



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4102053/2017**

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**Held in Glasgow on 23, 24, 25 and 30 April 2019**

**Employment Judge: Mary Kearns (sitting alone)**

10 **Mrs M Bori**

**Claimant  
In Person**

15 **Glasgow City Council**

**Respondent  
Represented by:  
Mr Anderson -  
Advocate**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The Judgment of the Employment Tribunal was that the claimant did not make any protected disclosures to the respondent. The case is dismissed.

### **REASONS**

1. The claimant presented an application to the Employment Tribunal on 23 June 2017 in which she claimed automatically unfair dismissal by reason of having made protected disclosures. She also stated that she had been subjected to detriments for the same reason contrary to section 47B of the Employment Rights Act 1996 ("ERA"). The respondent resists the application. At a Preliminary Hearing on 29 October 2018, the Employment Tribunal ordered that the claimant's document headed 'List of Protected Disclosures as alleged by Claimant' be accepted as the list of disclosures upon which the claimant seeks to rely. The claimant's case is that she made twenty-four protected disclosures as set out in the table below.

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**Issue**

2. The case was set down for a Preliminary Hearing in order to determine the following issue: whether any or all of the disclosures listed by the claimant below were protected disclosures within the meaning of Part IVA Employment Rights Act 1996:

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<b>[1]</b>	<b>Date of Disclosure</b>	<b>On or around 24/25 October 2015</b>
	Identity and Capacity of the persons to whom the disclosures were made	Jo Donnelly (Services Manager Orchard Grove)
	The means by which the disclosures were made	Conversation
	Summary of the subject matter	Advising Jo Donnelly that residents have fungal infections
	ERA details	43B(b) and 43B(d)
<b>[2]</b>	<b>Date of Disclosure</b>	<b>10 December 2015</b>
	Identity and Capacity of the persons to whom the disclosures were made	Cathy McDonald (Senior Care Worker & Senior in charge of Grape Unit)
	The means by which the disclosures were made	Meeting – see GCC Ref Appendix 14 Page 3 – R7b -1
	Summary of the subject matter	Meeting in which complainant discloses that Senior Annette Galbraith (Senior Social Care Worker in charge of Orange Unit) and Cordia Senior Staff Member, former workers at MerryLea Lodge are making complainant's life uncomfortable.
	ERA details	43B(b) and 43B(d)
<b>[3]</b>	<b>Date of Disclosure</b>	<b>26 January 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Cathy McDonald (Senior Care Worker & Senior in charge of Grape Unit)
	The means by which the disclosures were made	Email – GCC Doc “A34” – 2

	Summary of the subject matter	Email asking about consequences of mixing infected hosiery in laundry
	ERA details	43B(b) and 43B(d)
<b>[4]</b>	<b>Date of disclosure</b>	<b>Between 11 – 16 February 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Cathy McDonald (Senior Care Worker & Senior in charge of Grape Unit)
	The means by which the disclosures were made	Email – see document “A15” – 3
	Summary of the subject matter	Residents complained of the cold in dining rooms and bedrooms and of not being allowed to put up pictures – many wanted to leave
	ERA details	43B(b) & 43B(d)
<b>[5]</b>	<b>Date of Disclosure</b>	<b>27 February 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Catherine McDonald (Senior Social Care Worker), Jo Donnelly (Services Manager OG) Therese Fallon (Operating Manager OG) Fiona Wells (Operating Manager former Manager MerryLea Lodge)
	The means by which the disclosures were made	Email – see “Grape incident” documents “A35-37” – 4
	Summary of the subject matter	Quotes from professional sources as to how fungal infections of toenails may adversely affect lives of elderly & vulnerable persons especially those with diabetes
	ERA details	43B(b) & 43B(d)
<b>[6]</b>	<b>Date of Disclosure</b>	<b>28 February 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Therese Fallon (Operations Manager) Fiona Wells (Operations Manager) Catherine McDonald (Senior Social Care Worker)
	The means by which the disclosures were made	Meeting
	Summary of the subject matter	Discussion about an incident during which complainant discloses concerns that several

		Residents with apparent fungal nail infection have no curative plan of treatment/have not been referred to GP's for such
	ERA details	43B(d) and 43B(d)
<b>[7]</b>	<b>Date of Disclosure</b>	<b>2 March 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Jo Donnelly (Services Manager) Therese Fallon (Operations Manager) and Catherine McDonald (Senior Social Care Worker)
	The means by which the disclosures were made	Email – see document “A40”
	Summary of the subject matter	More evidence from professionals that fungal infection presents risk to health of Residents especially those with diabetes. See Documents A40.
	ERA details	43B(b) and 43B(d)
<b>[8]</b>	<b>Date of Disclosure</b>	<b>2 March 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Jo Donnelly (Services Manager) Fiona Wells (Operations Manager) and Catherine McDonald (Senior Social Care Worker)
	The means by which the disclosures were made	Email – see document “A41 a, b, d” & “A40b” – 6
	Summary of the subject matter	More evidence from professionals that fungal infection presents risk to health of Residents especially those with diabetes. See Documents A41.
	ERA details	43B(b) and 43B(d)
<b>[9]</b>	<b>Date of Disclosure</b>	<b>29 March 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Catherine McDonald (Senior Social Care Worker)
	The means by which the disclosures were made	Email – see document “A47 a b” - 7

	Summary of the subject matter	Complainant disclosed that worker was making false allegations
	ERA details	43B(b) and 43B(d)
<b>[10]</b>	<b>Date of Disclosure</b>	<b>29 March 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Therese Fallon (Operations Manager)
	The means by which the disclosures were made	Conversation
	Summary of the subject matter	Meeting during which Complainant disclosed that worker was making false allegations
	ERA details	43B(b) & 43B(d)
<b>[11]</b>	<b>Date of Disclosure</b>	<b>5 April 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Therese Fallon (Operations Manager) Fiona Wells (Operations Manager) Cathy McDonald (Senior Social Care Worker)
	The means by which the disclosures were made	Email see document "A48 a, c, d, e" – 8
	Summary of the subject matter	Reflection on meeting content, complainant disclosed that workers are failing to meet SSSC standards
	ERA details	43B(b) & 43B(d)
<b>[12]</b>	<b>Date of Disclosure</b>	<b>14 April 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Sharon O'Brien (Senior Social Care Worker), Senior in charge of Peach Unit, former staff at MerryLea Lodge)
	The means by which the disclosures were made	Email – see document "A51a" attached – 9
	Summary of the subject matter	That urgent care is required in respect of resident's feet
	ERA details	43B(b) & 43B(d)
<b>[13]</b>	<b>Date of Disclosure</b>	<b>6 May 2016</b>

	Identity and Capacity of the persons to whom the disclosures were made	Catherine McDonald (Senior Social Care Worker)
	The means by which the disclosures were made	Email & Resident medical notes – Documents – “A61” – 10
	Summary of the subject matter “A61”	Resident’s being in extreme pain and left without painkillers even though available from local 24 hours Asda Shopping Centre
	ERA details	43B(b) & 43B(d)
<b>[14]</b>	<b>Date of Disclosure</b>	<b>9 May 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Irene Milliken (Care Worker Orange Unit – previously Merrylea Lodge)
	The means by which the disclosures were made	Conversation
	Summary of the subject matter	Complainant informed Ms Milliken that a resident’s feet are in extremely poor condition.
	ERA details	43B(b) & 43B(d)
<b>[15]</b>	<b>Date of Disclosure</b>	<b>9 May 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Catherine McDonald (Senior Social Care Worker) & Sharon O’Brien (Senior Social Care Worker)
	The means by which the disclosures were made	Conversation
	Summary of the subject matter	Client informed Catherine McDonald and Sharon O’Brien that a resident’s feet are in chronic condition affecting his ability to walk. Client asks CMcD and SOB to have a look at the Resident’s feet and asks if this is neglect
	ERA details	43B(b) & 43B(d)
<b>[16]</b>	<b>Date of Disclosure</b>	<b>9 May 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Catherine McDonald (Senior Care Worker)
	The means by which the disclosures were made	Email – see document “A66a” - 11

