claimant's dismissal were set out in the outcome letter and had nothing whatsoever to do with the claimant's race, protected acts or protected interest disclosures. The Tribunal are satisfied that Emma Ciccone reached this opinion.

26.32. On 17 July 2018 the claimant's dismissal letter the respondent alleged that the claimant had failed to complete an AIMS and report the incident. The respondent's Manager Emma Ciccone, Team Leader Katrina Ciccone, Gemma Gledhill and SH repeatedly failed to complete AIMS and report it made a safeguarding alert when the claimant did report the incident. This is said to a detriment on the grounds of protected disclosure, discrimination because of race and victimisation because of the protected act. The Tribunal find that in respect of the Swiss Roll incident which was brought into the Home by the claimant and then it was served to a service user requiring a puree diet that the claimant should have completed an AIMS form but failed to do so. This was part of the respondent's reason for dismissing the claimant. The Tribunal did not hear any material evidence that Managers had failed repeatedly to complete AIMS forms. There is also a difference of situation here, the claimant was somebody undergoing her probation at the material time, others had long standing service with the respondent. That is a significant difference between claimant and the

comparators. In her evidence Emma Ciccone told the Tribunal there are minor incidents and there are life and death incidents. The incident with the Swiss Roll was a life and death situation had the resident actually consumed the Swiss Roll, they could have choked and it being a fatal incident. It was therefore a significant feature that the claimant and more serious that the claimant failed to complete an AIMS form in these circumstances, in the circumstances the Tribunal conclude that this was not a detriment and discrimination are denied and not upheld.

- 26.33. On 17 July 2018 in the claimant's dismissal letter the respondent alleged that the claimant failed to follow Anchor values and support her team. Multiple White colleagues breached Anchors values and had not been done for gross misconduct, they were not supported to XXXX but did not receive any formal sanction. This she says was a detriment on the ground of protected disclosure and was discrimination because of race and victimisation because of a protected act. The claimant has not provided any details of incidents when her comparators had breached the Anchor values or had not been supportive of co-workers. They did not receive any formal sanction. In this regard the Tribunal struggled to make a positive finding in the claimant's favour, on balance the claimant was failing to support her team and was not following the values of the respondent.

Part 7

- 26.34. On 18 July 2018 Katrina Ciccone in a disciplinary meeting said to June White she had disposed of medicines to avoid anyone else getting into trouble. Katrina Ciccone said we kind of forgot about residents, didn't want to make any more work for Emma and yourself this is said to be a detriment on the ground of protect disclosure, discrimination on the grounds of race. The claimant's evidence was that she was unaware of this matter until the disclosure in the course of the Tribunal proceedings. She does not complain as part of her case of detriment or less favourable treatment by either Katrina Ciccone or June White as a result of Katrina Ciccone's comments. The Tribunal therefore cannot find evidence there was detriment on the grounds of claimant having made a protected disclosure. The respondent does not understand how this amounts to less favourable treatment because of the claimant's race.
- 26.35. In the period August to October 2018 the respondent failed to respond meaningfully or at all to the claimant's grievance dated 27 August 2018 which raised errors in Butec patch administration. The Manager's response to a disclosure about that and the racially discriminatory treatment of BO. Detriment on the ground of protected disclosure, victimisation because of protected act and discrimination on race. The Tribunal find that the grievance was investigated thoroughly even though the claimant no longer worked for the respondent. The claimant was informed of the outcome of her grievance and she was offered a right of appeal. The claimant exercised this right. The fact that the outcome of the grievance did not uphold the claimant's complaints does not of itself mean that it was not conducted properly or meaningfully. The claimant did not agree with the outcome of the grievance. Her criticisms are not well founded, they do not amount to a detriment on grounds of having made a

protected interest disclosure or victimisation, there is no race discrimination here.

