THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE BALOGUN**

MEMBERS: **Ms N Christofi**
Ms C Edwards

BETWEEN:

Ms M Carruthers (C1)
Ms A Walters (C2)

Claimants

And

PJ' Community Centre Services Ltd (R1)
Jamma Umoja (Residential Services) Ltd (R2)

Respondents

ON: **3, 4, 5, 6 August 2020**
In Chambers: 27 November 2020

Appearances:

For the First Claimant: Ms S Chan, Counsel
For the Second Claimant: In Person
For the First Respondent: Ms L Hatch, Counsel
For the Second Respondent: Mr W Lane, Solicitor

RESERVED JUDGMENT

1. All the first claimant's claims fail and are dismissed against both respondents.

2. All the second claimant's claims fail and are dismissed against both respondents.

REASONS

3. The claimants, C1 and C2, complained of automatic unfair dismissal against the first respondent (R1) and protected disclosure (PID) detriment against both R1 and R2. All claims are resisted by the respondents.

4. We heard from C1 and C2. On behalf of R1 we heard from Anthony King, Interim Services Manager, and Claudine Reed, Director. On behalf of R2 we heard from Jody Hazell, former Senior Social Worker.

5. There were separate bundles for each claimant, which were provided in electronic form. References in square brackets in the judgment are to the Pdf page numbers from the bundles. The numbers from C1's bundle will be prefixed with "C" and from C2's bundle "W".

The Issues

6. The issues in this case are set out in the case management order of Employment Judge Freer, sent to the parties on 26 June 2019 [W75-78]. These are more specifically referred to in our conclusions.

The Law

7. Section 103A of the Employment Rights Act 1996 (the "ERA") provides that an employee shall be regarded as unfairly dismissed if the reason, or if more than one, the principal reason for the dismissal is that the employee made a protected disclosure.

8. Section 43B provides that 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 matters listed in sub-sections (a)-(f).

Reasonable belief

9. There are 4 stages to reasonable belief –

i) the claimant's subjective belief – did the claimant believe that the disclosure tended to show a relevant failure.

ii) The objective belief – was that belief reasonable. In considering the objective test, those with professional or insider knowledge will be held to a different standard than laypersons in respect of what it is reasonable for them to believe Korashi v Abertawe Bro Morgannwg University Local Health Board 2012 IRLR 4 EAT

ii) did the claimant believe that the disclosure was in the public interest

iv) If so, was such a belief reasonable.

10. Section 47B ERA provides that a worker has a right not to be subjected to any detriment by his employer on the ground that the worker has made a protected disclosure.

Findings of Fact

11. R2 is a social enterprise which delivers care and support services to vulnerable adults and children that are at risk. The respondent operates a recruitment agency that provides temporary workers to various organisations in the social care sector, including R2. At the relevant time, R1 provided staff to approximately 10 sites.

12. R2 operates two residential family (parent and child) assessment and treatment services in South London. It provides both residential and community based assessments of parenting in order to determine a family's ability to offer adequate care and prioritise the needs of their children. The centres accommodate up to 9 families and are staffed on a 24-hour basis. The focus of the assessment is the evaluation of risk; the quality of the attachment; and bonding between the children and parents. The assessment is a collaborative process involving a team of professionals, such as social workers, psychologists and therapists. The independent assessment is used by government agencies and in care proceedings.

13. R1 has been providing staff to R2 for over 3 years. Both C1 and C2 were provided by R1 to work as Support Workers at R2's centre but it is common ground that R1 was the employer of both C1 and C2.

Maria Carruthers - C1

14. C1 commenced employment with R1 in February 2018 and began to work at R2's centre in Bromley at the beginning of March 2018. The claimant's role was to observe the residents and feed information to the multi-disciplinary team of assessors as to what she saw and observed.

15. On 19 April 2018, the claimant sent an email to Anthony King (AK) Interim Service Manager of R1, informing him of a conversation she'd had with one of R2's resident's IG, who complained about how she was treated by her social worker and other R2 staff. The claimant relies on this email as her first protected disclosure [C105]

16. On 1 May 2018, C1 visited AK at his office and told him that IG wanted her to raise a complaint on her behalf about her treatment by R2 staff. As the complaints were about R2's employees, there was nothing that AK could directly do, except refer the matter to R2 for action. Accordingly, in the presence of C1, AK phoned Jodie Hazell (JH) Senior Social Worker at R2 informing her of the complaint he had received from C1.