	Summary of the subject matter	That the condition of resident's feet is shocking and in "dire need of GP consultation".
	ERA details	43B(b) & 43B(d)
<b>[17]</b>	<b>Date of Disclosure</b>	<b>25 May 2016 onwards</b>
	Identity and Capacity of the persons to whom the disclosures were made	Richard Thomson (Fitness to Practise Investigator)
	The means by which the disclosures were made	Conversation – series of telephone calls
	Summary of the subject matter	Several calls made with concerns about failure of Orchard Grove's staff to meet SSSC Standards and resulting investigation due to complainant having raised these concerns.
	ERA details	43B(b) & 43B(d)
<b>[18]</b>	<b>Date of Disclosure</b>	<b>10 June 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Catherine McDonald (Senior Social Care Worker)
	The means by which the disclosures were made	Email – see document "A79" - 12
	Summary of the subject matter	Information regarding effects of fungal infections and potential risk to vulnerable – especially diabetic – Support Users to be sent to SSSC for consideration
	ERA details	43B(b) & 43B(d)
<b>[19]</b>	<b>Date of Disclosure</b>	<b>14 June 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Richard Thomson (Fitness to Practise Investigator – SSSC)
	The means by which the disclosures were made	Email see document "A81a" – 13
	Summary of the subject matter	Email confirming concern raised over the phone that complainant has been raising issues with regard to Resident care which she believes has incurred complaints from staff in retaliation with

		documents attached to support her case
	ERA details	43B(b) & 43B(d)
<b>[20]</b>	<b>Date of Disclosure</b>	<b>29 June 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Jacqueline McCormack (Senior Officer GCC acting on behalf of I Cleary Investigating Officer – GCC) & Richard Thomson (Fitness to Practise Investigator – SSSC) for attention of aforementioned I Cleary
	The means by which the disclosures were made	Email – see documents titled “A82 a b d e” - 14
	Summary of the subject matter	Client informs I Cleary that GPs are not being informed of infections which may adversely affect Residents’ health & workers failing to meet SSSC Standards & risk to diabetics and possible burden of costs to NHS & GCC.
	ERA details	43B(d) & 43B(d)
<b>[21]</b>	<b>Date of Disclosure</b>	<b>29 September 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Catherine McDonald (Senior Social Care Worker)
	The means by which the disclosures were made	Email see document attached – submitted to GCC but missing “FW visitors and resident mealtimes” – 15
	Summary of the subject matter	Report at Seniors insistence their worker in Orange Unit failed to allow Residents to dine with their guests, which is contrary to SSSC standards
	ERA details	43B(d) & 43B(d)
<b>[22]</b>	<b>Date of Disclosure</b>	<b>8 September 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	R Wilkie (Care Worker & Union Representative)

	The means by which the disclosures were made	Email – 16 see attached email “Re other stuff” - 16
	Summary of the subject matter	Informs Union Rep that workers are failing to meet SSSC Standards
	ERA details	43B(d) & 43B(d)
<b>[23]</b>	<b>Date of Disclosure</b>	<b>16 October 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	I Cleary (Investigating Officer)
	The means by which the disclosures were made	Email “A89 & 90 d”
	Summary of the subject matter	Correction/comments Fact Finding Minutes – I Cleary MB discloses workers at OG fail to meet SSSC Standards f j l k, potential cost to NHS & GCC – d
	ERA details	43B(b) & 43B(d)
<b>[24]</b>	<b>Date of Disclosure</b>	<b>14 October 2016</b>
	Identity and Capacity of the persons to whom the disclosures were made	Jo Donnelly (Services Manager)
	The means by which the disclosures were made	Emails “A91 a b c d e” - 18
	Summary of the subject matter	Two emails reporting concerns re Seniors Cathy McDonald & Sharon O’Brien (were failing to respect staff members)
	ERA details	43B(b) & 43B(d)

### Observations on the Evidence

3. The claimant was a sincere and honest witness and I had no doubt that she was trying to do her best as she saw it for the residents she looked after. She was frank that her memory was not entirely reliable in relation to the timing of events and some of the detail. This was also the case with the respondent’s witnesses. The events in this case began nearly four years ago and it is unsurprising that memories have faded. I did not conclude that any of the witnesses were deliberately untruthful but there were issues with the reliability

of some of the detail on both sides. For example, the claimant changed the dates of some of the alleged disclosures from those originally specified. I have resolved conflicts in the evidence where necessary as set out below.

4. The claimant did appear somewhat focused on foot care and her concern that some residents might have undiagnosed foot infections was clearly a source of much anxiety for her. When the claimant went to see the home's general manager, Joanne Donnelly about her concerns shortly after she began working at Orchard Grove, the evidence, including the claimant's was that Ms Donnelly took her concerns very seriously and asked her to ensure contact was made with the residents' GPs.
5. I found Joanne Donnelly to be an honest witness who made appropriate concessions and gave her evidence carefully and in a measured way. I accepted her evidence, as overall service manager that no residents were confirmed as having fungal foot infections. This appeared consistent with the documentary record so far as this was referred to, both by the claimant and by the respondent's witnesses. The claimant referred to a number of patient records and diary extracts which she had lodged. Although a number of these concerned GP referrals for possible foot infections and/or the sending of toenail samples from residents to GPs for testing, none recorded positive test results. Of course, while the claimant requires to prove that she disclosed information that she reasonably believed tended to show one of the matters listed in section 43B(1) ERA, there is no requirement for her to demonstrate that her belief was factually correct. A belief may still be reasonable even though it turns out to be wrong.
6. One major conflict in the evidence concerned the condition of resident 3's feet on 6 or 9 May 2016. The claimant's evidence was that she thought he had a fungal foot infection and that his nails were very long and poking through his socks like bird claws. However, resident 3's key worker Irene Milliken testified that she had showered him that morning and that there was nothing wrong with his feet. Ms Milliken said that the claimant had told her that resident 3 had a fungal foot infection and that she was to use tea tree oil on his feet, but Ms Milliken had replied that he did not have an infection, that she had checked

his feet that morning and that she was not using tea tree oil because she could only use what the GP prescribed. Ms Millken said that the claimant had taken the resident into his room and he had come out "*not a happy person*" saying to the claimant that there was nothing wrong with his feet. Ms Millken said that if she had noticed anything wrong with his feet she would have contacted the appropriate outside agencies. Under cross examination by the claimant, Ms Millken accepted that the claimant might have described resident 3's nails as poking through his socks but said she did not remember that. Ms McDonald could not remember the incident at all and was only able to say that if the claimant had reported this to her, she would have checked. However, it transpired that it had in fact been Sharon O'Brien and not Ms McDonald who had checked the resident's feet. The claimant's evidence was that Ms O'Brien had gone and checked the resident's feet and had come back saying they were "*no great*". When this was put to Ms O'Brien by the claimant in cross examination her response was: "*That's not true*". On balance, I accepted Ms O'Brien's evidence on whether she said this, though not much turns on it given that according to the diary there was an instruction that day to refer him to his GP.

7. In her cross examination of Ms McDonald and Ms Donnelly the claimant suggested that a resident 10 had had treatment for a foot infection, but no further evidence was provided, and the claimant did not raise this in her own evidence.

### **Findings in Fact**

8. Note: For ease of reference, the numbered alleged disclosures above are referred to below in bold square brackets, for example: **[1]** denotes the first alleged disclosure in the list above.

9. The following facts were admitted or found to be proved:-

10. The respondent is Glasgow City Council. The respondent runs a number of care homes in the city. The claimant started employment with the respondent as a social care assistant on 1 March 2015 at Davislea Home for the Elderly.

On 23 October 2015 the claimant transferred from Davislea to Orchard Grove Residential Care Home (“Orchard Grove”).

11. Each resident in Orchard Grove is allocated a ‘key worker’. A key worker is a social care worker (not an assistant) who is responsible for compiling and implementing the health and social care plan for that resident. They must ensure that resident’s intimate and personal care is adhered to morning and evening. With regard to a resident’s feet, a key worker files and clips toe-nails when required and can make a referral to the resident’s podiatrist or GP if necessary. At some point in the first half of 2016 a ‘Footcare Package for Care Homes’ (R399 – 400) was brought in to record footcare for each resident as part of their health and social care plan. At the same time, one of the social care workers became a ‘foothealth champion’ which involved assuming responsibility for ensuring the tasks set out on the form were carried out for each resident.
12. In a previous job the claimant had worked with dementia patients in Fife and had noticed that some patients had fungal infections on their feet, which affected their toenails making them hard and opaque. The claimant became interested in the subject of fungal foot infections and possible alternative remedies. By the time she began working for the respondent she had spent a lot of her own time researching the subject on the internet.
13. When the claimant started working at the respondent’s Davislea home she thought that some of the residents had fungal foot infections, which she believed could be treated with tea tree footbaths. She bought some tea tree products and asked her own GP if it would be appropriate to use them diluted in a footbath. Her GP said he did not think the products contained enough tea tree to do any harm, but to do a skin test first. The claimant also phoned a podiatrist for advice. Having done this, the claimant took tea tree shower gel and face foam to the Davislea manager and was given permission to offer residents a footbath if they wanted one and if time permitted. The claimant found that when she gave some residents foot baths, others requested them too. It was her belief that the combined use of the shower gel footbath and the face foam as a protective barrier cleared up fungal infections over time and

she began to see an improvement in the foot health of the residents concerned.

14. The claimant's first shift at Orchard Grove was on 23 October 2015. [1] On or about 3 November 2015 (not 24/25 October 2015 as specified in the claimant's list of protected disclosures) the claimant approached the Orchard Grove services manager, Jo Donnelly. She knocked on Ms Donnelly's door and asked if she could "*have a wee word*". She told Ms Donnelly that she had noticed as a member of the peripatetic team that some of the residents had fungal foot infections with brown crusty nails. Ms Donnelly was concerned and told the claimant that she wanted her to identify the residents with infections and put their names in the diary. She said that she wanted their GPs contacted to see whether the GP was aware of the infection and if not, then the residents were to have appointments immediately to go down to the GP's surgery. Ms Donnelly gave the claimant permission to discuss the matter with the other care workers. She again instructed that entries be made in the diary. The claimant told Ms Donnelly what she had done at Davislea and asked whether she would be interested in her repeating tea tree treatments at Orchard Grove. Ms Donnelly said that there should be footbaths in the home and to speak to the care workers. The claimant spoke to the other care workers, hoping to inspire them with the curative properties of tea tree. However, she sensed that the care workers were hostile to the idea, possibly due to pressure of other work.

