EMPLOYMENT TRIBUNALS

Claimant Mrs J Edwards

Respondent **v** Orange Grove Fostercare Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Birmingham **On:** 19, 20, 21, 22, 23 October 2020
Hybrid; CVP/In person

Before: Employment Judge Lloyd **Members:** Mr D McIntosh
Mr M Z Khan

Representation
For the Claimant: In person
For the Respondent: Mr K Sonaike, Counsel

JUDGMENT

The tribunal's unanimous judgment is as follows

1) The Claimant's claim of constructive unfair dismissal is unproven and is dismissed.
2) The Claimant has not proven that she made a protected public interest disclosure to the Respondent at any time.
3) The Claimant has not proven that she was subjected to detriments in the course of her employment; whether as a consequence of a protected disclosure or otherwise.
4) The Claimant has presented no evidence on and has not proven her claim of breach of contract in respect of expenses incurred in the course of employment.
5) The tribunal grants the Respondent's application that the Claimant pays to the Respondent a contribution towards its legal costs in the sum of £1,000.00. The tribunal orders that the Claimant so pays that amount.

The tribunal dismisses the Claimant's proceedings in their entirety.

REASONS

Background and Issues

1.1 The Claimant was employed by the Respondent from 13 August 2015 until 24 April 2018 when her employment terminated by the expiry of her resignation notice. She had tendered her resignation on 28 February 2018 in order to take up a new post. She was placed on "garden leave" from Friday 2 March 2018. At all relevant times the Claimant was a supervising social worker. She was employed in that role by the Respondent at the date of her resignation. It is common ground that she left the Respondent to take up a similar position in another, rival, fostering agency. At

paragraph 6 of the Claimant's witness statement, she states unequivocally, "…when I left to take up a new position with management responsibilities in another fostering agency".

1.2 By a claim form presented on 30 August 2018 following a period of early conciliation from 23 March 2018 to 7 May 2018, the Claimant brought complaints of constructive unfair dismissal, public interest disclosure detriment and unpaid monies by way of work expenses.

1.3 A preliminary hearing for case management was conducted by Employment Judge Hindmarch on 15 November 2018. Her Order was sent to the parties on 23 November 2018. It is at pp.32 – 39 of the bundle. There is a detailed analysis of the issues of the case under the headings of constructive unfair dismissal, public interest disclosure and monies owed, pp.33 – 36.

1.4 Under the heading of PID, pp.34 – 34, the tribunal spent some time with the parties at this hearing examining the issue of the alleged disclosure (viii) and the alleged detriments (ix), (a) – (o).

1.5 During this hearing the Claimant's testimony has on good grounds come under close scrutiny. The veracity of her evidence has been roundly challenged by the Respondent's witnesses and by the Respondent's counsel in his cross examination of the Claimant and in his closing submissions.

The Claimant's case

Allegations

2.1 The Claimant contends that when she began employment with the Respondent, she was given no induction and had no probationary interview at the expiration of six months. Those matters should all have been attended to as a matter of company policy. She also complains that she had no appraisal during her period of employment, again in breach of company policy.

2.2 She further alleges that she did not have any supervision from her manager; more especially during a period when there was serious child protection concerns in relation to a foster carer which she supervised. Neither, she alleges, was she given a return to work interview following a three-week period of sickness because of work-related stress.

2.3 The Claimant alleges that she was treated unfairly because of whistleblowing and challenging her senior managers in relation to their decisions about safeguarding and child protection. She contends that she was subjected to 2 years of unfair treatment and bullying and that she had to resort to the company's grievance procedures and other efforts to resolve the issues.

2.4 She states in evidence that she was unable to cope with the alleged bullying and in those circumstances, she sought alternative employment

with another fostering agency. She was successful in securing a post with another, rival, fostering agency. She tendered her resignation on notice. The Respondent refused to give her a reference and made a report to the HCPC, the Health and Care Professions Council. That is the regulatory body for social employees. It has more recently adopted the name "Social Work England". This judgement shall refer to it as "SWE". The report was on the basis of alleged gross misconduct by the Claimant and her fitness to practice as a social worker. She was accused by the Respondent, and admitted to, sending emails from her work computer to her home computer. She has denied misconduct in that respect and contends that it was common practice. However, she accepted that the Respondent was obliged to make a reference to SWE who were in turn bound to investigate. The outcome of that investigation is pending. In turn, the Claimant was obliged to inform her future new employers of the reference to SWE. Because of the likely timescale for the investigation and its outcome, the new employers were not prepared to wait for the investigation to be completed. They withdrew the job offer to the Claimant.