17. Later that day, C1 wrote to AK with a formal complaint raised on behalf of IG, in which she sets out a number of allegations of mistreatment of IG by R2's staff. The claimant relies on this document as her second protected disclosure [C107-108] In the letter, C1 mentions that IG had asked her if she could look after her child if the child is taken away. This and other matters would later cause the respondents to question C1's ability to maintain appropriate professional boundaries between herself and the residents at R2.

18. On 21 May, C1 sent a text message to AK asking whether he had heard back from JH regarding the complaint [C110]. C1 had originally relied on this text as a third protected disclosure but withdrew this at the hearing.

19. On 31 May 2018, while at the Croydon Magistrates Court , C1 bumped into SS, a resident of R2 who had a court appearance. As she was on her own, SS asked C1 to go into court with her to provide moral support. After the hearing, SS informed C1 that she had walked to Croydon from R2's Bromley residence and would be walking back to as JH had refused to lend her £10 for her fare and had refused to allow her to share a taxi with 2 other residents who were going into Croydon.

20. C1 gave SS a lift in her car but rather than dropping her straight back to the residence, she stopped first at R1's offices to report to AK what she had been told by SS. The account of their conversation is disputed. C1 says that she told AK that she was going to report JH and R2 to Ofsted. She said that she told AK that SS was waiting in her car and asked him what she should do with her. He responded that she should take her back to the residence but should not park in R2's car park as that would put him in an embarrassing position as he supplied agency staff to them. AK denied that C1 had mentioned going to Ofsted or that he had advised her to drive SS back to the residence. However, having considered this conflict, we prefer C1's account. The claimant's version has a ring of truth to it and AK was unlikely to admit to it, given the presence of R2, his client, at the hearing. Further, we consider it entirely plausible that AK would have been professionally embarrassed had C1 turned up at R2 with one of its residents in her vehicle after hours, which is consistent with the instruction to not drive into R2's car park. C1 relies on her report to AK as her fourth protected disclosure.

21. On the same day, the C1 phoned Ofsted. At paragraph 32 of her statement she says that she reported what happened at R2 in terms of ill-treatment of residents, including the comments made to IG and how they treated SS. This is relied upon as the fifth disclosure.

22. On 6 June, Ofsted carried out an inspection of R2. The claimant says that this was as a result of her phoning them on 31 May and reporting JH and R2's treatment of the residents. The Ofsted report says that the visit was triggered by a significant number of complaints received directly from parents about the services they received from the centre. It makes no reference to complaints from staff. [C116-120] However, we accept C1's evidence that she was told by Ofsted that her report to them would be kept confidential.

23. On 8 June, AK called C1 to his office and advised her that she was to be removed from R2's site. There is a dispute as to the reason given for this. C1 says that she was told that R2 believed that she had reported them to Ofsted. AK denies this. His evidence was that JH had called him that day raising concerns about the claimant being too friendly with the residents and not respecting professional boundaries.

24. There is no record of the conversation. However, In his evidence, AK admitted that Hugh Hill (HH) registered manager of R2's Bromley centre, asked him: **"***what's this about MC calling Ofsted on R2***.** AK told us that he could not remember whether this was before or after the claimant was removed from R2's site. If it was before, then it would most likely have been raised with C1 at their meeting. In her resignation letter of

17 July 2018, just over a month later, C1 recounts her conversation with AK on the 8 June and it accords with the account she has given to us. AK acknowledged the letter on the 24 July 2018 but notably, did not challenge the claimant's account of their conversation, even though he sought to clarify another conversation he'd had with her. [C130]. Whilst we accept that JH raised concerns with AK about C1 not respecting professional boundaries, that is not inconsistent with her also telling him that R2 believed C1 had contacted Ofsted. For these reasons, we accept C1's evidence that she was told by AK that R2 believed she had reported them to Ofsted.

25. In light of what was reported to him, AK decided to withdraw the claimant from R2. He told us that it was not a suspension from work as he offered her an alternative placement at a different location but she refused. The claimant denies being offered alternative work at that point. She says that she was only offered work 2 weeks later, at The Lighthouse. We prefer the claimant's evidence on this as AK's evidence on what shifts were offered and where has not been clear.