15. On or about 14 November 2015 the claimant went to see Ms Donnelly again and told her that she sensed a bit of hostility to her idea about the tea tree footbaths and that the other care workers were not enthusiastic. She said she was not getting much success. Ms Donnelly asked the claimant to talk to the key workers for the residents concerned. The claimant tried to contact the key workers by leaving messages in the diary but she found it difficult to get in touch with them. However, the key workers did send the residents she had identified as having foot infections to the chiropodist and made GP referrals where appropriate. The claimant went back again to see Ms Donnelly in her office on or about December 2015. She told Ms Donnelly that she did not think

her previous suggestion of contacting key workers was working. Ms Donnelly told the claimant that if she thought a resident had a fungal nail infection, the GP was to be contacted and the claimant was to make the diary entry herself to contact the GP and ask if they were aware of the infection and if not, to make an appointment. In all, the claimant had three conversations with Ms Donnelly. The home had good relations with residents' GPs and podiatrists and GPs were contacted if there were any concerns about residents' feet being infected.

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16. On or about 15 November 2015 the claimant had a disagreement with Annette Galbraith, a senior worker in the 'Orange' Unit. Towards the end of November 2015 the claimant was moved from being a peripatetic worker to the 'Grape' unit. Her senior at Grape was Cathy McDonald. **[2]** On or about 10 December 2015 the claimant had a meeting with Cathy McDonald, who told her that she would be her line manager from now on. Ms McDonald asked the claimant how she was settling in and whether she found the management and staff to be approachable and supportive. The claimant said that there was only one senior social care worker ("SSCW") who she did not find approachable and that was Annette Galbraith. She said: "*She's a bit down on me and we don't get on.*" The claimant told Ms McDonald that there was a clash of personalities between herself and Ms Galbraith and that she would rather speak to another SSCW if she had anything to discuss. Ms McDonald asked if it was anything in particular and the claimant said no, it was just her manner. The claimant went on to say that she also had a few issues with one of the Cordia staff who was not happy with the amount of laundry she was taking down on a daily basis. She said that 'the girl kept complaining about her bringing laundry'. Ms McDonald offered to discuss this with the supervisor. The claimant said that she would deal with it but that if it continued she would bring it to Ms McDonald's attention again (R91).

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17. **[3]** On or about 26 January 2016 the claimant emailed Ms McDonald (R93) with the subject heading: "*Health Care Plans for Toenails Orchard Grove*" in the following terms: "*Dear Cathy, As you know I have been trying to bring attention to the serious number of elderly people with nail infections within the*

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Care System who/whose carers do not apparently know that many cases are curable and not just due to the inevitability of old age.// According to one study made in or around 2006 it is possible that 87% of cases of toenail infection and distortion of nail due to the nail bed are caused by candida albans – more commonly known as thrush.// My understanding is that thrush is ferociously contagious.// My question if hosiery from residents who may have infectious nails should go into the red bag or ordinary wash. Yours Moira.” Ms McDonald responded by email later the same day saying that if all staff adhered to procedures this would avoid and minimise the risk of infection; that gloves and aprons should be worn at all times and that “Residents whom you feel could benefit from wearing hosiery, discuss with the resident and staff members within Grape Grange, purchase hosiery for those residents who wish to wear them.”

18. On 5 February 2016 the claimant put an entry in the ‘Orange Unit’ diary (C47/153) as follows: “Can staff please contact GP of [names redacted] and ask if aware of Onychomycosis with these residents.”

19. On Sunday 7 February 2016 Ms McDonald asked the claimant to hold a residents’ meeting to ask their opinions on activities, such as the film club and art and gardening projects. However, unfortunately a resident became ill in the afternoon and the meeting could not be arranged. Accordingly, the claimant visited the residents in their rooms. Having done so she recorded their views in a written document (R95) which she printed out and brought to the attention of Emma Wylie between 11 and 16 February 2016 [4]. Ms Wylie told her to put it into the activities folder in the office. The claimant made Ms McDonald aware that she had done so and Ms McDonald told her she would read it later. The document recorded so far as relevant that the residents had raised the following issues:

“1. Residence is very cold at times

I. It was generally agreed that the dining room was usually chilly at mealtimes especially for those seated in the window seats. Recently residents seated by the windows dining room and

*lounge, and also by the hearth in the lounge have found themselves sitting in a chilly draft.*

II. *Some residents noted that rooms were often chilly with drafts coming in through the vents. One resident said even the vent for the sprinkler system sent a chilly draft into her room.*

III. *She also said staff tended to open her windows, presumably to air the room, but that they did not close them again on leaving the room, so that when she got back to her room it was cold.”*

20. [5] On 27 February 2016 the claimant sent an email (R97) to Ms McDonald at 20:07 hours. The email was copied to Joanne Donnelly, Fiona Wells and Therese Fallon. The email said “*Dear Cathy, There has been an incident and I am sending you my report of events. Moira Bori*”. The attachment (R101) comprised two closely typed pages of A4 and contained the following statements: “*I had been told that a certain resident’s family did not want any of the carers to clean her feet unless they were medical professionals. The nails of this particular resident’s toes seem to be shrunken/swollen dark brown in colour and look quite uncomfortable....as many as 87% of nails in a similar condition are caused by an infection called “Candida Albicans”.....When the Candida Albicans population starts getting out of control it weakens the intestinal wall, penetrating through into the bloodstream and releasing its toxic byproducts throughout the body. As they spread, these toxic byproducts cause damage to you body tissues and organs, wreaking havoc on your immune system.”* The claimant mentioned that candida albicans was more complicated to treat in people with uncontrolled diabetes.

21. The claimant then went on to report in the attachment that she had left resident 2 with her feet in a footbath while she went to take resident 1 to the toilet. However, resident 1’s two sons were visiting and had taken her to a table. The claimant said that she had asked permission to join them and they had agreed. She stated: “*I mentioned [resident 1]’s possible toenail infection and began to ask for permission for her to join the foot pampering sessions, if and when her feet were fit enough. [Resident 1] has diabetes...*” The claimant then went on to report that the sons had become angry and

complained about her and that she had been upset and had forgotten that [resident 2] was in her room with her feet in a footbath.

22. The next day, 28 February 2016 the claimant attended a meeting [6] with Fiona Wells, Sharon O'Brien and Cathy McDonald. The meeting had been arranged to discuss the incident the previous day. During the meeting the claimant told those present that she thought resident 1's feet were in a serious condition of onychomycosis, or fungal infection. She said she thought it needed to be investigated by her GP and that they were beginning to discover links between fungal foot infections and urinary tract infections.
23. The claimant was not in work for the next few days as she was taking ten days' break. She began to worry that she had let the residents down by not standing her ground at the meeting on 28 February. She prepared a document about the symptoms, causes and treatment of onychomycosis and its seriousness in the elderly. The document consisted of extracts from articles in the Journal of the American Academy of Dermatology. The claimant attached the document to an email dated 2 March 2016 (R103) to Therese Fallon copied to Cathy McDonald under the subject heading "onychomycosis". [7] She stated in the email: *"Dear Ladies, I have been trying to find the document saved way back in the 06's about Candida Albicans and Onychomycosis....Meanwhile if I may a document with links with I believe enough information, to ask why some of the residents in council care for over a year or more have such bad condition and why care workers are so reluctant to embrace this simple effective solution."* The claimant sent a further email dated 2 March 2016 (R107 & C64) [8] to Joanne Donnelly and Fiona Wells, copied to Ms McDonald to which she attached further articles from the British Journal of Dermatology, and the Canadian Medical Association Journal about onychomycosis. The email itself carried the subject heading *"More about care for Onychomycosis"* but was otherwise blank.
24. On 4 March 2016 the claimant made the following entry in the 'Orange' diary (C69/153): *"Please phone GP to ask if aware of onychomycosis. If not, make appointment for the following residents please: [five names redacted]. Please ask GP permission to use tea tree foam and tea tree and mint footbath in*

*personal care please to help eradicate. Please also call GPs of following residents severe cases possible onychomycosis. [three names redacted].” At some point between the claimant making the entry and the Tribunal Hearing, the entry had been scribbled over.*

5 25. On 29 March 2016 at 15:53 the claimant sent an email **[9]** to Ms McDonald (R115) with the subject heading ‘OG Peach’. The email said simply: “*Dear Cathy, Report of incident this morning in Peach attached. Thank you for your time. Moira Bori*”. Attached to the email was a one-page document (R117). In the document the claimant reported an incident in which another care worker had accused her of wrongly applying baby lotion to the skin of a resident with an irritable skin condition. She stated: “*This is the second time that the care worker has created a false story about me to make me look bad, that I am aware of at least, the first being when I had to take a resident to room for wash – a resident I knew to have possible Onychomycosis and so I asked care worker if I might use tea tree foam, care worker said no and that was fine because I then knew that senior staff had still not put in place as promised care plan for happy feet – heels, toe nails length colour and health, and finally care required or not and what kind of care – tea tree footbath plus tea tree wipes or medical route – medication from doctor risking clash with other*

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20 *medications etc.// But then, apparently, the care worker went down to the office and told seniors that I had applied tea tree foam when I have made agreement with seniors and management not to give approved care until their care plan is decided upon.*”

26. On or about 29 March 2016 the claimant had a staff supervision meeting **[10]** with Cathy McDonald and Therese Fallon. A record was kept (R185). The record stated that the purpose of the meeting was to discuss “*progress of additional personal development meetings and outcomes with line manager Cathy McDonald.*” The record referred to ‘some concerns’ having been raised by relatives and stated: “*we explored and discussed how these incidents could have been better managed to safeguard and promote confidence in the care delivered*”. The record went on: “*I am aware that a few issues were addressed over the last few weeks and months and Fiona Wells did meet with*

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5           you and asked that you did not use oils of any type when attending to feet as  
the whole care plan and health conditions of the residents need to be  
considered you stated that you have been accused of continuing to use this  
by a SCW when you have not I said I would address this with the staff  
member.// I understand that you have concerns re a foot condition that people  
10           can get and that you are clearly very passionate about and have read the  
affects this could have if not treated, and have asked that all residents are  
seen by their GP urgently, you have been informed that podiatry services will  
inform us if any individual resident requires further treatment and the GP will  
15           be contacted if residents require medical care. ”

27.       At the meeting the claimant also raised an issue about laundry. Ms Fallon said  
that the claimant had asked the laundry staff to re-laundry clean clothes which  
was increasing their workloads. The claimant said that elderly people  
sometimes have accidents and are embarrassed so they may fold up the  
15           clothes and put them in a drawer. She went on that if a duvet smelt of urine  
she would send it to the laundry and said that when the duvets came back  
from the wash some of them were lumpy.