2.5 The Claimant stated that she is presently employed on a part-time basis in a job totally unrelated to social work. She has sustained a significant loss of earnings and continues to do so.

2.6 During the course of the Claimant's employment in 2016, she raised an issue about the suitability of two foster carers employed by the Respondent.

2.7 Because of the sensitivity of these matters generally, the tribunal has made a restricted reporting and anonymity order under rule 50 of the tribunal rules; providing that the two foster carers in question shall be identified only as Ms A and Mr B. In turn, the three siblings who were in their foster care at the relevant time are to be identified only as Children X, Y and Z.

2.8 The matter was investigated and the foster carers were de-registered after the review panel made recommendations. During the period of time that the investigation was ongoing the children were removed and placed with other foster carers. No new children were placed with Ms A and Mr B, following standard practice.

2.9 Dean Temple (DT) was the Claimant's first supervisor. Ms A and Mr B were referred to by DT on the Claimant's first day of work. The Claimant says that she was told by DT that A and B had been paid a financial incentive to remain as foster carers at the Respondent. The Claimant says that during her initial visits to A and B in July 2015 she began to feel concerned about some aspects of the foster carers presentation. She says that she discussed that with DT during her supervisions. She says that her concerns continued, and continued to be discussed with DT. The Claimant says that she attended a professionals meeting on 6 November 2015 and there were a number of serious concerns raised about A and B, which she says were reported to DT immediately on her return to the office. The Claimant contends that under the National Minimum Standards for Foster Carers 2011, the concerns raised constitute grounds for notification to

Ofsted within 24 hours. The Claimant contends that DT did not notify Ofsted despite several reminders from her to do so.

Regulatory steps and safeguarding

3.1 The local authority (Wolverhampton City Council) eventually removed X, Y, and Z from their care with A and B on 21 January 2016. The Claimant states that following their removal from A and B, X, Y, and Z began to make allegations of a safeguarding nature and in relation to physical abuse, inappropriate sexual behaviour towards them, emotional abuse and neglect.

3.2 In line with local safeguarding procedures, a position of trust (POT) meeting was convened and chaired by the local authority designated officer (LADO). The outcome of that meeting was that although A and B did not meet the threshold for criminal charges to be made, their suitability to work with children was cause for concern. The LADO wrote to the Respondent with the view that A and B were unsuitable to be foster carers and supported their deregistration.

3.3 The Claimant has stated that she was informed by DT that she needed to complete a review report. That should be in the form of a general annual review rather than a "post-allegation review report". The Claimant maintains that when completing the review paperwork in March 2016, she was concerned that the report form was not suitable for her to record all relevant information. The local authority submitted a formal complaint about A and B on 7 March 2016. X, Y, and Z had been removed and were no longer considered at risk, but the Claimant says that the local authority was concerned about the safety of any other children who may be placed with A and B at a future date.

Whistleblowing

4.1 The Claimant's evidence was that she knew that safeguarding procedures had not been followed and that children had been at risk and were at future risk. She says that she rang the safeguarding manager, Bridgid McCaig (BMcC), and she claims that she reported the fact that DT had not reported the foster carers to OFSTED. She contended that was in breach in legislation and safeguarding procedures. Further, she claims that she expressed concern that the Respondent had not followed national minimum standards for fostering services in notifying Ofsted about A and B. She states that it was at that point, in March 2016, that she did the act of whistleblowing. She states that BMcC told her that she would speak to Simon Newstone (SN), who at the relevant time was the head of operations for the Respondent.

4.2 The Claimant's evidence is that she had no further discussion about the matter with anybody within the Respondent. BMcC did not speak to her further in relation to whistleblowing. She has stated that she assumed that her concerns about DT were being dealt with.

4.3 The reviewing officer did not support the Claimant's recommendation for deregistration. However, A and B were deregistered as foster carers upon review by the fostering panel on 19 May 2016. The Claimant states that the Respondent notified the local authority and LADO of the outcome, but the Disclosure and Barring Service (DBS) were not notified.

4.4 The Claimant tendered her resignation on 28 February 2018, giving two months' notice. The Respondent's case is that around that time the Claimant was subject to a performance improvement plan (PIP).

4.5 The Claimant's last day of employment was 25 April 2018. However, she was placed on gardening leave from 2 March 2018 until the end of her employment. Her last day in the office was 2 March 2018. The Respondent's evidence is that it is standard company practice to put an employee on garden leave when that employee is leaving to work for a competitor. That combined with the fact that the Claimant was on a PIP at the time cause the Respondent to decide that it was best practice for the Claimant to be placed on garden leave.