26. On 17 July 2018, AK received a call from R2 who informed him that C1 had attended court the day before and agreed to co-parent IG's child. This information had been reported to R2 by the local authority, Childrens' Services. [151] The claimant told us that this was not true though she accepted that she had attended court to give evidence on behalf of IG in her care proceedings.

27. AK called C1 that evening leaving a voicemail informing her that she was to be suspended from all work for 7 days pending an investigation into a conflict of interest and was asked to attend the office the following day for a meeting. AK later spoke to C1 on the phone and she confirmed that she had put her name down to look after IG's child and had attended court to give evidence about the treatment IG had received from R2. This is confirmed in the claimant's resignation letter, referred to below.

28. On 18 July 2018, AK sent an email to members of staff informing them of C1's suspension. The letter read: " *I was saddened to hear of Maria Carruthers' clear breach of our code of conduct and in addition major conflict of interest in terms of "Agreeing to" co parent and take on a Jamma residents child despite the fact that Jamma Umoja had given a negative recommendation regarding the child. Maria has put the integrity of PJ's Community Services and Jamma Umoja at risk and based on this, Maria is suspended….."* [C127]

29. C1 tendered her resignation. The resignation letter was drafted on the 17 July. The claimant thought she had sent it on that day but found it in her in-box. It was actually sent to AK on the 24 July 2018. [C128-133]. AK wrote acknowledging the resignation on the same day [C130]

30. On 8 August 2018, C1 wrote to Claudine Reed (CR) Director of R1, to lodge a grievance and to retract her resignation [C139-141]. On 12 August 2018, CR replied, inviting C1 to an exit interview. The letter went on to say that they would discuss at the meeting "…..*if and how you are able to return to work for PJs Community Service and the process to rescind your resignation*." [C142-143]

31. On 13 August 2018, C1 attended a meeting with CR, accompanied by someone from the CAB, who took notes. [C148]. It is clear from the notes that they were at cross purposes as to the reason for the meeting. The claimant thought they were there to discuss the recission of her resignation; CR said that it was an exit interview.

Nevertheless, there was a discussion about the Cpl1's wish to withdraw her resignation and around the matters raised in her grievance. When asked at the end of the meeting what would happen next, CR said that she would get back to C1 in 14 days [C148-149]

32. On 4 September 2018, CR wrote to C1 informing her that they would not be looking into her grievance as her resignation had been accepted and she was no longer a member of staff [C173].

33. In the meantime, the claimant had applied for a permanent support worker position at the Lighthouse, where she had been placed by R1 following her removal from R2. On 14 August 2018, a day after the meeting with CR, she was offered the role.

34. On 23 August 2018, R2 raised a formal complaint against C1 in relation to her attendance at court on 17 July 2018 [151-153]. On 3 October, there was a second complaint from R2 where it was alleged that C1 had attended further care proceedings on 29 September 2018 in support of a resident of R2. [C182-183]

35. On 3 September 2018, Lighthouse wrote to R1 for a reference in respect of C1. In response to the question: "*Has the applicant received any disciplinary action/been subject to any complaint/adult protection investigation within the last 12 months?...*" R1 responded that C1 was suspended pending investigation for a breach of confidentiality, code of conduct, professional boundaries and placing Children subject to Section 47 Child Protection at risk. In response to the question: "*Do you consider the applicant suitable to work with vulnerable adults? If not, give your reasons*", R1 replied that C1 had not demonstrated suitability to work with children and vulnerable adults and was considered a concern. [C197-201]. These responses were provided on legal advice and guidance from LADO (The Local Authority Designated Officer), who advised that R1 were duty-bound to highlight any safeguarding concerns on the form [C186]

36. C1 complains about the quality of the reference provided and the delay in providing it as protected disclosure detriments.

37. C1 alleges that on 1 October 2018, HH and JH wrote dishonest statements to the Judge in the case of a resident, in which they stated that C1 had attended the case claiming to have legal expertise and training. C1 relies on this as a protected disclosure detriment. [C176-179] C1 also alleges that in the same correspondence, R2 falsely alleged that on 12 October 2018, she had attended a criminal hearing with a resident and had possibly colluded with the resident to mislead the court about an assessment carried out in relation to the resident. C1 relies on this as the second detriment against R2.