28.       On 5 April 2016 the claimant sent an email to Therese Fallon at 1:33 (R191)  
in the following terms: “*Dear Therese, I hope you don’t mind my [not] waiting  
20           until I receive your minutes or until I am next in but I felt overwhelmingly  
disappointed since our last meeting and felt obliged to respond.*” Attached to  
the email was a three-page document [11]: ‘OG Communications 2016 3  
29.doc 02/04/16 09:05:21’ (R195). In a section headed ‘3 Complaints’ (R196)  
the claimant stated: “*You mention that you continue to get complaints about  
25           my work and yet I find myself time and time again in controversy with senior  
members/ members with longevity who inform/ask me to move those  
residents and senior citizens who simply do not wish to move or rise. Time  
and time again I am ignored when I try to inform staff that a resident is out of  
sorts, unable to walk, in pain, unsteady unusually tired, sleeping during meals,  
30           and yet time and time again it has proved that residents are indeed out of  
sorts tired, unwell and in hospital when next I visit.// One resident whose  
eyesight I reported to be failing, who was exceptionally unsteady and*

uncommonly desirous to stay in bed, was forced to walk and a report filed that he had eaten well when he had not eaten a bite – the missing piece of food I found under his chair. Fortunately another worker must have agreed with me, because he was soon in hospital care but sadly died a few days later – exactly who is not adhering to council/SSSC policy?// One resident had been in pain for so long that when she finally got some sleep – thanks to my intervention – I thought I could smell urine, I decided to let her have her rest knowing that when she woke she would be able to wash we could change sheets and wash mattress easily enough, confident that rested and finally out of pain she would be able to join the other residents in daily activities..” In the document the claimant also stated: “staff need to be aware that some residents will store dirty washing in drawers along with clean laundry....”

29. The context of (R195) was that the claimant had been made aware by Ms Fallon at a meeting the previous week that there were a number of concerns with her work. These included an allegation that she had left a resident for some time in a urine-soaked bed. The three-page document she had produced and sent to Ms Fallon (quoted in the previous paragraph) contained the explanations she wanted to make for the incidents that had led to concerns being raised with her about her work.

30. On 14 April 2016 the claimant sent an email [12] to Sharon O’Brien with the subject heading: ‘OG Communications March 29’. Attached to the email was a document entitled: “happy feet.doc”. The email contained the following statements: “Over the past few weeks I have found that there are at least 7 residents in Peach whose nails need some kind of personal care most of whom would benefit from a tea tree footbath.// I have found feet that look as if they have not been cleaned.// At least two residents in Orange need nails cut one urgently especially when we are trying to get her to walk. Her nails are beginning to grow back into the skin – surely this would make walking painful and I am told we are trying to encourage her to walk...” The ‘Happy Feet’ document attached to the email was a blank chart the claimant had drafted for suggested use in recording residents’ feet issues.

31. On 5 May 2016 resident 4 was taken to see his GP (C8) by care worker Maria Stewart. The Health record records so far as relevant that *“A toe nail specimen (possibly 2 big nails) also has to be took and handed into the surgery this is to determine any infection in the nail. A urine sample was also handed in. Please contact surgery for test results..”* A further entry by Maria Stewart dated 9 May 2016 stated: *“Called Doctor’s surgery for update regarding recent urine sample that doctor wanted. All is fine and it came back clear.”* There was no entry in the extract produced to suggest that any foot infection had been diagnosed.
- 10 32. On 6 May 2016 the claimant sent an email (R127) **[13]** to Ms McDonald with the subject heading ‘Orange Concern’. In the email the claimant stated: *“Dear Cathy, I was very concerned last night. A resident [name redacted] in Orange – I think room 9 – was weeping in pain. She said the back of her legs I felt the they [sic] were sore to the touch but seemed very hard perhaps muscles cold and tight. I would have preferred to get her into shower or hot bath but she just wanted into bed. But I was shocked to find she had no painkillers at all. No gel and no paracetamol although she often complains.// The reasoning was apparently connected with her condition but the worker was resistant to asking GP to be contacted today to discuss gel and painkiller on request.”* In addition to sending the email the claimant put a note in the diary and the resident’s social notes. On receipt of the email Ms McDonald checked the position and found that the claimant had been mistaken. The patient did have painkillers prescribed by her GP.
- 25 33. On 6 May 2016 the claimant spoke to Irene Milliken, a care worker in Orange Unit. **[14]** The claimant told Ms Milliken that resident 3 had a serious fungal foot infection and should be given tea tree treatment. The claimant said to Ms Milliken that resident 3’s nails were very long and were poking through his socks. Ms Milliken said that resident 3 did not have an infection in his feet and that she could not use tea tree oil because she could only use what his GP prescribed. The claimant felt that Ms Milliken did not seem concerned about the matter so, at the end of her shift she took the matter up with Ms McDonald **[15]** in the reception area. She told Ms McDonald that she was shocked at

resident 3's feet; that his nails were poking through his socks and that they looked like bird claws. She asked Ms McDonald to go and have a look. Ms McDonald asked Sharon O'Brien to look into this. Ms O'Brien checked the resident's feet but did not find anything of concern.

5 34. On 6 May 2016 the claimant wrote in the Orange Unit diary (CG-27): *"Could someone please send sample of toe nail clippings [resident 3] to Dr for analysis."*

35. At 14:48 on 9 May 2016, the claimant emailed Ms McDonald (R129) **[16]** under the subject heading 'Orange Feet'. The email included the following statements:  
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*"Dear Cathy*

*So very happy that you are going to be looking at [resident 3]'s feet in Orange when you have time. I think when you see them you will agree that this condition is shocking and in dire need of GP consultation if I am not allowed to go down the non medical route (footbaths tea tree etc). [resident 3]'s smaller toe skins seem to be tight, pink and swollen – when I have seen skin like this there has been an infection painful and often itchy like for example yeast infection of fingernail or similar. The doctor was quite surprised at the condition of [resident 4] in Peach feet. I would say that in Orange [resident 5] and a few others are at least as bad as [resident 4] in Peach, [resident 6]'s toe nails are to my memory in pretty bad condition with skin irritation, but I may be wrong. There are several cases as bad as [resident 4] in Strawberry, in Plum and Peach that I know about although cannot remember names except P in Peach. Her condition is pretty bad and painful, and makes her cry."* She went on to say that although Jo Donnelly had asked her to identify bad conditions, report them to the care team and ask them to ensure the resident's GP knew about the condition, the care workers seemed very reluctant to 'trouble the doc' and that they did not seem to understand that chiropodists only cut and filed nails. She finished the email: *"Only the GP can send nail clippings etc for analysis and proscribe [sic] if necessary medication but this is even more necessary for persons with diabetes because they are in danger of broken skin from the condition when it gets bad so we need to*

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*check it is or is not infection same as we check for urinary infections – we take sample and send to doc”.*

36. With effect from 18 May 2016 the claimant was under disciplinary investigation in relation to allegations that she had failed to provide safe care to residents on certain occasions. The claimant was put on administrative duties from that date and was thereafter not working directly with residents.
37. On 25 May 2016 the claimant called the SSSC and spoke to Amy Chapple (R215). The claimant told Ms Chapple that she had received a letter stating that she was under disciplinary investigation. Ms Chapple asked the claimant for the contact number of her manager and advised her of the SSSC processes. She said she would be back in contact with her in due course. Thereafter, the claimant corresponded with Richard Thomson, a fitness to practise investigator at SSSC [17]. The claimant had a series of telephone calls with Mr Thomson.
38. [18] On 10 June 2016 the claimant emailed Cathy McDonald a number of attachments (R225 – 234) saying that they were the onychomycosis documents she was planning to send in to the SSSC. They comprised general information about onychomycosis, its symptoms, treatment etc. The claimant did not receive a reply to this email, so on 14 June 2016 she forwarded the same documents by email (R217) to Richard Thomson at the SSSC [19]. In the covering email of 14 June 2016 the claimant told Mr Thomson about her concerns about residents suffering from onychomycosis *and stated: “a resident on a unit I had occasion to work on had a possible (it is not for me to diagnose) very severe case which I reported a while back...”* She said that she had checked his feet *“just before this blew up”* and that: *“The nails had deteriorated so that now the nails on one foot looked like bird claws long and thin.”* She said she had brought it to the attention of her senior who had promised to go and look but had finally done so a few days later.
39. On 29 June 2016 at 17:01 the claimant sent an email to Jacqueline McCormack [20], a senior officer of the respondent acting on behalf of Isobel Cleary (the person conducting the claimant’s disciplinary investigation). The