4.6 On 5 March 2018, the Respondent had access to the Claimant's work email and H drive. The Respondent discovered that the Claimant had sent numerous emails from her work email to her personal email address on 2 March 2018 before leaving the office. She was also found to have sent company templates from her work email to her personal email address. An investigation meeting was arranged.

4.7 The investigation meeting was stated to be a fact-finding exercise; but that the company may wish to institute a disciplinary hearing at a later stage. At the investigation meeting on 9 March the Claimant admitted sending the emails. The Respondent concluded that her actions amounted to a data protection breach and decided that there was sufficient evidence of misconduct to proceed to a disciplinary hearing. The Respondent also notified SWE, to advise it of the Claimant's actions. We accept that the Respondent had an obligation to do so having regard to the serious nature of the allegation. The Claimant has also accepted that the Respondent was obliged to take that step.

4.8 Following the investigation meeting, the Respondent wrote to the Claimant inviting her to attend a disciplinary hearing on 12 March 2018. The purpose of the meeting was for the Claimant to answer allegations of gross misconduct on the grounds that she had disclosed confidential information by sending a number of work emails to her private email in breach of the Respondent's confidentiality policy. Her actions were also in breach of the data protection policy. The Respondent considered that was a very serious matter because of the fact that its work entails fostering and the protection of vulnerable children and young people in care.

4.9 The disciplinary hearing did not proceed on 12 March 2018. The Claimant arrived at the disciplinary hearing and presented a written document containing a number of complaints that she wished to make. Ms Alice

Pearce, the HR Business Partner, decided to suspend the disciplinary hearing and to allow the Claimant to exhaust the grievance process before continuing with the disciplinary proceedings. Ms Pearce did not accept the Claimant's complaint at that time and instead advised the Claimant to pursue a grievance through the proper channels.

The Grievance

5.1 The Claimant submitted a formal grievance to the Respondent on 2 April 2018. She complained of bullying and discrimination which she alleged had followed her whistleblowing and her safeguarding complaints which she had made to the Respondent. The Respondent investigated the grievance. Following a meeting on 19 April 2018 the Respondent wrote to the Claimant, on 1 May 2018, informing her that her grievance had not been upheld.

5.2 The Claimant made an appeal against the dismissal of her grievance, but that appeal was unsuccessful.

Termination of Employment

6.1 The Claimant's employment with the Respondent terminated by the expiration of her notice of resignation, on 25 April 2018.

6.2 The Respondent has denied that there was a repudiatory breach of the Claimant's contract of employment to entitle her to resign and claim constructive dismissal. It is further denied that the Respondent breached any implied term of the Claimant's contract. It denies in terms that it behaved in any manner likely or calculated to destroy the relationship of trust and confidence between an employer and employee.

6.3 The Respondent further denies that the Claimant made any whistleblowing complaint or that she was forced to resign because she made any whistleblowing complaint. The Respondent has further denied that the Claimant suffered any detriment because of any whistleblowing complaint if such had been made; which the Respondent denies.

6.4 Moreover, in respect of the Claimant's monetary claim she has failed to show any evidence of the claims for expenses or the Respondent's liability to pay the same. Such claims are therefore denied in their entirety.

The Hearing and Evidence

7.1 The tribunal has conducted this hearing on a hybrid basis; commencing on Monday 19 October and concluding, with a verbal judgment on Friday 23 October 2020.

7.2 The tribunal panel members have sat in person throughout the hearing. The Judge sat remotely via CVP on Monday and Tuesday 19 and 20 October, sat in person on Wednesday and Thursday, 21 and 22 October and delivered the verbal judgment remotely on Friday 23 October, following deliberation by the panel.

7.3 The Claimant, the Respondent's counsel and Robert Sanders of the Respondent's Group Head of HR were in attendance in person throughout.

7.4 Sue Purthill and Simon Newstone, the opening two Respondent's witnesses gave their evidence via CVP on the afternoon of Tuesday 22 October. Tracey Livesey and Jo August, for the Respondent, attended the tribunal from Wednesday 21 October to the conclusion of the hearing and they together with Mr Sanders gave their evidence in person on 21 October.