Angela Walters – C2

38. C2 was an agency worker of R1 between October 2017 and July 2018 and throughout that time was assigned to R2, as a support worker on the nightshift, alongside C1.

39. On 19 April 2018, C2 sent an email to AK relaying to him some of the complaints about R2's day staff from some of its residents. C2 states that one resident had a door slammed in her face by a member of staff "G" and on another occasion was left standing outside the door for 10 minutes by "E". Another resident was told by "E" that they wanted to strangle her. She also alleged that "G" had always been very

judgmental of the residents. Later the same day, C2 spoke to AK about these matters on the phone. She also claimed that her end of shift notes had been altered. C2 relies on the email and phone call as protected disclosures. [122]. When asked what wrong the information tended to show, C2 said that the door slamming was failing to protect the health and safety of vulnerable residents, leaving a resident outside was a deliberate attempt to demean them; and saying you want to strangle someone is a breach of the legal obligation to ensure that residents are not threatened. She also said that making judgmental comments about residents may lead to staff being subjective in their notes which was not in line with the legal obligation to make objective assessments.

40. On 26 April 2018, C2 raised her concerns directly with R2, as directed by AK, and on the same day, she received an email from Myles Lemon, Operations Manager, in which he wrote:

" Hi Angela,
I'm glad that the meeting went well, You are correct in taking the avenue of providing me with any concerns you have directly, as I will be able to deal with them directly or together with the families case managers.
Than you for updating me and I am happy that you're still with us lol." [W124]

41. On 27 June 2018, JH contacted AK about concerns R2 had about C2's ability to remain objective when dealing with the residents. JH's view was that C2 (along with C1) adopted too much of a parent-centred approach to the point of ignoring the best interests of the child and this was considered a safeguarding issue. JH asked that C2 not be sent to them anymore (by this time, C1 had already been removed). That same day, AK phoned C2 to inform her that she would no longer work at R2 because of their concerns. C2 was offered shifts with another of R1s clients, Broadwalk in Greenwich. C2 relies on her removal from R2 as a protected disclosure detriment by R1 and R2

42. Notwithstanding the request of R2, on 15 July 2018, AK called C2 and asked her to do a shift at R2 as emergency cover. When C2 queried this, AK assured her that it was fine. However, 3 hours into the shift, C2 was phoned by AK and told to leave site immediately. On 16 July, C2 submitted a timesheet for the 3 hours worked. However, on 17 July, R1 returned it to her unpaid as R2 had refused to sign it. On the timesheet was an annotation by R2: "*I cannot sign this timesheet as Angela was not meant to be working*" [W132-133]. The claimant relies on these matters as detriments.

43. On 5 September 2018, R1 received a written complaint from R2 about C2's attendance at court in a personal capacity to give evidence in support of a resident under assessment by R2. C2's attendance was considered by R2 to be inappropriate and to give rise to potential reputational damage to its business. [W150-151]

44. On 10 September 2018, C2 attended a meeting with CR. C2 was told about the complaint against her from R2 and that the matter was to be investigated. [W154]. C2 relies on this meeting as a detriment.

45. On 25 September 2018, R1 received a call from R2 alerting it to concerns raised by a separate local authority relating to another unsanctioned court attendance that day by C1 and C2 on behalf of a resident of R2. R1 took advice and were told that they had no alternative but to suspend C2. Accordingly, on 26 September 2018, CR wrote to C2 suspending her from duty (without pay) pending investigation into the complaints,

which were summarised in bullet form in the suspension letter [W157]. In the same letter, C2 was invited to attend an investigation meeting on 16 October 2018. C2 relies on the suspension as a detriment.

46. On 3 October 2018, R2 put the above complaint in writing.[W162-164]

47. On 16 October 2018, C2 attended the investigation meeting with CR. This was a fact-finding meeting in relation to the second complaint received from R2. The clamant relies on this meeting as a detriment. She stated in evidence that she thought the meeting was to talk about the suspension and her complaint against R2. However, the purpose of the meeting is clear from the suspension letter [W157]

48. On 12 November 2018, C2 was invited to attend a "next steps meeting" on 19 November. She was advised that the investigation against her was now complete and that there were 3 allegations that would be discussed at the meeting; which were: i)Interference of the professional investigation; ii)Breach of confidentiality and iii); Loss of professional boundaries [W196]. C2 relies on this letter as a detriment.