5 email was copied to Richard Thomson. In the email she acknowledged receipt  
of a letter inviting her to an investigative interview on 21 July 2016 and stated  
that some senior care workers would not allow residents to have a lie in when  
they wanted to. She said she believed that her concern over cases of possible  
10 onychomycosis was at the core of *“all this trouble and discord with co-workers  
at OG especially those who I now find have apparently been caring for service  
users for many years, service users that I have identified as having possible  
(I am not allowed to diagnose, but pictures from the internet would suggest  
severe) cases of Onychomycosis.”* She said that since she had arrived at  
15 Orchard Grove there seemed to be several workers who were resisting her  
attempts to introduce effective foot care routines, and even her attempts to  
identify possible cases. She stated: *“I am disappointed that when I report a  
possible case, asking the care worker to log it in diary and medical log,  
sometimes myself logging request for discussion with GP and Medical sheet  
and Diary, as suggested by our service manager, it does not seem to have  
20 been followed through, since when I come back to the unit possibly months  
later there is no additional personal care routine in effect.// Maddeningly, at  
least one service users condition has worsened. The toe nails on one foot at  
least are now like bird claws and when I checked over long. I am especially  
upset because he had asked me in early March to help him clear the condition  
and I had promised to help him then and nothing has been done despite my  
asking folk to look into it.”* In the final paragraph of the letter the claimant wrote:  
*“It seems that there is no practice or policy in place to require Chiropodists to  
alert care staff to possible infection and recommendation to refer to GP for  
25 discussion of treatment...There does not seem to be any training in place to  
help service workers to know what to do when they meet possible cases of  
toenail infection, even non medical care such as I was apparently successfully  
offering at the Davislea.”*

40. Please see [21] in chronological order below.

30 41. On 1 September 2016 the claimant sent an email to Ross Wilkie, her union  
representative in which she stated: *“No tea coffee milk sugar basics at break  
time. No one wants to set up a contribution pay for the above to ensure it is*

there when we need it after working hard on shift. Management seem to be well served.” The claimant considered that this state of affairs was discouraging agency workers from wanting to work at Orchard Grove. [22] On 8 September 2016 at 10:52 the claimant sent another email (J143) to Ross Wilkie in which she stated: “I have been asked to get folk out of bed and stand for no nonsense when the unwilling resident (normally a stickler for being up and ready) dies three days later. Surely the whole purpose of the Super home and dining room/kitchen in every unit is so that the residents can enjoy breakfast when they wish, late or early...” The claimant’s purpose in sending these emails was to assist Mr Wilkie in representing her.

42. At 12:16 on 29 September 2016 the claimant sent an email to Cathy McDonald [21] under the subject heading “visitors and resident mealtimes” (R141). The email itself stated: “Dear Cathy this is the best I can do. Afraid that you seem to have wiped most from my head before it had quite set in.” Attached to the email was a letter to Ms McDonald (J142) from the claimant recounting two incidents which had both occurred on the same day the previous week. The earlier incident was said to have occurred around lunchtime and concerned the wife of a resident in Orchard Grove who had come in for a flying visit. The claimant said that she had phoned through to the unit and asked if the visitor could eat lunch with her husband. The claimant related that the care worker who answered the phone had initially refused and then said to send the wife down. However, the wife had come back half an hour later and said she had not even been offered a cup of tea and had had to cut the visit short to go to Asda and get something to eat. The later incident reported by the claimant concerned another visitor who had arrived at 4.10pm who had reported that one of the care workers had been rather abrupt and had not allowed the visitor to sit with the resident during the meal even though there was room at the table with the result that she had had to wait in the resident’s room and only had a five minute visit.

43. [23] On 14 October 2016 the claimant sent an email to Isobel Cleary (J235) in which she stated that the minutes of a fact-finding meeting held on 11

August 2016 contained errors. She attached a copy with the errors underlined and suggested corrections in brackets (J237 – 248).

44. [24] On 16 October 2016 at 9:06 the claimant sent two emails to Jo Donnelly (C2/ 128 and 129) copied to Cathy McDonald and Sharon O'Brien. In the first email the claimant stated:

*"Dear Jo*

*I have just been hauled into the office to discuss the matter of this morning. I tried to explain but was talked over. I was not allowed at any time to get my point across. I do not believe it is good management just to talk at a staff member and dictate. I left the "meeting" after I told the Seniors that while they may have a point in what they say (vis a vis resolving matters their way) I did not believe that their communications with me were respectful. If management cannot respect a worker's value then how can a worker discuss issues openly with management. This is where lies are told and confidences lost just because workers do not trust management...."*

45. At 15:13 on 16 October 2016 the claimant sent a further email to Jo Donnelly, again copied to Cathy McDonald and Sharon O'Brien (C2/ 129). The email bore the subject heading "*staff communications*". The claimant stated that the previous day an agency member of staff had asked for access to the storage cupboard to get toilet paper and towels and that the senior staff had been "*livid and very sharp about Cordia staff having to wait*". She stated that "*the Seniors were quite vocally critical and I think the Cordia staff member was rather upset...*" She also reported that an ASA worker who had just completed a 12.5 hours shift had been stunned to be told his photocopied time sheet was not acceptable because it was not in duplicate.

### **Applicable Law**

46. Section 43A ERA provides as follows:

#### ***"43A Meaning of "protected disclosure"***

*In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."*

47. Section 43B provides so far as relevant as follows:

**“43B Disclosures qualifying for protection**

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

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(a) .....

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

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(c) .....

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

(e) ....., or

(f) .....”

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48. In terms of Section 43C:

**“43C Disclosure to employer or other responsible person**

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure —

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(a) to his employer, or

(b) .....”

49. Finally, Section 43L which sets out other interpretative provisions states at sub section (3):

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“(3) Any reference in this Part to the disclosure of information shall have effect, in relation to any case where the person receiving the information is already aware of it, as a reference to bringing the information to his attention.”

**Discussion and Decision**

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50. The only question I am required to determine at this preliminary hearing is whether or not any or all of the alleged disclosures on the claimant’s list quoted above were protected disclosures in terms of Part IVA Employment Rights Act 1996 (“ERA”). As is apparent from the legislation set out above, in

order for a disclosure to be a qualifying disclosure it must satisfy a number of tests. I have applied these to the facts in relation to each alleged disclosure below. The tests to be applied to each alleged disclosure are described more fully below and are as follows: Did the claimant disclose information? If so, did she reasonably believe that the disclosure was made in the public interest and that it tended to show one of the prescribed matters? The final issue to be considered in relation to whether a qualifying disclosure is protected is whether it was made in the correct manner.

*Did the claimant disclose information?*

51. A qualifying disclosure must convey information, in the form of facts even if those facts are already known to the employer (Section 43L). Mere allegations are not sufficient. In Cavendish Munro Professional Risk Management Ltd v Geduld 2010 ICR 325 the EAT illustrated the distinction between information and mere allegation with the following example: “*The wards have not been cleaned for the past two weeks. Yesterday sharps were left lying around*” would amount to the communication of information. By contrast “*You are not complying with health and safety requirements*” would be an allegation but not (without more) the conveying of information. However, it is important to note that there is no rigid dichotomy between ‘information’ on the one hand and ‘allegations’ on the other, as the recent case of Kilraine v London Borough of Wandsworth [2018] EWCA (Civ) 1436 cited by Mr Anderson makes clear. In Kilraine the Court of Appeal said that the EAT’s example in Cavendish Munro: “*You are not complying with health and safety requirements*” was so general and devoid of specific factual content that it could not be said to fall within the language of section 43B(1) so as to constitute a qualifying disclosure. In order for a statement to be a qualifying disclosure, they said, it has to have sufficient factual content and specificity to tend to show one of the matters listed. The Court said that whether an identified statement meets that standard is a matter for “evaluative judgment” by the Tribunal in light of all the facts of the case, assessing the disclosure in context. Context may be particularly important, both in considering whether the above test is met and also in assessing whether the worker making the disclosure reasonably believed it

tended to show one of the relevant matters. The Court of Appeal adapted the example given in Cavendish Munro to say that if the worker had brought his manager down to a particular ward in a hospital, gestured to sharps lying around and said ‘*You are not complying with health and safety requirements*’  
5 the statement would have derived force from the surrounding context and could then have constituted a qualifying disclosure.