7.5 The witness cast list was:

i) The Claimant
ii) Sue Purthill – Former Manager, Fostering Team and the Claimant's superviser
iii) Simon Newstone – Former Head of Operations
iv) Tracey Livesey – Managing Director, Respondent's Integrated Services Programme
v) Robert Sanders – Group Head of HR
vi) Jo August – Respondent's Chief Executive Officer

7.6 The order of the hearing was as follows:

i) Monday 19 October – Housekeeping/Timetable: 10.00 – 11.10am
ii) Monday 19 October – Panel Reading: 11.15 – 1.30pm
iii) Monday 19 October – Claimant's evidence: 2.00 – 5.00pm
iv) Tuesday 20 October – Claimant's evidence: 10.00 – 1.30pm
v) Tuesday 20 October – Sue Purthill and Simon Newstone: 2.30 – 4.15pm
vi) Wednesday 21 October – Tracey Livesay, Robert Sanders, Jo August: 10.00 – 12.00pm
vii) Thursday 22 October – Written and oral submissions
viii) Friday 23 October - Delivery of verbal judgment

The Relevant Law

Constructive Dismissal

8.1 The law relating to constructive dismissal is well settled. See Western Excavating v Sharp [1978] ICR 221. In order for a Claimant to succeed, it must be shown:

a) That there was a breach of contract

b) That it was so serious as to entitle an employee to resign from his/her employment;

c) That resigning was at least in part – see Wright v North Ayrshire [2014] IRLR 4 - in response to the breach of contract. This is essentially a question of fact for the tribunal. The repudiatory breach(es) need not be the sole cause provided they are an effective cause. There is no

requirement to identify a principal reason so long as the conduct played a part in the dismissal: Abbeycars (West Horndon) Ltd v Ford UKEAT/0472/07. Accordingly, even if an employee leaves both in order to commence new employment and in response to a repudiatory breach, the existence of the concurrent reasons will not prevent a constructive dismissal arising: Jones v F Sirl & Son (Furnishers) Ltd [1997] IRLR 493.

d) The North Ayrshire case refers to the threshold test of resignation being at least in part in response to the breach of contract.

e) That in resigning the Claimant did not delay or act otherwise so as to affirm the breach of contract. There is no fixed time: delay *per se* will not amount to an affirmation in law albeit that it may often be a factor: Chindove v William Morrison UKEAT/0201/13.

f) A Claimant who relies on a breach of the implied term of trust and confidence needs to establish conduct which amounts to a breach of an obligation that the employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Malik v BCCI [1997] IRLR 462. Such a breach is always a repudiatory breach.

g) The focus in a trust and confidence scenario is on the conduct of the employer. Subjective intention is irrelevant: Leeds Dental Team Ltd v Rose [2014] IRLR 8; it is for the tribunal to assess whether the employer's acts or omissions, when considered objectively, amount to conduct in breach of the term of trust and confidence.

h) That said, there is no rule as to what might or might not be a breach: see Leeds Dental,

"the test does not require a tribunal to make a finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of"

"the circumstances are so infinitely various that there can be and is no rule of law saying what circumstances justify and what do not", and that "in other words, it is a highly context-specific question".

i) The "last straw" need not be of itself a breach of contract but must when viewed in conjunction with other facts be considered sufficient to warrant the resignation to be treated as a constructive dismissal. Such a last straw might not always be unreasonable but it must be an act in a series whose cumulative effect was to amount to a breach of the implied term and the act must contribute something to the breach: Omilaju v Waltham Forest [2004] EWCA Civ 1493.

Public Interest disclosure; whistleblowing

8.2 In relation to public interest disclosure, "whistleblowing", the Employment Rights Act 1996 provides three main rights:

a) it is automatically unfair to dismiss an employee for making a protected disclosure (ERA 1996 s 103A);

b) it is unlawful to subject an employee to any detriment for making a protected disclosure (ERA 1996 s 47B);

c) any term in the employee's contract or any other agreement is void in so far as it purports to preclude the employee from making a protected disclosure (ERA 1996 s 43J). It follows that the act of whistleblowing within the terms of the Act will not amount to a breach of contract.

d) The ERA does not define what constitutes a detriment. It will be for a tribunal to decide if a detriment has been suffered. Detrimental treatment commonly includes being disciplined, being passed over for promotion, being relocated, being excluded from workplace matters and damage to career prospects.

e) The employee (or worker) must make a "qualifying disclosure" which requires:

i) The employee must actually disclose information. The mere gathering of information is not enough.

ii) The information disclosed must relate to one or more of the following wide categories of wrongdoing: criminal offence, breach of any legal obligation, miscarriage of justice, danger to health and safety of any individual, environmental damage and/or the deliberate concealing of any such information.

iii) The employee must have a reasonable belief that the information tends to show one of the categories of wrongdoing.

iv) The employee must also have a reasonable belief that the disclosure is in the public interest.

v) Further, the disclosure must be a "protected disclosure" which relates to the method of disclosure and to whom the disclosure is made.