49. On 15 November 2018, C2 wrote to CR tendering her resignation from R1, claiming to have been bullied, discriminated against and victimised for whistleblowing. [W201-202]. Needless to say, she did not attend the meeting scheduled for 19 November 2018.

Submissions

50. All parties provided written submissions, supplemented by oral submissions. All of these have been taken into account.

Conclusions

51. Having considered our findings of fact, the parties' submissions and the relevant law, we have reached the following conclusions on the issues before us:

C1 – Claim

Disclosure 1 – email 19.4.18

52. This is a reference to the matters at paragraph 15 above. Information must contain sufficient factual content and specificity that is capable of tending to show one of the relevant types of wrongdoing. Cavandish Munro Professiona Risks Management v Geduld [2010] IRLR 28 The email is essentially a complaint about R2's staff being uncaring and unsupportive towards a resident and does not in our view contain sufficient factual content and specificity to amount to information Further, the claimant could not reasonably have believed that it tended to show a breach of a legal obligation. When asked by me whether she was able to tell us what the legal obligation was that the information tended to show, she said she could not. The most she was able to say was that IG was a vulnerable person and should not have been treated in that way. Believing that actions are wrong or unacceptable is not enough to amount to a breach of a legal obligation. There is no identifiable legal obligation here. We find that this was not a qualifying disclosure.

Disclosure 2 – email 1.5.18

53. This is a reference to the matters at paragraph 17 above. Again, this is an extension of the earlier matter, being a complaint about the alleged treatment of a resident by R2's staff. Although there is some factual content in the matters raised i.e. IG being asked how many baby fathers she had and being told she needed to learn to shut her legs, the claimant could not reasonably have believed that this tended to show a breach of a legal obligation. When asked to paraphrase the legal obligation, C1's response was that IG was a vulnerable adult and should not have been treated in this way. Also, the matters raised are about the one individual so C1 could not have reasonable have believed that the disclosure was in the public interest. We find that this was not a qualifying disclosure.

Disclosure 4 (disclosure 3 was withdrawn) C1 verbal report to AK on 31.5.18

54. This is a reference to the matters at paragraphs 19 and 20 above. There is sufficient factual content here i.e. that SS went to court on her own without support and was refused a loan for her fare. Also, C1's threat to refer R2 to Ofsted suggests that she has a subjective belief that the information tends to show a breach of a regulatory duty for which Ofsted is the policing authority. C1 refers at paragraph 30 of her witness statement to a breach of the legal duty to properly safeguard and support vulnerable residents though that is not something that was said at the time. As with the earlier matters, it is a complaint about the alleged treatment of one individual with no wider public interest element and the legal obligation that the claimant believed it tended to show was not identified or apparent. We find that this was not a qualifying disclosure.

Disclosure 5 – Report to Ofsted – 31.5.31

55. This is a reference to the matters at 21 and 22.

56. A disclosure must be made in accordance with 43C-H ERA. Those provisions identify the persons to whom the disclosure can be made in order to amount to a qualifying disclosure. It appears that Ofsted's Chief Inspector is a prescribed person under 43F for disclosures about matters relating to the regulation and inspection of establishment and agencies for children's social care services. Neither party addressed me on whether a disclosure to Ofsted fell within this or any of the other provisions of 43C-H but on a reading of those provision, we consider that either 43F or 43H would apply.

57. The content of the phone call, as described, does not disclose sufficient information. The reference to ill-treatment of residents is a general allegation with no factual content. C1 does not identify anything said in this phone in relation to IG and SS that differs from what was disclosed in relation to disclosures 1, 2 and 4 and we have already found this to be insufficient. We have considered whether looking at the disclosures cumulatively makes a difference and we have decided it does not, The quality of the information is not improved by aggregation.