*If the claimant did disclose information, did she reasonably believe that the disclosure was (i) made in the public interest and (ii) that it tended to show one of the prescribed matters?*

10 *Reasonable belief*

52. A qualifying disclosure must, in the reasonable belief of the worker making it be made in the public interest and tend to show one or more of a number of the states of affairs listed in Section 43B(1) (a) to (f). (In this case the claimant relies on s. 43B(b) and/or (d)). In Kilraine the Court of Appeal said this (at  
15 paragraph 35 – 6):

*“Grammatically, the word ‘information’ has to be read with the qualifying phrase, ‘which tends to show [etc]’ (as, for example, in the present case, information which tends to show that a person has failed or is likely to fail to comply with any legal obligation to which he is subject). In order for a  
20 statement or disclosure to be a qualifying disclosure according to this language, it has to have sufficient factual content and specificity such as is capable of tending to show one of the matters listed in sub-s (1). The statements in Cavendish Munro did not meet that standard.*

*36 Whether an identified statement or disclosure in any particular case does  
25 meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in s 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by  
30 Underhill LJ in Chesterton Global at [8], this has both a subjective and an objective element. If the worker subjectively believes that the information he*

*discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief.*

5 53. Thus, whilst this is a subjective test in the sense that section 43B says “*in the reasonable belief of the worker making the disclosure*” it has an objective element to it. The belief must be “*reasonable*” which suggests there must be some proper basis or degree of substantiation for it. The test in Kilraine was summarised thus by Choudhury P in Dray Simpson v Cantor Fitzgerald Europe UKEAT 0016/18: “69. *The Tribunal is thus bound to consider the content of the disclosure to see if it meets the threshold level of sufficiency in terms of factual content and specificity before it could conclude that the belief was a reasonable one. That is another way of stating that the belief must be based on reasonable grounds. As already stated above, it is not enough*  
10 *merely for the employee to rely upon an assertion of his subjective belief that the information tends to show a breach.*”

15 54. In Babula v Waltham Forest College [2007] ICR 1026, the Court of Appeal considered the reasonable belief provisions of s.43B of the 1996 Act. Wall LJ held: “41. *Darnton's case [2003] ICR 615 seems to me clear authority for the*  
20 *proposition that whilst an employee claiming the protection of section 43(1) of ERA 1996 must have a reasonable belief that the information he is disclosing tends to show one or more of the matters listed in section 43B(1)(a) to (f) , there is no requirement upon him to demonstrate that his belief is factually correct; or, to put the matter slightly differently, his belief may still be*  
25 *reasonable even though it turns out to be wrong. Furthermore, whether or not the employee's belief was reasonably held is a matter for the Tribunal to determine.*”

#### *Public interest*

30 55. In relation to the public interest test, Mr Anderson reminded me of the dicta of Underhill LJ in Chesterton Global Limited v Nurmohamed [2017] IRLR 837. At paragraph 27 he said this: “*The tribunal thus has to ask (a) whether the*

worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.” He went on to observe that the tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker and that there may be more than one reasonable view of the matter. Finally, he stated: “I do not think there is much value in trying to provide any general gloss on the phrase “in the public interest”. Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression.” At paragraph 37 Underhill LJ listed some potentially helpful factors (from submissions recorded at paragraph 34) that would normally be relevant as follows:

“(a) the numbers in the group whose interests the disclosure served...;  
(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;  
(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;  
(d) the identity of the alleged wrongdoer – as Mr Laddie put it in his skeleton argument, “the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest” – though he goes on to say that this should not be taken too far.

56. At paragraph 35 Underhill LJ said this: “It is in my view clear that the question whether a disclosure is in the public interest depends on the character of the interest served by it rather than simply on the numbers of people sharing that interest.”

**The manner of the disclosure**

57. The fact that a disclosure is a qualifying disclosure under section 43B is not sufficient on its own to make it a protected disclosure. The disclosure must be made in the correct way. A qualifying disclosure made to the employer will normally be a protected disclosure. (Section 43C(1)(a) ERA).
58. Applying the above tests to the specific disclosures alleged:
59. **[1]** The claimant's first alleged disclosure was said to have been made verbally to Jo Donnelly, Services Manager at Orchard Grove on or around 3 November (not 24/25 October as stated on the claimant's list) 2015. The claimant's position in evidence in relation to the alleged disclosure was that she had knocked on Ms Donnelly's door and asked if she could "*have a wee word*". She testified that she had told Ms Donnelly that she had noticed as a member of the peripatetic team that some of the residents had fungal foot infections with brown crusty nails. Ms Donnelly's evidence in chief on the point was that quite soon after the new home had opened and the claimant's employment had commenced, the claimant had come to her office and spoken to her about the residents' feet. She accepted in cross examination that the claimant had told her that some residents had possible fungal foot infections. Thus, the claimant's evidence on this disclosure was supported to some extent by Ms Donnelly and I accepted the claimant's evidence about what she had said and made findings in fact accordingly. Mr Anderson submitted that nothing in the claimant's evidence indicated that any information was actually disclosed. I agreed with him that the statement set out in the findings in fact in relation to this alleged disclosure did not have sufficient factual content and specificity to constitute information tending to show one of the types of wrongdoing in section 43B(1), either the failure to comply with a legal obligation, or "*that the health or safety of any individual has been, is being or is likely to be endangered*".
60. This fundamental flaw is exemplified in the following question and answer from the claimant's cross examination:

Mr Anderson: *“There was nothing in that conversation whereby you were telling [Joanne Donnelly] that Glasgow City Council were doing something wrong and that the health or safety of any individual would be endangered?”*

Claimant: *“I didn’t in any of my disclosures say to Glasgow City Council they were doing anything wrong. I would have considered that impertinent. I was making them aware there was an issue.”*

5  
61. The nub of a qualifying disclosure is that the worker is disclosing information which in their reasonable belief tends to show one of the types of wrongdoing or failure listed in section 43B(1). It was clear that the claimant subjectively  
10 believed that some residents might have fungal foot infections, but not clear from her evidence that she was alleging wrongdoing or failure. The respondent had a procedure for referring suspected infection to a resident’s GP and the documents lodged indicate that the claimant and other workers used that procedure. It was apparent from diary entries and health records that toe-nail  
15 samples were sent to GPs for analysis. There was no evidence that any of these came back positive. (The claimant asked a question of two witnesses in relation to a [resident 10], who she said had been treated for a fungal foot infection, but she did not give evidence about this herself). An erroneous disclosure may still be a qualifying disclosure as set out above, but there must  
20 be a subjective belief that it tends to show one of the section 43B(1) categories of wrongdoing and that subjective belief must have some proper basis.

62. I therefore accept Mr Anderson’s submission that in these circumstances, where service users have all come from different places and been gathered into one new home, no failure or wrongdoing was being raised by the claimant’s  
25 statements. Ms Donnelly responded to the claimant entirely appropriately and instructed her to identify the residents with infections, put their names in the diary and ensure their GPs were contacted to see whether the GP was aware of the infection and if not, the residents were to have appointments immediately to go down to the GP’s surgery. According to the guidance given by Underhill  
30 LJ in Chesterton Global: *“If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it*

*is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief.*" In light of the claimant's concession that she was not reporting wrongdoing, but making the respondent aware that there was an issue, I concluded that this was not, in the circumstances, a qualifying disclosure tending to show either failure etc to comply with a legal obligation or endangerment of the health or safety of any individual.

63. **[2]** The claimant's second alleged disclosure was said to have happened at a meeting on 10 December 2015 with Ms McDonald. The claimant testified that she told Ms McDonald that there was only one senior social care worker who she did not find approachable and that was Annette Galbraith. She told her: *"She's a bit down on me and we don't get on."* She said there was a clash of personalities between herself and Ms Galbraith and that she would rather speak to another SSCW if she had anything to discuss. The claimant also said she had a few issues with one of the Cordia staff who was not happy with the amount of laundry she was taking down on a daily basis. She said that 'the girl kept complaining about her bringing laundry'. These statements do not contain *"sufficient factual content and specificity such as is capable of tending to show one of the matters listed"*. It was not clear that the claimant did believe that the statements tended to show failure to comply with a legal obligation or endangerment of the health or safety of any individual. Even had she done so there was no proper basis or degree of substantiation for such a belief. It would not be a reasonable belief. Additionally, as Mr Anderson submitted, there is nothing identifiably in the public interest. This does not amount to a qualifying disclosure.

64. **[3]** On 26 January 2016 the claimant emailed Ms McDonald as described above. The email did not, in my view contain sufficient factual content and specificity to tend to show either breach of a legal obligation or that the health or safety of an individual was etc endangered. It did not, therefore amount to a disclosure of information in terms of section 43B. The claimant simply made some general statements and asked a general question: *"My question if hosiery from residents who may have infectious nails should go into the red bag or ordinary wash."* This does not come close to a qualifying disclosure.

65. [4] On 7 February 2016 the claimant visited the residents in their rooms to seek their views on activities. She then produced a document (R95) which she brought to the attention of Emma Wylie between 11 and 16 February 2016. The document recorded so far as relevant that the residents had said the dining room was usually chilly at mealtimes and that recently there had been a chilly draft in the dining room and lounge; some residents said their rooms were chilly with drafts coming in through the vents; One said staff tended to open her windows and not close them again, so that when she got back to her room it was cold. As set out above, a qualifying disclosure must have sufficient factual content and specificity to tend to show (in this case) breach of a legal obligation or that the health or safety of an individual has been etc endangered. In this instance the claimant has simply asked residents for their views as instructed and passed on their comments. The claimant has not shown the disclosure of information in terms of section 43B. There is also no suggestion of wrongdoing or of any failure by the respondent to act upon the residents' observations.
66. The attachment at [5] was prepared for and discussed at the meeting [6]. On 27 February 2016 the claimant sent an email (R97) to Ms McDonald at 20:07 hours. The purpose of the email was to give her account of two incidents where her conduct had been criticised. The email said "*Dear Cathy, There has been an incident and I am sending you my report of events. Moira Bori*". The attachment (R101) [5] comprised two closely typed pages of A4 and contained the following statements: "*I had been told that a certain resident's family did not want any of the carers to clean her feet unless they were medical professionals. The nails of this particular resident's toes seem to be shrunken/swollen dark brown in colour and look quite uncomfortable....as many as 87% of nails in a similar condition are caused by an infection called "Candida Albicans".....When the Candida Albicans population starts getting out of control it weakens the intestinal wall, penetrating through into the bloodstream and releasing its toxic byproducts throughout the body. As they spread, these toxic byproducts cause damage to you [sic] body tissues and organs, wreaking havoc on your immune system.*" The claimant then went on to report that she had left [resident 2] with her feet in a footbath while she went

to take [resident 1] to the toilet. She had then forgotten about [resident 2] because of an altercation with [resident 1]'s relatives.