f) In Okwu v Rise Community Action Ltd UKEAT/0082/19/OO, the Claimant was a charity employee and was accused of poor performance, for which she was ultimately dismissed. Prior to her dismissal she raised various concerns, including concerns that her employer was breaching data protection laws. The Employment Appeal Tribunal held that, even if the Claimant had raised those maters in defence of her performance, this did not mean she could not reasonably believe them to be in the public interest.

g) A detriment occurs where a reasonable employee would or might take the view that they have been disadvantaged [see Jesudason v Alder Hey Children's NHS Foundation Trust (COA)]. [2020] EWCA Civ 73

h) In the case of Jhuti v Royal Mail [2019] UKSC 55, the Supreme Court determined that Ms Jhuti had been automatically unfairly dismissed even though the person dismissing her was unaware she was a whistleblower. Ms Jhuti had raised concerns to her line manager about regulatory guidance violations. In retaliation, the line manager subjected Ms Jhuti to

performance reviews and produced a misleading report about her performance, which was relied up on good faith by the dismissing manager when deciding to dismiss Ms Jhuti. The Supreme Court ruled *"if a person… determines that she… should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason."* In this case, the real reason for the dismissal was the protected disclosures. Whilst the facts of this case will be rare in practice, it underlines the importance for employers of ensuring that they have all relevant information before deciding to dismiss, which may include information about disclosures that an employee has raised previously even if those were not upheld or withdrawn.

Findings, Evidence and Analysis

9.1 The tribunal has preferred the evidence of the Respondent.

9.2 We conclude that the Claimant's evidence is not in significant parts an honest or credible account of events. In her heart of hearts, we think the Claimant knows that, but she has faced a dilemma in coming to terms with the reality of her actions. She acted rashly and impulsively in misappropriating company information for her own use. In the wake of that and the discovery of her professional misconduct, and in her desperate attempt to save her reputation and her professional registration, she manipulated the truth of the matters.

9.3 We think that the Claimant historically has been a conscientious social worker. Her health issues in recent times, specifically work-related stress symptoms and depression, has led to legitimate concern being shown for her general well-being; as well as her overall standard of work. The concern we find was genuine concern by her managers and team colleagues; and not intrusion and conspiracy by colleagues as she interpreted it.

9.4 The accumulation of all these matters we think wrongly skewed the Claimant's perception of how she was viewed by the Respondent and its managers and of her worth to the Respondent. Also, of how and why she perceived that she had made a protected public interest disclosure about a pair of foster carers under her supervision; and in her perception the alleged failure of the Respondent to make a formal reference to Ofsted.

9.5 The Claimant is not a reliable witness. We have preferred and accepted the Respondent's evidence. We accept counsel's submission that the evidence of the Claimant was variously unclear, inconsistent, and self-contradictory in many critical respects.

9.6 *Sending confidential documents to herself*

9.6.1 The Claimant failed to provide any or any credible explanation for the fact that at the end of her employment, she accessed the Respondent's work system from home and sent a large number of highly confidential documents to herself. These documents appear from p.198 – p.234 (including pp. 228a -c; pp. 230a – n).

9.6.2 She accepted (initially) in cross-examination that most of the documents listed in the email folder on page 225/230a were not relevant to her grievance. Subsequently, she sought to suggest that some of them were sent to her personal email because she needed to be able to print them at home for work purposes. This was contrary to her assertion during the investigation that the documents she had taken were *'to contribute to information for grievance. Totally and utterly nothing else' (p.238).*

9.6.3 Her explanation lacked veracity. She also had no explanation for the fact that she had specifically deleted the emails from her sent items folder. Additionally, she admitted in evidence that her actions were unacceptable and amounted to misconduct, and that the Respondent had a statutory obligation to report the matter to SWE. Yet, she still insisted that her claim in respect of the reporting by the Respondent to SWE was a valid one.

9.6.4 We find that the Claimant took the documents for the purposes of benefitting her new employment with a rival company. She was open about the fact of experienced social workers in fostering frequently being approached by rival agencies. We think she had for some time had a plan in place to await the offer of a better role; not because she was being treated vindictively by the Respondent but to achieve betterment and move on from an employer against which her judgment had been negative almost from the start of her employment with it.

9.7 *No supervision*

9.7.1 During the investigation of her grievance, the Claimant stated that she had had no supervisions between August (2017) and January (2018). This was wrong, and the Claimant must have known that it was completely wrong when she asserted it. It was clear from her cross-examination, that she had in fact had 5 separate formal supervision sessions with Sue Purtill. She sought to argue, we think naively, that she had meant there had been no supervision over her cases. However, this was shown to be entirely false.