- 26.36. The claimant continues to suggest in the period of September to October 2018 the respondent failed to investigate and respond meaningfully to the claimant's grievance dated 12 September 2018. Victimisation because of a protected act denied.
- 26.37. On 19 October 2018 Linda Green failed to respond meaningfully or at all to the claimant's grievance appeal prior, poor practice amounts to neglect, 3 White Team Leaders are involved in the antibiotic error, Linda Green dismissed claimant's appeals. Detriment on the ground of protected disclosure, discrimination because of race, victimisation because of protected act. This is without foundation as referred to above.
- 26.38. 19 October 2018 Linda Green describes claimant's complaint about Miss White, said she was ambiguous and failed to address an allegation of religious discrimination, discrimination because of race, victimisation because of protected act. Linda Green did express the view that the complaint about religious discrimination was ambiguous, this was the view that she formed. In her evidence before the Tribunal Linda Green clarified her meaning of ambiguous, she said "I have nothing to go on, no dates, no specifics, no facts to look at". In the circumstances having formed that view on reasonable grounds Linda Green was not committing less favourable treatment on the basis of race or that the claimant was subjected to a detriment. The fact is, and the reality is the claimant had provided insufficient material for Linda Green to form any view on it.
- 26.39. Service user on a puree diet ate a whole donut XXXXX the claimant's dismissal which was not safeguarded, no investigation carried out and no one was disciplined. Detriment on ground of protected disclosure, discrimination because of race, victimisation because of protected act. The Tribunal find that the reference to a donut is incorrect, the evidence is that there was a Swiss Roll brought in by the claimant into the Home and it has been explained to the claimant on a number of occasions that the donut is incorrect. Insofar as we can substitute the word 'whole donut' to Swiss Roll the understanding was that the fact that the claimant had failed to undertake the completion of an AIMS form, her lack on insight of the risk to the service user is the reason why the claimant was dismissed. The respondent Manager Emma Ciccone states no complaints were made against Linda Green but staff complained against the claimant. Emma Ciccone distorted the fact as multiple written complaints were raised against Linda Green and statement obtained against the claimant were malicious, a witch hunt. Emma Ciccone did not separate herself from the claimant's probation review despite requests influenced a fair process. Detriment on the ground of protected disclosure, discrimination because of race, victimisation because of protected act. Multiple written complaints were not made against Linda Green as is alleged. There was no witch hunt of the claimant it was appropriate that Emma Ciccone who line managed the claimant directly that she should complete the claimant's probation review, this would be the normal way that things are done in the respondent's business. She did undertake this fairly and in a supportive manner towards the claimant.

Automatic unfair dismissal

25. The Tribunal finds that the claimant was dismissed because she failed to pass her probation. It was not until the meeting with the claimant that it was decided that the claimant should be dismissed, it was not predetermined. The evidence heard by the Tribunal was that if the claimant was prepared to accept this at the meeting then the door was open if the claimant wished to walk through it. Emma Ciccone said "I looked at everything, even that first review raised issues with her, I wanted to work with her, she had been a Manager, I wanted to work with her, could work together, make things better had she turned round and said she's messed up but she didn't accept that, she did not have any insight into what she had done and was not prepared to accept any accountability for it, the service user could have died". Emma Ciccone explained that Joe Starmer was on the rota because he was on probation and needed to buddy up with another member of staff, this was not because the claimant's dismissal was planned. Emma Ciccone's evidence was not challenged in this regard. The Swiss Roll incident was very serious and the claimant did not accept that she had done anything wrong. Having heard all the evidence the Tribunal were not satisfied that a White individual having committed the error that the claimant did as regards the Swiss Roll would have been treated any differently. She was not singled out or treated oppressively or unjustified in any manner at all. The Tribunal notes that the claimant was recruited by Tanvir Ali but this appointment was approved by Emma Ciccone. Katrina Ciccone admitted to gross misconduct and was demoted, NS was found to have committed an act of gross misconduct and was dismissed. Linda Green has since been dismissed for gross misconduct as is set out above with the exception of JS who was dismissed for gross misconduct during probation, the circumstances of these individuals are materially different to the claimant's own. The respondent did investigate disclosures whoever made them and there are a number of examples where disclosures were made, there is no history of treating non-White employees less favourably than the claimant was treated. The main concern for the respondent is the way that the claimant made those disclosures, she made lengthy complaints XXXX her public interest disclosures, her grievances took a huge amount of management time, the claimant failed to be satisfied with the way in which matters were handled by the respondent, the claimant had become completely unmanageable. Of significance evidential importance was the description by the individuals of the effect that the claimant's constant complaint raising was having on their wellbeing and the workplace. The Home started off in April 2018 to be a happy successful Home, by the time that the claimant left the employment of the respondent it had turned into a situation of mistrust between various employees. The claim under section 103B of the Employment Rights Act 1996 fails. The claimant has the burden of proving that as a result of raising public interest disclosures she was subjected to a detriment. The Tribunal have actually found that some of the matters raised by the claimant did meet the definition of protected disclosures but causation cannot be established. Direct race discrimination against the claimant has not proved any facts on which the Tribunal could conclude that she has been treated less favourably than a comparator because of her race. The Tribunal find that the claimant was not dismissed because of her race, she was dismissed for the reasons set out in the outcome letter. The claimant was not subject to harassment on the grounds of her religion whether as alleged or at all. The Tribunal do not find that the matters complained about amount to unwanted conduct within the definition of section 26 of the ERA.

Victimisation

27. The claimant was not victimised, although it is accepted that the claimant did make some protected acts the claimant was not treated less favourably by reason of it. The distinction must be drawn between the respondent taking issue with the fact that the claimant having done the protected act and taken issue with the manner in which she does it section 27 of the Equality Act 2010 also fails.

Employment Judge Wedderspoon

10 December 2019