5 67. The next day, 28 February 2016 the claimant attended a meeting [6] with Fiona Wells, Sharon O'Brien and Cathy McDonald (C58/153) which had been arranged to discuss the incidents the previous day. I accepted the claimant's evidence that during the meeting she had told those present that she believed [resident 1]'s feet were in a serious condition of onychomycosis, or fungal infection and that she said she thought it needed to be investigated by her GP and that they were beginning to discover links between fungal foot infections and urinary tract infections.

10 68. Again, the claimant is reporting to the respondent her belief that a resident has a fungal foot infection, but she is not suggesting wrongdoing. The statements accordingly have insufficient factual content and specificity to tend to show that the health of an individual has been, is being or is likely to be endangered or that a person has etc failed to comply with a legal obligation. Once the claimant drew attention to the possibility that a particular resident might have an infection, the respondent had a procedure for it to be checked. If the claimant's disclosure had been that there had been a refusal or failure to refer the person to their GP after she had (with a proper basis) alerted them to an infection, that might have constituted a qualifying disclosure, depending on the circumstances, but the mere statement that a resident may have an infection, without more is insufficient to tend to show one of the listed matters. For the reasons set out above I have concluded that the claimant's statements do not contain "*sufficient factual content and specificity such as is capable of tending*

15 20 25 *to show one of the matters listed*".

30 69. Separately, Mr Anderson submitted that the disclosure related to the claimant's own conduct and there was nothing identifiably in the public interest such as to ground a reasonable belief. The disclosure was made in the context of an investigation into two incidents in which the claimant was said to have been at fault. Whilst observing that motivation for making a disclosure was more important when the issue of 'good faith' impacted on liability, I accept his submission in relation to the public interest. The context here was that the

claimant was giving an explanation for her own conduct, about which a complaint had been received.

70. Turning to the claimant's seventh alleged disclosure [7], it was said to be the document at R103 sent to Ms Donnelly and others by email on 2 March 2016. The document consisted of extracts from articles in the Journal of the American Academy of Dermatology. The claimant stated in the email: *"Dear Ladies, I have been trying to find the document saved way back in the 06's about Candida Albicans and Onychomycosis....Meanwhile if I may a document with links with I believe enough information, to ask why some of the residents in council care for over a year or more have such bad condition and why care workers are so reluctant to embrace this simple effective solution."* The claimant sent a further email dated 2 March 2016 (R107 & C64) [8] to Joanne Donnelly and Fiona Wells, copied to Ms McDonald to which she attached further articles from the British Journal of Dermatology, and the Canadian Medical Association Journal about onychomycosis. The email itself carried the subject heading *"More about care for Onychomycosis"* but was otherwise blank.
71. Neither [7] nor [8] contains the factual content or specificity required for a disclosure of information tending to show one of the listed states of affairs. The attachments comprise general information about onychomycosis downloaded from the internet. They do not tend to show that the health or safety of any individual has been etc endangered or that a person has failed etc to comply with a legal obligation etc and no statement is made to that effect. Neither amounts to a qualifying disclosure.
72. On 29 March 2016 at 15:53 the claimant sent an email [9] to Ms McDonald (R115) with the subject heading 'OG Peach'. The email said simply: *"Dear Cathy, Report of incident this morning in Peach attached. Thank you for your time. Moira Bori"*. Attached to the email was a one-page document (R117). In the document the claimant reported an incident in which another care worker had accused her of wrongly applying baby lotion to the skin of a resident with an irritable skin condition. This did not amount to a disclosure of information

which in the claimant's reasonable belief was either made in the public interest or tended to show any of the listed matters.

73. On or about 29 March 2016 the claimant had a staff supervision meeting [10] with Cathy McDonald and Therese Fallon. A record was kept (R185). The record stated that the purpose of the meeting was to discuss "*progress of additional personal development meetings and outcomes with line manager Cathy McDonald.*" None of the extracts to which the claimant referred had sufficient factual content or specificity to tend to show either failure by a person to comply with a legal obligation or endangerment of the health or safety of any individual. Thus, relevant information was not disclosed, and no qualifying disclosure was made as defined by section 43B.

74. On 5 April 2016 the claimant sent an email to Therese Fallon at 1:33 (R191). The terms of the email to which the claimant pointed are set out in the findings in fact above. The context was that certain conduct issues had been brought up with the claimant at a meeting the previous week. Attached to the email was a three-page document [11] saved as: 'OG Communications 2016 3 29.doc 02/04/16 09:05:21' (R195). In a section headed '3 Complaints' (R196) the claimant stated: "*You mention that you continue to get complaints about my work and yet I find myself time and time again in controversy with senior members/ members with longevity who inform/ask me to move those residents and senior citizens who simply do not wish to move or rise....*" The document went on in a similar vein. Mr Anderson submitted that the document was wide-ranging and lacking in coherence. It also related to the claimant being in dispute with the respondent in relation to her own conduct. I concluded that in the passages the claimant alleged were qualifying disclosures there was insufficient factual content and specificity to tend to show one of the matters listed. Furthermore, the context, (from which it was clear that the claimant was trying to justify her own action in leaving a resident in a urine soaked bed) led me to conclude that the claimant had not shown a reasonable belief either in the disclosure tending to show a relevant matter or that it was in the public interest. There did not appear to be a proper basis for the content of the disclosure [11]. I concluded that this did not amount to a qualifying disclosure.

75. On 14 April 2016 the claimant sent an email [12] to Sharon O'Brien containing the following statements: *"Over the past few weeks I have found that there are at least 7 residents in Peach whose nails need some kind of personal care most of whom would benefit from a tea tree footbath.// I have found feet that look as if they have not been cleaned.// At least two residents in Orange need nails cut one urgently especially when we are trying to get her to walk. Her nails are beginning to grow back into the skin – surely this would make walking painful and I am told we are trying to encourage her to walk..."* I have concluded that this message does not contain sufficient factual content and specificity to be capable of giving rise to a reasonable belief in either failure to comply with a legal obligation; endangerment of the health or safety of any individual or in the public interest. It simply draws attention to nailcare issues. In the circumstances I have concluded that it does not meet the test for a qualifying disclosure.
- 15 76. On 6 May 2016 the claimant sent an email (R127) [13] to Ms McDonald with the subject heading 'Orange Concern'. In the email the claimant stated: *"Dear Cathy, I was very concerned last night. A resident [resident 11] in Orange – I think room 9 – was weeping in pain. She said the back of her legs I felt the they [sic] were sore to the touch but seemed very hard perhaps muscles cold and tight. I would have preferred to get her into shower or hot bath but she just wanted into bed. But I was shocked to find she had no painkillers at all. No gel and no paracetamol although she often complains.// The reasoning was apparently connected with her condition but the worker was resistant to asking GP to be contacted today to discuss gel and painkiller on request."* In addition to sending the email the claimant put a note in the diary and the resident's social notes. The statement that a resident in pain had no painkillers and that the worker was resistant to contacting the GP could have had sufficient factual content and specificity to be capable of giving rise to a belief that the health or safety of an individual had been endangered. However, Mr Anderson's submission was that the resident did have painkillers and that there was accordingly no reasonable basis for the claimant's assertion. There was a conflict in the evidence on this point. The relevant witness for the respondent was Cathy McDonald who I found to be a credible witness. I concluded on

balance that Ms McDonald, being in a senior position with medication training would be more likely than the claimant to know whether the resident had painkillers prescribed. Ms McDonald's evidence, which I accepted, was that she recalled the email and had checked the position. She testified that the patient did have painkillers and that the claimant had been mistaken. I concluded that although the claimant believed what she had written in the email, there was no proper basis for the assertion and her belief was not reasonable. Her belief was not simply wrong, but not based on reasonable grounds. It follows that the disclosure was not a qualifying disclosure.