9.7.2 Asserting that supervision meetings were solely about her competence. At paragraph 64 of her witness statement, the Claimant asserted that many of her supervision meetings with Sue Purtill were 'to solely discuss my alleged incompetence, and there was no case discussion, even though my cases were complex…' This was untrue. As the Claimant herself ultimately admitted in cross- examination, the supervisions she held with Sue Purtill were entirely supportive, including, considerable discussion about the Claimant's welfare (not competency issues).

9.8 *Did the Claimant make a protected disclosure?*

9.8.1 The Claimant asserts that during a telephone conversation with BMcC on 22 March 2016 (1 day before her email to BMcC on 23 March 2016 (p.81) she made a protected disclosure. She now asserts that during that conversation, she complained that despite urging DT several times about the need to make a Notification to Ofsted about lack of care/child abuse by two carers back in November 2015, he had failed to do so.

9.8.2 The tribunal accepts that if such a disclosure had been made, it would amount to a protected disclosure. However, we do not find that the Claimant made such a disclosure. The Claimant's email dated 23 March 2016 raises the concerns she had at the time, but (as is plain on the face of the email and as accepted by the Claimant in cross-examination) nothing in the email itself refers to or mentions the disclosure she now alleges that she had just made.

9.8.3 She did not document her request to DT or document her concerns about the lack of notification in any way (whether by file note, email, entry on the system, or even a reference in the case report she wrote.

9.8.4 The children remained with the carers until January 2016. Despite significant concerns about child neglect/abuse, she took no steps to ensure the removal of the children for 2 months. We agree with counsel that it is highly unlikely that the Claimant would have allowed this to happen if she genuinely believed an issue of neglect existed that was serious enough to warrant immediate notification to Ofsted. As we have found we think she was historically a social worker who was in essence a principled individual. Sadly, the events leading to this tribunal reflect a change in her mindset born of her failing health at the time along with a personal judgment affected by her health and her obsessive perception of her marginalisation in the workplace; a perception that was we think imagined rather than real.

9.8.5 The only documented reference in November 2015 (when she now asserts, she raised the issue with DT) refers to a minor issue with the DBS status of the child of the relevant carers (p.214).

9.8.6 Importantly, we think, and as Mr Sanders (RS) confirmed, BMcC would have acted if such a serious disclosure had been made. Very sadly, Ms McCaig passed away in April this year. RS, we think has been in a strong position to affirm the approach Ms McCaig would have taken.

9.8.7 The first and only documented reference to notification by the Claimant is on 10 May 2016.

9.8.8 Simon Newstone confirmed that a matter is only recorded as Notification on their system if in fact it has been notified to Ofsted. So, there is no basis on which this can be changed or downgraded as the Claimant alleges occurred. Simon Newstone and Dean Temple acted to emphasise rather than downplay the seriousness of the issues related to the carers.

9.8.9 The Local Authority confirmed that they were satisfied with the way the Respondent had dealt with the complaint.

9.8.10 The Notification to Ofsted by the Respondent was on 18 May 2016. The removal of the children from the carers in January 2016 was supported and advocated for by the Respondent.

9.9 Did the Claimant suffer detriment because of protected disclosure?

9.9.1 We find that the detriments alleged by the Claimant were either not detriments at all or were not caused or motivated by any protected disclosure.

9.9.2 The Respondent failed to take the Claimant's concerns seriously? The Respondent took the issues regarding the carers and allegations of child neglect extremely seriously in our finding. The Respondent left the Claimant to deal with the issue alone. However, we find that DT and SN were fully involved and engaged in the issue with the Claimant. Additionally, the Claimant accepted that BMcC was supportive and responsive when she raised queries about the foster care review format.

9.10 SN downgrading the severity of a notification in April/May 2016.

9.10.1 SN advocated for the deregistering of the carers (which the Claimant accepted was the ultimate sanction) as well as the fact that the Respondent did in fact make a notification to Ofsted on 18 May 2016 (p. 92a-i).

9.11 Sue Purtill

9.11.1 The Claimant has eventually conceded that Sue Purtill was a highly supportive manager; 'a breath of fresh air'

9.12 Constructive Dismissal

9.12.1 The evidence undermines the allegation that Sue Purtill asked foster carers about the Claimant's performance and suggesting they had trouble with the Claimant. Sue Purtill was extremely supportive of the Claimant. In supervision meetings that she took great pains to encourage and support the Claimant particularly through the Claimant's depression and anxiety. This is backed up by the Claimant's own evidence. The evidence of the Claimant herself undermines any suggestion that Sue Purtill went to other carers in the attempt to undermine the Claimant's reputation.