58. We therefore find that none of the matters relied upon by C1 amount to qualifying disclosures.

59. In case we are wrong about the above matters being disclosures, we have gone on to consider the detriments. Addressing first of all the detriments relating to R1:

Suspending the claimant from working at R2 on 8.6.18

60. Based on our findings at paragraph 24, we are satisfied that the reason for removing C1 from R2's site was, in part, connected to her disclosure to Ofsted. However, this detriment complaint is out of time. By section 48(3) ERA, a detriment complaint must be brought before the end of 3 months beginning with the date of the act or failure to act. The act was done on 8 June 2018 and so any claim should have been presented by 7 September 2018. The claim was presented on 28 November 2018. Acas early conciliation opened and closed on 27 November 2018 and as this was more than 3 months after the detriment, C1 did not have the benefit of an Acas time extension. C1 had decided to resign by 17 July 2018, so must have been aware at that point that she had a potential complaint. C1 has given no satisfactory reasons as to why it was not reasonably practicable to present the claim in time and we therefore find that it was. The tribunal therefore has not jurisdiction to consider this complaint.

Suspension from Lighthouse on 17/7/18

61. This refers to the matters at paragraphs 26 and 27 above. We are satisfied that the claimant's suspension was because of a complaint received from R2, which had in turn been reported to R2 by Children's Services. We are also satisfied that the allegations were substantially true. C1 admitted attending court to give evidence detrimental to R2 and in support of one of its residents. She also admitted putting her name forward as a potential carer for the resident's child. This was obviously a conflict of interest, given her role, and the complaint that she was too friendly with the residents and did not respect professional boundaries had a clear basis. It was therefore legitimate for R1 to seek to investigate these matters and to suspend C1 while it did so. We are satisfied that this was the reason for the suspension and not any protected disclosures.

Rejecting the claimant's request to retract her resignation on 4 September 2018

62. See paragraphs 30-32 above. At paragraph 24 of her statement, CR says that she could not agree to C1 returning to work because she considered her incapable of maintaining the professional boundaries needed to safely and effectively carry out the role of Family Support Worker with vulnerable children and adults. Based on the complaint from R2, which we have found to be substantially true, we consider that this was a genuine concern and the reason for not allowing C1 to retract her resignation. It had nothing to do with any disclosures.

Delay and quality of the reference

63. See paragraphs 35-37 above. The reference was requested on 3 September 2018 and provided on 31 October 2018. We are satisfied from CR's evidence and supporting documentation that the delay was because R1 wanted to seek legal advice on how to respond, given that the reference was requested by a client and there had been two complaints against C1. We are satisfied that the contents of the reference are factually accurate and based on the legal advice given. These were not detriments connected to any protected disclosures.

Automatic Unfair Dismissal

64. Although we have found that the removal of the claimant from R2 was materially influence by her report to OFSTED, even if that amounted to a breach of trust and

confidence, the claimant affirmed it by agreeing to be re-assigned to work at the Lighthouse. The last act of R1 before the resignation was C1's suspension from the Lighthouse. It has not been identified as a last straw and we have found, in any event, that there was reasonable and proper cause for it. The claimant has not satisfied us that these matters cumulatively amounted to a fundamental breach of contract causing her to resign. In the absence of a dismissal, there cannot be an automatic unfair dismissal. This complaint fails.

Unlawful deduction of wages

65. This is based on non-payment of wages between C1's removal from R2 and her assignment to the Lighthouse. C1 was on a zero hours contract and was only entitled to be paid when she worked. She did not work during the intervening 2 week period and has not shown any contractual basis for her claim or identified the sums she contends are properly payable to her. This claim is not made out.

66. We now turn to the detriments relating to R2.

The provision of dishonest statements by HH and JH on 1 October 2018 relating to the events on 31.5.18

67. This is a reference to the matters at paragraph 37. Whilst we are not in a position to say whether the allegations are true, we are satisfied that the information came from the local authority and that HH and JH honestly and reasonably placed reliance on the statements. We find that their letter was not influenced by any disclosures by C1.

Conclusion on the Claim of C1

68. All C1's claims against both respondents fail and are dismissed.

C2 - Claim

Disclosure – complaint to AK by email and phone on 19 April 18'

69. This refers to the matters at paragraph 39 above. There is some factual content in some of the allegations: i.e. "G" slamming the door in a resident's face, "E" leaving a resident standing outside for 10 minutes, and telling another resident she wanted to strangle him. C2 cannot reasonably have believed that the reference to strangling was anything more than a figure of speech, in which case she could not have reasonable believed that it tended to show breach of a legal obligation or health and safety under section 43B(1) ERA. In her submissions, C2 contends that the legal obligation breached was R2's duty to safeguard vulnerable residents and relies on the statutory duty under Regulation 10 of the Residential Family Centre Regulations 2002.
We are satisfied that in relation to the allegations of "*slamming the door in a resident's face*" and "*leaving a resident standing outside*" C2 reasonably believed that these tended to show a breach of a legal obligation. We also find that C2 reasonably believed that these disclosures were in the public interest because of the public function of R2 in providing parenting assessments for care proceedings. We find that C2's email and phone complaint contained qualifying disclosures.