77. On 6 May 2016 the claimant told Irene Milliken, a care worker in Orange Unit [14] that resident 3 had a serious fungal foot infection and should have tea tree treatment. Ms Milliken did not agree. The claimant also said to Ms Milliken that [resident 3]'s nails were very long and were poking through his socks. Not content with telling Ms Milliken, the claimant then took the matter up with Ms McDonald [15]. She told Ms McDonald that she was shocked at [resident 3]'s feet; that his nails were poking through his socks and that they looked like bird claws. She asked Ms McDonald to go and have a look. Later the same day, at 14:48 on 9 May 2016, the claimant emailed Ms McDonald (R129) [16] under the subject heading 'Orange Feet'. The email included the following statements:

*"Dear Cathy*

*So very happy that you are going to be looking at [resident 3]'s feet in Orange when you have time. I think when you see them you will agree that this condition is shocking and in dire need of GP consultation if I am not allowed to go down the non medical route (footbaths tea tree etc). [resident 3]'s smaller toe skins seem to be tight, pink and swollen – when I have seen skin like this there has been an infection painful and often itchy like for example yeast infection of fingernail or similar. The doctor was quite surprised at the condition of [resident 4] in Peach feet. I would say that in Orange [resident 5] and a few others are at least as bad as [resident 4] in Peach, [resident 6]'s toe nails are to my memory in pretty bad condition with skin irritation, but I may be wrong. There are several cases as bad as [resident 4] in Strawberry,*

*in Plum and Peach that I know about although cannot remember names except P in Peach. Her condition is pretty bad and painful, and makes her cry.”* She went on to say that although Jo Donnelly had asked her to identify bad conditions, report them to the care team and ask them to ensure the resident’s GP knew about the condition, the care workers seemed very reluctant to ‘trouble the doc’ and that they did not seem to understand that chiropodists only cut and filed nails. She finished the email: “*Only the GP can send nail clippings etc for analysis and proscribe [sic] if necessary medication but this is even more necessary for persons with diabetes because they are in danger of broken skin from the condition when it gets bad so we need to check it is or is not infection same as we check for urinary infections – we take sample and send to doc*”.

78. The discussions and email quoted above in my view do not demonstrate sufficient factual content and specificity to tend to show that the health of individuals has been, is being or is likely to be endangered. The claimant was preoccupied with the health of residents’ feet and I accepted that she was sincere in her belief, despite, by this stage being under investigation in relation to her conduct. However, the specification that [resident 3]’s toes were pink and swollen and the reference to fungal infection and alleged nail conditions, in my view, did not afford sufficient factual content and specificity without more to provide the basis for a reasonable belief in the endangerment of his health or that of the others referred to despite the reference to care workers seeming reluctant to ‘trouble the doc’. Mr Anderson’s submission in relation to this alleged disclosure was that it was not the case that any resident had a fungal foot infection and that it was a fixation on the part of the claimant, who was, by now in conflict with the respondent. This did seem to be correct on the evidence I accepted from Jo Donnelly that there were no confirmed cases of fungal foot infections, despite residents being referred to their GPs and nail samples being sent in for analysis. In any event, with regard to [resident 3], an entry had been put in the diary that day by the claimant requesting a diagnostic test by his GP. Thus, far from there being grounds for reasonable belief in his health being endangered by wrongdoing on the part of the respondent, a referral was in hand.

79. On 25 May 2016 the claimant called the SSSC and spoke to Amy Chapple (R215). The claimant told Ms Chapple that she had received a letter stating that she was under disciplinary investigation. Ms Chapple asked the claimant for the contact number of her manager and advised her of the SSSC processes. She said she would be back in contact with her in due course. Thereafter, the claimant corresponded with Richard Thomson, a fitness to practise investigator at SSSC [17]. The claimant had a series of telephone calls with Mr Thomson. The claimant did not really elaborate on this in her evidence in chief. In cross examination she referred to the SSSC's note of her telephone call with Ms Chapple (R215). The claimant accepted there was no disclosure in this.
80. [18] On 10 June 2016 the claimant emailed Cathy McDonald a number of attachments (R225 – 234) saying that they were the onychomycosis documents she was planning to send in to the SSSC. They comprised general information about onychomycosis, its symptoms, treatment etc. There was no factual content or specificity such as would tend to show one of the listed matters and the communication was not capable of amounting to a qualifying disclosure.
81. On 14 June 2016 the claimant forwarded the same documents by email (R217) to Richard Thomson at the SSSC [19]. In the covering email of 14 June 2016 the claimant told Mr Thomson about her concerns about residents suffering from onychomycosis and mentioned that a resident had a possible very severe case and that she had checked his feet, though she stated in brackets: "*it is not for me to diagnose*". She said: "*The nails had deteriorated so that now the nails on one foot looked like bird claws long and thin.*" She said she had brought it to the attention of her senior who had promised to go and look but had finally done so a few days later. There is insufficient factual content here to tend to show one of the listed breaches. There is also a question mark over whether, in circumstances where the claimant is primarily in contact with SSSC because of a disciplinary investigation into her own conduct, she did believe, and had reasonable grounds for believing that the disclosure was in the public interest. Finally, the claimant is making the disclosure, not to her employer but outside

her organisation, which engages additional requirements. This is not a qualifying disclosure.

82. On 29 June 2016 the claimant emailed Jacqueline McCormack [20], a senior officer of the respondent acting on behalf of Isobel Cleary (the person conducting the claimant's disciplinary investigation). The email was copied to Richard Thomson. In the email she acknowledged receipt of a letter inviting her to an investigative interview on 21 July 2016 and made the statements set out in the findings in fact above. These arguably contained sufficient factual content and specificity to tend to show one of the matters listed. However, the context strongly indicates that the claimant is not making the disclosure in the public interest. She is communicating with the investigating officer in relation to her disciplinary investigation. Indeed, the claimant frankly admitted in cross examination that her purpose in writing was to try and end the investigation into her conduct.
83. [21] is in paragraph 84 below. On 1 September 2016 the claimant sent an email to Ross Wilkie, her union representative in which she stated: "*No tea coffee milk sugar basics at break time. No one wants to set up a contribution pay for the above to ensure it is there when we need it after working hard on shift. Management seem to be well served.*" The claimant considered that this state of affairs was discouraging agency workers from wanting to work at Orchard Grove. [22] On 8 September 2016 at 10:52 the claimant sent another email (J143) to Ross Wilkie, her trade union representative in which she stated: "*I have been asked to get folk out of bed and stand for no nonsense when the unwilling resident (normally a stickler for being up and ready) dies three days later. Surely the whole purpose of the Super home and dining room/kitchen in every unit is so that the residents can enjoy breakfast when they wish, late or early...*" As submitted by Mr Anderson, these are not qualifying disclosures within the meaning of the Act. They are not capable of giving rise to a reasonable belief, either in one of the listed breaches or in the public interest. In addition, they were not made to the claimant's employer. They were sent to Mr Wilkie in his capacity as the claimant's trade union representative to assist with her representation.

84. At 12:16 on 29 September 2016 the claimant sent an email to Cathy McDonald [21] under the subject heading “*visitors and resident mealtimes*” (R141). The email concerned two incidents reported in reverse chronological order. In the first, the claimant said she had been on reception at Orchard Grove when the wife of a resident had appeared. The claimant had phoned the unit and asked if she could be given a bite to eat and a cup of tea with her husband. However, the woman had come back half an hour later and said she had not even been offered a cup of tea and had had to cut the visit short to go and buy food. In the second incident, the claimant had suggested to a relative to join a resident in the dining room. However, the care worker in charge (Irene Milliken) had not allowed this. The claimant considered that these incidents were a denial of residents’ rights. Whilst these may have been unfortunate incidents, nothing in the factual content of these statements would support a reasonable belief in one of the breaches listed in section 43B(1). They are not qualifying disclosures.

85. [23] On 14 October 2016 the claimant sent an email to Isobel Cleary (J235) in which she stated that the minutes of a fact-finding meeting held on 11 August 2016 contained errors. She attached a copy with the errors underlined and suggested corrections in brackets (J237 – 248). This correspondence took place after the claimant’s disciplinary investigation chaired by Ms Cleary. The claimant’s purpose in returning the minutes with her corrections marked up related to her own disciplinary proceedings and was not in the public interest. She was adding/amending explanations for her own alleged conduct. These amended minutes do not contain qualifying disclosures as defined in the Act.

86. [24] On 16 October 2016 at 9:06 the claimant sent two emails to Jo Donnelly (C2/ 128 and 129) copied to Cathy McDonald and Sharon O’Brien. In the first email the claimant stated:

*“Dear Jo*

*I have just been hauled into the office to discuss the matter of this morning. I tried to explain but was talked over. I was not allowed at any time to get my point across. I do not believe it is good management just to talk at a staff member and dictate. I left the “meeting” after I told the Seniors that while they*

5            *may have a point in what they say (vis a vis resolving matters their way) I did not believe that their communications with me were respectful. If management cannot respect a workers value then how can a worker discuss issues openly with management. This is where lies are told and confidences lost just because workers do not trust management...."*

87.        At 15:13 on 16 October 2016 the claimant sent a further email to Jo Donnelly, again copied to Cathy McDonald and Sharon O'Brien (C2/ 129). The email bore the subject heading "*staff communications*". The claimant stated that the previous day an agency member of staff had asked for access to the storage cupboard to get toilet paper and towels and that the senior staff had been "*livid and very sharp about Cordia staff having to wait*". She stated that "*the Seniors were quite vocally critical and I think the Cordia staff member was rather upset...*" She also reported that an ASA worker who had just completed a 12.5 hours shift had been stunned to be told his photocopied time sheet was not acceptable because it was not in duplicate. Neither of these emails sent by the claimant on 16 October 2016 contains sufficient factual content and specificity such as would tend to show one of the types of wrongdoing listed in section 43B(1). Accordingly, they are not qualifying disclosures.

88.        I have concluded that none of the statements or communications listed by the claimant constituted a qualifying disclosure as defined in the Act. It follows that the case must be dismissed. I am grateful to both the claimant and Mr Anderson for their all their hard work and co-operation in presenting their respective cases.

25        **Employment Judge: Mary Kearns**  
**Date of Judgment    12 August 2019**  
**Date sent to parties: 13 August 2019**