9.12.2 The Claimant has alleged that in September 2017 Sue Purtill informed the Claimant that she was to be investigated due to complaints, which she later said were concerns. The evidence was clear that the Claimant was not being investigated. Instead, Sue Purtill merely raised the fact (as she was obligated to do as line manager) that a number of carers had mentioned that they had not visits or calls from the Claimant. (p.126).

9.12.3 However, the Claimant herself acknowledged that there was an issue in regard to her support of the carers. It is not a detriment or an improper action for a line manager to raise a genuine work issue with an employee. Sue Purtill raised the issue in an entirely supportive manner.

9.12.4 Regarding Christmas 2017/Jan 2018 and Sue Purtill allegedly telling the Claimant that colleagues were talking about her behind her back. It is clear as set out in the supervision notes (p.156) that other carers - whom the Claimant asserts were all positive and kind towards her - had reached out to Sue Purtill out of care and concern about the Claimant, who appeared distressed because she had been crying and was teary at work. Sue Purtill was clearly raising this out of concern, which the Claimant accepted during her cross-examination. For the Claimant nevertheless to maintain that this should still form part of her constructive dismissal claim, simply reveals the inherent flaws of her claim.

9.12.5 Sue Purtill telling the Claimant not to cry at work. There is no evidence that Sue Purtill said or implied this. Instead it is clear that Sue Purtill demonstrated exceptional care and concern at the fact that the Claimant was evidently distressed and in a low mood.

9.12.6 In 2017 Sue Purtill omitted the Claimant from a newsletter. Such allegation is wholly without foundation in our view.

9.12.7 Sue Purtill asking the Claimant to undergo occupational health. However, throughout the supervision sessions, the Claimant displayed symptoms of depression and anxiety, as well as raising issues of arthritis, which is why the Occupational Health appointment was recommended. The Occupational Health referral was of benefit and required (report p.130-1).

9.12.8 In January 2018 Alice Pearce and Sue Purtill asked the Claimant to go to occupational health and requested her GP notes. In the 3 January 2018 meeting. The Claimant was evidently still distressed given that *'she had been crying in the office and saying she couldn't cope'*. There were two occasions when staff said they felt she was unwell and had appeared distressed' (pg 156). As a result, at the end of the meeting, it was recorded (p.162) that Sue Purtill was *'to request/offer further OH appointment?'*

9.12.9 The correspondence on this issue shows Alice Pearce being entirely supportive. When the Claimant indicated that she did not want an OH appointment, Alice Pearce immediately accepted this.

9.13.1 In 2017 Sue Purtill suggested to the Claimant that she see a psychotherapist. The Claimant is seeking to attempt to turn acts of care and support into negative and detrimental conduct. Sue Purtill sought to offer the Claimant whatever support was available to be offered.

9.13.2 During 2017 supervisions Sue Purtill said 'I don't know why you would want to work for the Respondent if you are so unhappy' It is admitted that this was said by Sue Purtill and it is clear that this was also another example of her efforts and attempts to support and get through, to understand why the Claimant felt distressed at work. (P.157). There agree with the Respondent that there is nothing inappropriate or objectionable in this comment by Sue Purtill.

9.14 *The Claimant has unfairly attempted to paint supportive acts in a negative light.*

9.14.1 Alice Pearce reported the Claimant to the SWE. However, the Claimant accepts that she took highly confidential documentation belonging to the Respondent, and which in some instances included private data of carers as well as policies and templates which would be of undoubted value to the rival company with which she had already been offered a job. At the time of the investigation, the Claimant herself admitted to the misconduct and described it as a 'moment of madness' (pg 280) and that she had taken '*confidential and sensitive information' (*pg 239). Aside from being a breach of the Respondent's IT policy justifying summary dismissal the Claimant in evidence also admitted that the Respondent had a statutory duty to report the matter to SWE.

9.14.2 On 31 October 2017 Sue Purtill told the Claimant about a meeting with the Head of HR and the Director 'bombarded the Claimant with questions about her whistle-blowing'. Anne Marie Bloxham confirmed that the meeting was scheduled to discuss the OH report. It was an informal meeting and therefore not one at which any notes were recorded. Anne Marie Bloxham confirmed in her investigation interview that: *'It was an informal meeting to discuss her occupational health report and we also listened to her concerns about the process of de-registering the foster carers' (*p.322).

9.14.3 There was no reference to whistleblowing or protected disclosure or even a reference to the failure of notification that the Claimant now alleges she was raising.