Detriments relating R1

Suspending C2 from working for R2 on 27.6.18

70. This refers to the matters at paragraph 41 above. Given that C2 was immediately reassigned and therefore did not lose income, we are not satisfied that she suffered a detriment at all. However, even if she did, we are satisfied that her removal from working for R2 was at R2's request after JH raised a complaint about her. We find (and C2 accepted in evidence) that R1 had no option but to accede to that request. This was the reason for C2's removal. It was not connected to any protected disclosures by C2.

The events of 15 July 2018

71. See paragraph 42 above. Whilst we find it surprising that AK would send C2 back to R2 given their request that she be removed, we are satisfied that he did so because there was nobody else he could send at the time. This is supported by C2's evidence at paragraph 28 of her statement where she refers to the request as "emergency cover". C2's assertion that AK used her for those 3 hours to cover the shift until he could get someone else is speculation on her part. However, even if she is right, that is a reason that speaks to administrative convenience or necessity related to the emergency need for cover rather than protected disclosures.

The events of 10 September 2018

72. See paragraph 44 above. The meeting with C2 was a natural consequence of the complaint received by R1 about her on 5 September. That complaint was based on a report from the local authority, which was independent of any disclosures made by C2. By meeting with C2, R1 was following its disciplinary procedure which provides that *"Employees will be told of the complaint against them and be given a full opportunity to state their case before a decision is taken" [W98]*. This detriment is not made out.

Suspending C2 from all assignments on 26.9.18

73. This is dealt with at paragraph 45 above. Based on our findings, we are satisfied that the reason for the suspension was the need to investigate the matters raised by R2. These matters were not contrived; the report originated from a third party and the fact that C2 had made an unsanctioned court attendance on behalf of a resident of R2 was not in dispute. It was legitimate for R1 to want to investigate this and to suspend C2 while it did so. This decision was not connected to any protected disclosures by C2.

The events on 16 October 2018

74. See paragraphs 45-47 above. This was a fact finding meeting following the further complaint received from R2. For similar reasons to those at paragraph 73 above, we find that this was not a protected disclosure detriment.

The events of 12 November 2018

75. See paragraph 48 above. An invitation to attend a "next steps meeting" (otherwise known as a disciplinary meeting) is a natural progression through the disciplinary process and provides C2 with an opportunity to state her case. This is not a protected

disclosure detriment.

Detriments relating to R2

Informing R1 not to place C2 with it on or around 27 June 2018

76. See paragraph 41 above. We are satisfied from the evidence of JH that R2's decision to have C2 removed from its site was based on safeguarding concerns and not any protected disclosures.

The events of 16 July 2018

77. See paragraph 42 above. We are satisfied that, rightly or wrongly, the reason R2 refused to sign C2's timesheet was because in its view, she should not have been working for them on that day, given their previous instructions to R1.

Automatic Unfair Dismissal

78. In her resignation letter, C2 claims that she was bullied, discriminated against and victimised for whistleblowing. We take these phrases to be used colloquially to describe the detriments referred to above. We have already found these not to be protected disclosure detriments. In addition, we find that there was reasonable and proper cause for the decisions taken by R1. C2 has not proved that she resigned in response to a fundamental breach of her contract by R1. The constructive dismissal claim is dismissed.

Unlawful deduction of wages

79. This claim relates to the non payment of salary during the suspension. C2 was employed under a temporary contract. In R1's welcome pack provided to C2, under the heading "Your Wages" it states: "*If you do not work you will not get paid*" [W89-90]. C2 has not shown any contractual basis for her claim for pay during her suspension. This claim is dismissed.

Conclusion of the claim of C2

80. All claims of C2 against both respondents fail and are dismissed.

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Employment Judge Balogun
Date: 18 February 2021