9.15 *Last Straw and the Resignation*

9.15.1 It remains entirely unclear in the tribunal's view, what the Claimant relies on as the last straw, prompting her to resign from her employment.

9.15.2 We find there was no fundamental breach of contract. We find that the Claimant has failed to demonstrate any breach of a fundamental term of her contract, and no breach of the implied term of trust and confidence.

9.15.3 The Claimant only resigned at the end of February 2018. She affirmed her contract by her continued employment. It is clear to the tribunal that the Claimant by that time having been offered and accepted a new job with a rival agency she activated her settled intention to leave the Respondent. But it was for her own progression as a social worker in foster care; not as a response to detriment or a fundamental breach of contract.

9.15.4 The Claimant resigned with notice so there is no wrongful dismissal claim. The Claimant has not provided any evidence or information in respect of her claim of breach of contract or unlawful deduction of wages.

Summary and Conclusion

10. We do not find that there was a fundamental breach of the duty of trust and confidence in the employment relationship occasioned by the

Respondent's conduct. Rather, we find a unilateral decision by the Claimant herself, probably long taken by her, to move on to another employer.

11. We do not find that there was an act of whistleblowing on the Claimant's part. We certainly cannot conclude that the Claimant engages s.103A ERA in respect of her dismissal. There is a time issue moreover even if a protected disclosure were made. But we are clear in our conclusion that there was not. Accordingly, the Claimant cannot succeed in her claims that she was subjected to detriments in her employment as a result of any such act of whistleblowing.

12. We have not found the Claimant to be a credible or reliable witness. The Claimant has not discharged her burden of proof in any of the claims she advances against the Respondent. Her relationship with the Respondent was soured on her part, by the Respondent's perceived failures in relation to her induction and initial training. The Respondent now acknowledges that it fell short of acceptable professional standards in its induction of her as a new employee. However, we do not find that of itself to be a repudiatory act in relation to the Claimant's contract of employment. It was moreover separated by a significant lapse of time before the Claimant offered her resignation.

13. The Claimant's evidence to this tribunal is of her alleged subjection to detriment for whistleblowing and the perceived undermining and exclusion of her by the Respondent destroying trust and confidence. Aside from its sheer lack of cogency, her evidence was also deliberately manipulated in an unsuccessful attempt by the Claimant to show that what was in truth a serious mis-judgment on her part was rather a serious breach of the employment relationship by the Respondent. That was far from the truth in our conclusion.

14. The Claimant had resolved to move on to a competitor of the Respondent quite of her own volition. She has been candid about regular approaches she was accustomed to receive from competitor fostering agencies. Fostering agencies are very competitive organisations as the Claimant well knew. The Claimant committed a serious lapse of professional judgment in appropriating materials which were likely to be of value to her in her new post with her new employer. We do not accept on the evidence before this tribunal that those emails were relevant to the grievance complaint she intended to pursue. She herself acknowledged that initially in her evidence in cross examination, but subsequently changed her response to that of those emails being wholly or partly relevant. She does not dispute that the Respondent was bound to refer that event to her professional body SWE, who in turn were bound to investigate. The consequent withdrawal of the Claimant's new employment was the catalyst to the Claimant's claim, in which we think she has made an unsupported and belated attempt to show she was a victim of the Respondent's malice, mal-administration and incompetence. That was not true on any proper analysis of the evidence.

15. We have unanimously decided that the Claimant's claims shall be dismissed.

15. It is not a matter for this tribunal of course, but we remark that de-registration by SWE would be a very harsh penalty for her to bear in all the circumstances. We think that the Claimant has erstwhile been a conscientious social worker. However, her longer-term health issues in recent times, had we believe led her to make very poor decisions, which in turn has led to this unsuccessful claim.

16. We dismiss her claims in their entirety.

Costs

17.1 Counsel for the Respondent has made an application for costs. The application has been advanced in realistic and restrained terms we think. Mr Sonaike stated that his instructions were to limit the amount of the Respondent's costs application to £1,000.00.

17.2 We refer to Rule 76(1)

A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success.

17.3 We conclude that the Claimant's claims have been conducted unreasonably, on evidence fundamentally lacking in credibility. The claim has had no reasonable prospect of success in those circumstances.

17.4 Having regard to our findings and to the provisions of Rule 76(1), the tribunal concludes that Respondent's application for costs is a reasonable one in merit and amount.

17.5 The tribunal grants the Respondent's costs application and we order that the Claimant pays to the Respondent a contribution towards its legal costs in the sum of £1,000.00.

Signed electronically by
Employment Judge B Lloyd
Signed and Dated: 11 November 2020